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Friday
September 5, 1986

Briefings on How to Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 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: September 25; at 9 am.

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

RESERVATIONS: Doris Tucker 202–523–3419

Contents

Federal Register

Vol. 51, No. 172

Friday, September 5, 1986

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
2.....31757
908.....31758
1136.....31759
1230.....31898

14 CFR
Proposed Rules:
39.....31779

18 CFR
Proposed Rules:
37.....31781

19 CFR
111.....31760
171.....31760
178.....31760

21 CFR
178.....31760
357.....31763
369.....31763
558.....31763

24 CFR
511.....31764

28 CFR
Proposed Rules:
16.....31781

38 CFR
Proposed Rules:
21.....31782

40 CFR
Proposed Rules:
86.....31783
260.....31783
261.....31783
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783

42 CFR
Proposed Rules:
57.....31920

43 CFR
2880.....31764
Proposed Rules:
2800.....31886
2880.....31886

44 CFR
Proposed Rules:
10.....31788

48 CFR
223.....31765
228.....31765
242.....31765
252.....31765

49 CFR
571.....31765

50 CFR
655 (2 documents).....31774, 31775
663.....31776

Rules and Regulations

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Agricultural Marketing Service (AMS), the authority to administer the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Watermelon Research and Promotion Act (7 U.S.C. 4901–4916); Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4531–4538); Floral Research and Consumer Information Act (7 U.S.C. 4301–4319); Section 213 of the Tobacco Adjustment Act of 1938, as amended, (7 U.S.C. 511r); and Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended by sec. 121 of the Food Security Act of 1985 (7 U.S.C. 4501–4513; 4531–4538).

The Secretary of Agriculture believes that these programs can be conducted most effectively under the jurisdiction of AMS.

EFFECTIVE DATE: September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Hooper, Financial Management Division, Agricultural Marketing Service, Department of Agriculture, Washington, DC (202) 447–6961.

SUPPLEMENTARY INFORMATION: The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) authorizes the Secretary of Agriculture to establish a national pork promotion, research, and consumer information order.

The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916) authorizes the Secretary of Agriculture to issue an order which authorizes the collection of assessments on watermelons and the use of such funds to cover cost of research, development, advertising and promotion with respect to watermelons.

The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612) provides for a nationally coordinated, industry financed research, promotion and consumer information program designed to expand the markets for honey products.

The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319) provides for a nationally coordinated, industry financed research, consumer, and producer education and promotion program for cut flowers, potted plants, and foliage plants.

Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538) provide for a nationally coordinated, industry financed dairy products promotion, research, and nutrition education program and a National Dairy Research Endowment Institute.

Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r) requires all tobacco, except cigar tobacco and oriental tobacco, imported into the United States to be inspected, insofar as practicable, for grade and quality and requires flue-cured and burley tobacco imported into the United States to be certified by the importer that such tobacco does not contain residues from any pesticides banned from U.S.-grown tobacco.

The Secretary of Agriculture believes that these programs can be conducted most effectively under the jurisdiction of AMS. This document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services, and the Administrator, AMS, the responsibility and the authority for administering the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Watermelon Research and Promotion Act (7 U.S.C. 4901–4916); Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612); Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538); Floral Research and Consumer Information Act (7 U.S.C. 4301–4319); and section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Finally, this subject is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 continues to read.

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953 unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding new paragraphs (a)(3)(xxxviii) through (xliii) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

(a) * * *

(3) * * *

(xxxviii) The Pork Promotion, Research and Consumer Information Act of 1985 (7 U.S.C. 4801–4819).

(xxxix) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916).

(xl) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612).

(xli) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538).

(xlii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319).

(xliii) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.50 is amended by adding new paragraphs (a)(3) (xxxix) through (xliv) and by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) * * *

(3) * * *

(xxxix) The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819).

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616).

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612).

(xlii) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538).

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319).

(xliv) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

* * * * *

(b) * * *

(1) Taking final action on regulations under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A)); section 12(a) of the Cotton Research and Promotion Act (7 U.S.C. 2111(a)); section 311(a) of the Potato Research and Promotion Act (7 U.S.C. 2620(a)); section 118(a) of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4509(a)); section 1625(a) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4814), section 1650(a) of the Watermelon Research and Promotion Act (7 U.S.C. 4909), section 10(a) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4609(a)), section 14(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2713(a)), and section 1714(a) of the Floral Research and Consumer Information Act (7 U.S.C. 4313(a)).

(2) Issuing, amending, terminating, or suspending any marketing agreement or order or any provision thereof under the Agricultural Marketing Agreement Act of 1937; the Cotton Research and Promotion Act; the Potato Research and Promotion Act; Subtitle B and C of the Dairy Production Stabilization Act of 1983, as amended; the Pork Promotion, Research, and Consumer Information Act of 1985; the Beef Research and Information Act, as amended; the Watermelon Research and Promotion Act; the Honey Research, Promotion, and Consumer Information Act; or the Floral Research and Consumer Information Act.

* * * * *

Dated: August 29, 1986.

For Subpart C.

Peter C. Myers,

Acting Secretary, Secretary of Agriculture.

For Subpart F.

Alan T. Tracy,

Deputy Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 86–20064 Filed 9–4–86; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 379]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 379 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period September 5–11, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 379 (§ 908.679) is effective for the period September 5–11, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on September 2, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges continues to improve.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act.

Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been

notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing agreements and orders, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

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

2. Section 908.679 is added to read as follows:

§ 908.679 Valencia Orange Regulation 379.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 5, 1986 through September 11, 1986 are established as follows:

(a) District 1: 460,000 cartons;
(b) District 2: 540,000 cartons;
(c) District 3: Unlimited cartons.

Dated: September 3, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–20180 Filed 9–4–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1136

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues a prior suspension of the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pool status under the Great Basin Federal milk order. The continuing action was requested by Western General Dairies, Inc., a cooperative association representing most of the producers supplying the market.

The suspension is based on information received at a public hearing held March 18–20, 1986, in Salt Lake City, Utah. The hearing was held to consider a proposal to merge the Great Basin and Lake Mead milk orders. Provisions of the proposed merged order would alleviate the pooling problems experienced by the cooperative for approximately the past year. A further suspension of the Great Basin order's requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining the plant's pool status is warranted until the hearing proceeding has been completed. Such interim action is needed to provide a continuation of the orderly and efficient handling of the supplies of milk surplus to the fluid needs of the market while the proceeding is under consideration.

EFFECTIVE DATE: September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Notice of Proposed Suspension: Issued July 29, 1986; published August 4, 1986 (51 FR 27866).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Great Basin marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 4, 1986 (51 FR 27866) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the continued suspension were received.

After consideration of all relevant material including the proposal in the notice, comments received, and testimony and evidence in the hearing record, it is hereby found and determined that the suspension, which applied to milk marketed through the end of July 1986, should be extended and continued until the hearing proceeding on a proposed merger of the Great Basin and Lake Mead orders has been completed and that the following provisions of the current order do not tend to effectuate the declared policy of the Act:

In § 1136.7(a), the language "or diverted therefrom as producer milk to a nonpool plant pursuant to §1136.13."

Statement of Consideration

This action is based on the record of a public hearing held on March 18–20, 1986, at Salt Lake City, Utah, to consider a proposed merger of the Great Basin and Lake Mead orders. The Great Basin order now requires that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pooling under the order. The order provides that a certain percentage of a distributing plant's receipts in each month be disposed of as route disposition if the plant is to be qualified for pooling. In addition to fluid milk products physically received at the plant, diversions of producer milk to nonpool plants are included as part of the receipts of which a particular percentage must be disposed of on routes.

Continuation of the suspension was requested by Western General Dairies, Inc., a cooperative association that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies. Western General also operates pool distributing plants and manufacturing plants in the Great Basin marketing area. The cooperative based its request for continued suspension on the record of a public hearing held March 18–20, 1986, in Salt Lake City, Utah, to consider its proposal to merge the Great Basin and Lake Mead orders.

Data introduced at the hearing show that producer milk pooled under the Great Basin order in 1985 increased by 33 percent over 1984. Over the same period, Class I sales by Great Basin handlers increased by only 6 percent. The percentage of producer milk used in Class I in 1985 was 48.38 percent, as compared with 59.34 percent in 1984. Testimony received at the hearing indicated that increasing volumes of milk production are expected to be eligible for pooling under the Great Basin order in the near future. Given these conditions, it is likely that some distributing plants whose principal business is supplying fluid milk products to the markets will fail to distribute the proportion of their total milk supplies on routes required to maintain their pool status. The order requires that a fluid milk plant dispose of 50 percent of its receipts, including diversions to nonpool plants, on routes during the months of

September through February, 45 percent in March and April, and 40 percent during the months of March through August. As the actual percentage of producer milk used in Class I declines to about the same percentage of pooled handler's receipts that must be disposed of as route dispositions, it becomes more likely that some fluid milk plants will fail to qualify for pooling, or will have to omit some of their suppliers of producer milk from the marketwide pool. Either situation would tend to create disorderly marketing conditions in the Great Basin area.

Western General's proposed merged order would continue to include diversions of producer milk to nonpool plants in the receipts from which pool plant qualifications would be calculated. However, the proposed order also includes as a pool plant a manufacturing plant operated by a cooperative association within the marketing area. Such a definition would cause milk delivered by Western General to its own manufacturing plant to be considered deliveries to pool plants, thereby removing such milk from the receipts to be included in pool plant qualification computations. In post-hearing briefs, two proprietary handlers supported the omission of diverted milk from receipts to be used in computing pool plant qualifications in the proposed merged order. The handlers explained that if diverted milk were to be considered a receipt for such purpose, they would experience difficulty in pooling all of the milk shipped by their nonmember producers.

Gossner Foods, Inc., a proprietary handler regulated under the order, filed comments supporting the proposed suspension. No comments in opposition to the proposed action were received.

An extension of the current suspension is warranted on the basis of the foregoing information. The extension will enable Western General and other handlers to handle their reserve milk supplies efficiently and assure that the milk of dairy farmers who supply the fluid needs of the market will continue to be pooled until such time as the hearing proceeding is completed.

It is hereby found and determined that thirty day's notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for this action were explored fully at a public hearing held on March 18–20, 1986, where all interested parties had an opportunity to testify concerning the proposals. Also, notice of proposed rulemaking was given interested persons and they were afforded opportunity to file written data, views of arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1136

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following language in § 1136.7(a) of the Great Basin order is hereby suspended for the month of August 1986 and continuing until the rulemaking proceeding relating to the merger of the Great Basin and Lake Mead Federal milk orders has been completed:

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR Part 1136 continues to read follows:

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

§ 1136.7 [Amended]

2. In § 1136.7(a) the language "or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13" is suspended.

Effective date: September 5, 1986.

Signed at Washington, D.C., on: September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–20067 Filed 9–4–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 171, and 178

[T.D. 86–161]

Customs Regulations Amendments Relating to Customs Brokers

Correction

In FR Doc. 86–19256 beginning on page 30336 in the issue of Tuesday, August 26, 1986, make the following corrections:

1. On page 30337, first column, first complete paragraph, the third, fourth and fifth lines should have read as follows: "recorded in an alternate method in addition to maintenance of the original documents.".

2. On page 30339, first column, seventh line, "should" should have read "would".

§ 111.28 [Corrected]

3. On page 30343, first column, in § 111.28(c), ninth line, "of" should have read "to".

§ 111.95 [Corrected]

4. On page 30346, first column, in § 111.95, fourth line, "to" should have read "of".

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 80F–0498]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt as an emulsifier in the manufacture of coatings for paper and paperboard intended for food-contact use. This action responds to a petition filed by Polysar Limited.

DATES: Effective September 5, 1986; objections by October 6, 1986.

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

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 3, 1981 (46 FR 10542), FDA announced that a petition (FAP 9B3443) had been filed by Polysar Limited, Sarnia, Ontario, Canada N7T 7M2, proposing that the food additive regulations be amended to provide for the safe use of styrene-butadiene copolymers containing *N*-methylolacrylamide as a polymer component and *alpa*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt as an emulsifier in the

manufacture of paper and paperboard intended for food-contact use.

In the **Federal Register** of January 9, 1986 (51 FR 881), the agency published as a partial response to the petition, a final rule to provide for the safe use of *N*-methylolacrylamide as a minor monomer in styrene-butadiene copolymers that are used in the manufacture of paper and paperboard. The January 1986 final rule also made clear that FDA had not completed its review of the safety of the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt in paper and paperboard. The agency stated that action on this salt would be the subject of a future **Federal Register** document. FDA has now completed its review of the safety of this additive.

FDA, in its evaluation of the safety of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt has not been found to cause cancer, it may contain minute amounts of ethylene oxide and 1,4-dioxane as byproducts of its production. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids are commonly found as contaminants in all chemical products, including most food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4. (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the food additive amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinning for those decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is applicable only when the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt will result in extremely low levels of exposure to the additive. The agency has calculated an estimated daily intake of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt based on considerations such as the maximum possible migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles that contain this substance. The estimated daily intake for the additive is 0.14 milligram per day (48 parts per billion in the diet) for a 60-kilogram person.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. Because *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt has not been shown to cause cancer, the anticancer clause does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive. Based on its evaluation of all the available data on this additive including the results of the testing that was done, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in its evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities that may be present in this food additive, ethylene oxide and 1,4-dioxane, has two aspects: (1) assessment of the worst case exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-sulfo-*omega*(dodecyloxy)poly(oxyethylene) ammonium salt, as well as the level of 1,4-dioxane that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to 1,4-dioxane from the use of this additive to be 0.1 nanogram per person per day. The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to

estimate the upper bound level of lifetime human risk from exposure to 1,4-dioxane stemming from the proposed use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to 1,4-dioxane stemming from the proposed use of *alpha*-sulfo-*omega*-(dodecyloxy)poly (oxyethylene) ammonium salt could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additive. Based on a worst case exposure of 0.1 nanogram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt is 4×10^{-12} or less than 1 in 250 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt, as well as the level of ethylene oxide that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to ethylene oxide from the use of this additive to be 0.1 nanogram per person per day. The agency used data in a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, West Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of *alpha*-sulfo-*omega*-(dodecyloxy)poly (oxyethylene) ammonium salt. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas of the forestomach and carcinoma in situ of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the findings of carcinogenicity. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to ethylene oxide could be made from the bioassay.

Based on a worst case exposure of 0.1 nanogram per person per day, FDA estimates using a linear proportional model that the upper bound limit of individual lifetime risk from potential exposure to ethylene oxide from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt is 2×10^{-12} or less than 1 in 5 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to ethylene oxide that results from the use of *alpha*-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt.

C. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the food additive. The agency finds that a specification is not necessary for two reasons: (1) Because of the levels at which ethylene oxide and 1,4-dioxane are used in production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure, even under worst case assumptions, is very low, less than 1 in 250 billion for 1,4-dioxane and less than 1 in 5 billion for ethylene oxide.

D. Conclusion on Safety

FDA has evaluated the available toxicity data and the exposure calculation for the additive and has determined that the additive is safe for its proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?," Committee on

Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," October 24, 1983, Cambridge, MA.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated February 13, 1986, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "Exposure to Ethylene Oxide (EO) and 1,4-Dioxane (DX)."

Any person who will be adversely affected by this regulation may at any time on or before October 6, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3400 is amended in paragraph (c) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3400 Emulsifiers and/or surface-active agents.

* * * * *

(c) * * *

List of substances	Limitations
* * * * *	
Alpha-sulfo-*omega*-(dodecyloxy)poly(oxyethylene) ammonium salt (CAS Reg. No. 30174-67-5).	For use only as an emulsifier at levels not to exceed 0.3 percent by weight of styrene-butadiene copolymer coatings for paper and paperboard complying with § 176.170 of this chapter.
* * * * *	

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Dated: August 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–19998 Filed 9–4–86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 357 and 369

[Docket No. 79N–0378]

Anthelmintic Drug Products for Over-the-Counter Human Use; Final Monograph

Correction

In FR Doc. 86–17180, beginning on page 27756, in the issue of Friday, August 1, 1986, make the following correction:

On page 27759, third column, after § 357.180, "Part 396" should read "Part 369".

BILLING CODE 1505-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Roxarsone, and Bacitracin Zinc

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Minerals & Chemical Corp., providing for safe and effective use of previously approved salinomycin, roxarsone, and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds. The feeds are used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808, filed NADA 139–190 providing for combining the following previously approved Type A articles: Bio-Cox® containing 30 grams of salinomycin sodium per pound with 3-Nitro® containing 10, 20, 50, or 80 percent roxarsone, and Baciferm® containing 10, 25, 40, or 50 grams of bacitracin zinc activity per pound. The Type A articles are combined to make Type C broiler feeds containing salinomycin at 40 to 60 grams per ton, roxarsone at 34.1 grams per ton (0.00375 percent), and bacitracin zinc at 10 to 50 grams per ton. The feeds are used for prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and increased rate of weight gain and improved feed efficiency. The NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.550 is amended by adding new paragraph (b)(1)(ix) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(b) * * *

(1) * * *

(ix)(*a*) *Amount per ton.* Salinomycin 40 to 60 grams with roxarsone 34.1 grams and bacitracin zinc 10 to 50 grams.

(*b*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency.

(*c*) *Limitations.* Feed continuously as sole ration. Use as sole source of organic arsenic. Do not feed to layers. May be fatal if accidentally fed to adult turkeys or horses. Withdraw 5 days before slaughter. Roxarsone as provided by No. 017210 and bacitracin as provided by No. 012769 in § 510.600(c) of this chapter.

* * * * *

Dated: August 28, 1986.

Richard H Teske,

Acting Associate Director for Veterinary Medicine.

[FR Doc. 86–19997 Filed 9–4–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 511

[Docket No. R–86–1302; FR–2254]

Rental Rehabilitation Program; Announcement of Effective Date for Revisions to Mandatory Deobligation of Grant Amounts and Other Miscellaneous Revisions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY. This notice announces the effective date for a final rule published in the **Federal Register** on August 11, 1986 (51 FR 28703). The current regulations require that HUD deobligate any rental rehabilitation grant amounts that are not committed to specific local projects within two years of receipt by the grantee (three years, if a State distributed the grant amount to State recipients), or are not expended for eligible costs within four years of receipt by the grantee (five years, if a State distributed the grant amount to State recipients). This rule provides that, on a case-by-case basis, HUD may extend for one year any of these time periods. This revision is intended to avoid deobligation of grant amounts in situations where the grantee's overall administrative performance has been sound and the amounts are likely to be used by the original grantee within the extended period.

The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.** The purpose of this notice is to announce the effective date of that final rule.

DATE: The effective date for the final rule published August 11, 1986 (51 FR 28703), is October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Acting Director, Rental Rehabilitation Division, Office of Urban Rehabilitation, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 755–5970. (This is not a toll-free telephone number.)

Dated: August 29, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86–19995 Filed 9–4–86; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[AA–330–4211–02NCPF–2410; Circular Nos. 2550 and 2557]

Rights-of-Way Under the Mineral Leasing Act; Amendment Relating to Reimbursement of Costs

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking reaffirms and clarifies the authority of the Department of the Interior to recover costs from Alyeska Pipeline Service Company for monitoring Alyeska's operation, maintenance and eventual termination of its right-of-way for the Trans-Alaska Pipeline System and ensure the enforcement of the various environmental stipulations agreed to by Alyeska.

EFFECTIVE DATE: August 3, 1984.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Theodore Bingham, (202) 343–5441.

SUPPLEMENTARY INFORMATION: A temporary final rulemaking and a proposed rulemaking, both of which amended 43 CFR Part 2880, were published in the **Federal Register** on August 3, 1984 (49 FR 31208, 31094). Even though the temporary final rulemaking was effective upon publication, the proposed rulemaking provided 60 days within which the public was requested to comment on the amendment made by the proposed rulemaking. During the comment period, comments were received from two sources, both from the oil industry.

Neither of the comments questioned the authority of the Secretary of the Interior to recover costs incurred in connection with the monitoring of Alyeska's operation, maintenance and eventual termination of its right-of-way for the Trans-Alaska Pipeline System, but they suggested changes in the procedure provided by the amendment. One of the comments expressed the view that the Trans-Alaska Pipeline System had benefitted the public and that the costs of monitoring the operation, maintenance and eventual termination of that system should be spread to a much broader base. This comment has not been adopted by this final rulemaking because section 28 of the Mineral Leasing Act (30 U.S.C. 185), authorizes the Secretary of the Interior to collect all administrative and other costs of processing an application for a right-of-way or temporary use permit under the authority of the Mineral Leasing Act. The other comment on the temporary final rulemaking raised questions about the authority of the Secretary of the Interior to recover all costs in connection with a right-of-way

granted under the provisions of the Mineral Leasing Act and suggested that the temporary final rulemaking be withdrawn and that the cost reimbursement regulations being developed under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), be made applicable to rights-of-way issued under the Mineral Leasing Act. This comment has not been adopted by the final rulemaking because the provision for the recovery of costs in section 28 of the Mineral Leasing Act authorizes the Secretary of the Interior to recover all administrative and other costs of processing of an application, while the Federal Land Policy and Management Act provides for the recovery of reasonable administrative and other costs. Therefore, the Department of the Interior, in compliance with the differing statutory authorities contained in the two Acts, is promulgating regulations which provide for the differences in the recoverable costs permitted by the two statutes for the different types of right-of-way grants or temporary use permits.

Finally, during the period since the issuance of the temporary final rulemaking, there has been no challenge to the provisions of the temporary final rulemaking and Alyeska, the only entity affected by the temporary final rulemaking, has paid the assessments of recoverable costs made pursuant to the temporary final rulemaking.

No changes have been made in the temporary final rulemaking and it is hereby adopted as a final rulemaking.

The principal author of this final rulemaking is Mark D. Etchart, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The amendment made by this final rulemaking will impact only one entity, the Alyeska Pipeline Service Company, which is a large entity.

There are no additional information collection requirements in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2880

Administrative practice and procedure, Common carrier, Oil and gas industry, Pipelines, Public lands—rights-of-way.

Under the authority of section 28 of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 185), section 203 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 95–153) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), the provisions of the temporary final rulemaking published in the **Federal Register** on August 3, 1984 (49 FR 31208), as changed by the final rulemaking published in the **Federal Register** of January 10, 1985 (50 FR 1308), are hereby adopted without change.

J. Steven Griles,

Assistant Secretary of the Interior.

August 12, 1986.

[FR Doc. 86–20037 Filed 9–4–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF DEFENSE

48 CFR Parts 223, 228, 242 and 252

Department of Defense Federal Acquisition Regulation Supplement; Safety Precautions for Ammunition and Explosives; Correction

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comment; correction.

SUMMARY: This document corrects an interim rule which was published August 13, 1986 (51 FR 28943) and corrected on August 15, 1986 (51 FR 29231). This action is necessary to correct a typographical error in Part 252 and to reflect removal of a clause from Part 252.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

The Department of Defense is correcting amendatory language to read as follows:

252.223–7002 [Corrected]

1. The introductory paragraph in section 252.223–7002 is corrected by changing the letter "(b)" to read "(c)".

252.228–7007 [Removed]

2. Section 252.228–7007 is removed.

[FR Doc. 86–20013 Filed 9–4–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 46]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection and Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to eight petitions for reconsideration of several of the amendments to Standard No. 208, *Occupant Crash Protection,* that appeared in the **Federal Register** of Friday, March 21, 1986. In response to the petitions, the agency is modifying the test dummy positioning procedures. However, so as not to affect compliance testing done using the old procedures, the agency is permitting manufacturers to use either the old or new procedures for a one year period. Beginning September 1, 1987, the new procedures would be mandatory. This notice denies a request to extend the September 1, 1989 effective date for dynamic testing of manual lap/shoulder belts in the front seat of passengers cars. (The dynamic test requirement would go into effect on that date only if the automatic restraint requirement is rescinded.) A response to four petitions asking the agency to reinstate certain of the test requirements of Standard No. 209, *Seat Belts Assemblies,* for dynamically-tested manual lap/shoulder belts, and to revise the current exemption for automatic belts, will be addressed separately at a later date.

DATES: The amendments made by this notice are effective on September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street, SW., Washington, DC 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: On March 21, 1986 (51 FR 9800), NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection.* Subsequent to publication of the amendments, eight interested parties timely filed petitions asking the agency to reconsider some of the amendments adopted in that final rule. This notice responds to those petitions.

Test Procedures

The March notice adopted several changes to the test dummy positioning procedures of the standard. Ford Motor Company (Ford) said that the revised test procedures were not objective because of what it termed ambiguities, inconsistencies, and subjective elements in the test procedure provisions. Each of Ford's specific objections are discussed below, in the order that Ford raised them.

Positioning of Manual Belts for Dynamic Testing

Ford noted that the standard provides that in the dynamic test for manual belts, the lap/shoulder belt is to to be placed around the test dummy after the dummy's arms and hands have been positioned. Ford said it is impracticable to position properly a lap/shoulder belt on a driver test dummy whose hands are on the steering wheel or on a passenger test dummy whose palms are in contact with its thighs. Ford noted that the agency's New Car Assessment Program (NCAP) test procedures provide for positioning the arms and hands after the safety belt has been positioned.

Ford is correct that the NCAP test procedure provides that the safety belts are to be placed on the test dummy before the arms and hands are placed in their final positions. To eliminate possible safety belt positioning problems, NHTSA is amending the Standard No. 208 positioning requirements to adopt the NCAP requirement.

Positioning of Automatic Belt for Dynamic Testing

Ford also noted that the safety belt positioning procedure applies only to manual belts and asked the agency to specify at what stage during the positioning of the test dummy, automatic belts are to be deployed. Ford also asked what adjustment procedures the agency would use with automatic belts.

In NCAP testing, NHTSA has finally positioned both automatic and manual safety belts after the test dummy has been settled in its specified position and before the hands are placed in their final position. The agency has used this procedure because it is simpler than having to position the hands first and then move them in order to place the safety belt on the test dummy. NHTSA is therefore modifying the title of the safety belt positioning procedure to indicate that it applies to the positioning of both manual and automatic safety belts.

In the Agency's NCAP testing, the only adjustment NHTSA has made to an automatic belt once it has been deployed on the test dummy is to ensure that the belt is lying flat on the test dummy's shoulder when the belt is in its final position. The agency is adopting the same procedure for the Standard No. 208 compliance test. In addition, as discussed immediately below, the agency will also adjust an automatic belt with a tension-relieving device that can be used to introduce slack in the belt system in accordance with the manufacturer's instructions provided in the vehicle owner's manual. For automatic belts that do not have devices that can be used to introduce slack in the belt system, it should not be necessary to make any further adjustments, other than ensuring the belt is flat on the test dummy's shoulder.

Adjusting Belt Slack

Ford noted that S7.4.2 of the standard requires automatic belts and dynamically-tested manual lap/shoulder belts to be tested with the maximum amount of slack recommended by the manufacturer. It said that the standard does not, however, prescribe a procedure for adjusting the slack of automatic belts with tension-relieving devices.

The purpose of S7.4.2 of the standard is to ensure that automatic and dynamically-tested manual belt systems will perform adequately when they are adjusted to the maximum amount of belt slack recommended by the vehicle manufacturer. S7.4.2(b) of the standard specifically requires manufacturers that use tension-relieving devices to provide information in their owner's manual describing how the tension-reliever works. In addition, the owner's manual must inform vehicle owners of the maximum amount of safety belt slack recommended by the vehicle manufacturer. In conducting its crash tests, the agency will adjust any safety belt tension-relieving devices in accordance with the instructions provided by the vehicle manufacturer in the owner's manual.

Belt Tension Loading

Ford noted that the safety belt positioning procedure specifies applying a 2 to 4 pound tension load to the lap belt of a lap/shoulder belt, but does not specify how the load is to be applied or how the tension is to be measured. Ford asked the agency to clarify the procedure, particularly with regard to whether the load is to be applied to the lap portion of the belt or whether an increasing load is to be placed on the shoulder portion of the belt until the required amount of tension has been reached in the lap portion of the belt.

NHTSA does not believe that the area of application of the belt tension load should have a significant effect on the subsequent performance of the belt in a dynamic test. However, to promote uniformity in application of the load, the agency is amending the standard to provide that the load will be applied to the shoulder portion of the belt adjacent to the latchplate of the belt. If the safety belt system is equipped with two retractors (one for the lap belt and one for the upper torso belt), then the tension load will be applied at the point the lap belt enters the retractor, since the separate lap belt retractor effectively controls the tension in the lap portion of a lap/shoulder belt. The amount of tension will also be measured at the location where the load is applied. Finally, the agency is amending the standard to provide that after the tension load has been applied, the shoulder belt will be positioned flat on the test dummy's shoulder. This will ensure that if the belt is twisted during the application of the tension load, it will be correctly positioned prior to the crash test.

Test Dummy Settling and Leg Positioning

Ford said that it was particularly concerned about the repeatability of the leg placement obtained using the new test procedures. Ford said that the positioning procedures provide for the placement of the test dummy's legs before the test dummy is settled. Ford said that the settling procedure usually results in movement of the test dummy's legs, but the new procedure does not call for readjustment of the leg positions after the test dummy has been settled. Ford requested that the procedure be changed by providing that after test dummy settling and placement of the arms and hands, the test dummy's feet and knees should be repositioned, if necessary. As an alternative approach, Ford suggested that the procedure provide that the test dummy settling be performed prior to adjustment of the legs.

NHTSA agrees that the procedures should be changed to minimize the possibility of inadvertent leg movement during the settling procedure. The agency is therefore adopting Ford's suggestion that the test dummy's feet and legs should be repositioned, if necessary, after the test dummy has been settled and its hands and arms have been positioned.

Initial Knee Spacing for the Driver

Ford and Nissan Motor Company, Ltd. (Nissan) expressed concern that NHTSA

had misinterpreted comments made by General Motors Corporation (GM) and Honda Motor Company, Ltd. (Honda) concerning one of the proposed changes to the test dummy positioning procedures in the April 1985 NPRM. In that notice, NHTSA proposed a test dummy initial knee spacing of 14.5 inches for both the driver and passenger test dummies. In their comments on the April 1985 notice, GM and Honda requested that the proposed initial spacing of the passenger test dummy knees be changed from 14.5 inches to 11.75 inches, which would mean that the passenger test dummy legs would be parallel. In the March 1986 final rule, NHTSA adopted the 11.75 inch initial knee spacing change for both the driver and the passenger test dummy.

In their petitions for reconsideration, Ford and Nissan said that they support the change sought by GM and Honda for the initial placement of the passenger's knees. Thus, they requested the agency to apply the 11.75 inch requirement only to the spacing of the passenger's knees and retain the former 14.5 inch requirement for the driver's knees. Ford noted that an 11¾ initial knee spacing for the driver is not compatible with the requirement to position the driver's right foot on the accelerator pedal and keep the leg in a vertical plane.

NHTSA misinterpreted GM and Honda's suggested change and therefore believed that the commenters were seeking a change to the initial knee spacing requirement for both the driver and the passenger. NHTSA agrees that a change should not have been made to the initial knee spacing for the driver's knees, since the smaller initial knee spacing requirement is not compatible with the positioning requirement for the driver's right foot. The agency is therefore reinstating the 14.5 inch initial spacing requirement for the driver.

NHTSA emphasizes that, as it stated in the notice adopting the test dummy positioning procedures on July 5, 1977 (42 FR 34301), the knee spacing requirements apply only to the *initial* placement of the knees. The final spacing of the knees depends on the specific configuration of the vehicle's occupant compartment and may vary due to the positioning of the test dummy's feet to accommodate such differing design features as protruding wheelwells, foot rests, and ventilating system ducts. Thus, the agency recognizes that the initial spacing may have to be modified to ensure that the legs and feet are correctly positioned.

Driver Right Leg Positioning

Ford objected to the requirement in S10.1.1(b) that the driver's right leg be placed so that the upper and lower leg centerlines fall, as close as possible, in a vertical longitudinal plane. Ford said the requirement that the legs be in a vertical longitudinal plane is not compatible with the requirement that the driver's foot be placed on the accelerator pedal. Ford said that "in many passenger cars the accelerator pedal is further inboard than the pivot point of the driver's right femur and therefore not in the same longitudinal plane as the dummy's upper leg." Ford further said that requiring the leg to remain in a vertical plane is incompatible with the knee spacing requirement. Ford suggested that a leg position specification is unnecessary since specifying the positions of the foot and knee would adequately define the position of the right leg.

NHTSA recognizes that the initial knee spacing requirement and the requirements on foot placement help to maintain the right leg in a consistent position. However, because of the numerous variations in passenger car interior designs, it may not be possible to maintain the initial knee position and thus a further control is needed to maintain proper placement of the right leg. NHTSA recognizes it may be particularly difficult to place the right leg so that it is in a longitudinal plane, since as Ford pointed out, the right leg may have to be moved to place the foot on the accelerator. On reconsideration, the agency believes that simply requiring the leg to remain in a vertical plane after the right foot has been positioned (instead of a vertical longitudinal plane) should be sufficient to ensure consistent placement of the right leg.

Foot Placement on the Accelerator Pedal

Ford noted that S10.1.1(b) provides that if the driver's right foot can not be placed on the accelerator pedal, it is to be placed as far forward as possible in the direction of the "geometric center" of the pedal. Ford said that a formula is needed to guide technicians in determining the geometric center of an asymmetrically-shaped accelerator pedal.

The agency agrees with Ford's underlying point that it is unnecessary to place the foot in the "geometric center" of the accelerator pedal to ensure proper foot placement. The intent of the requirement, which is to provide for consistent placement by different testing organizations, can be achieved by simplifying the requirement by providing that the centerline of the foot is to be placed, as close as possible, in the same plane as the centerline of the pedal.

Driver Left Foot Placement

Ford said it was concerned about the requirements of S10.1.1 for the placement of the driver's left foot in vehicles which have wheelwells that project into the passenger compartment. Ford agreed that in the case of the passenger test dummy, it "may be desirable to avoid placing the passenger dummy's right foot on the wheelwell because such placement can result in head contact with the dummy's knee, but head-to-knee contact is virtually impossible on the driver's side of the vehicle because the steering wheel would block any potential contact. In addition, placement of the driver's left foot is complicated by the presence of brake and clutch pedals, and therefore placement of the driver's left leg to avoid the brake and clutch pedals may have to take precedence over avoiding the wheelhouse projections."

Ford also said that it is not clear from the text of the standard whether the driver's left foot is to be placed inboard of a wheelwell projection. In addition, Ford said that S10.1.1(c) does not clearly specify where the driver's left leg should be positioned in such cases. Ford said "it is unclear whether the foot should be placed perpendicular to the tibia with the heel resting on the floor pan and the sole resting on one end of the brake pedal, or whether the foot may be pivoted around the axis of the tibia to eliminate contact with a brake pedal. It is also unclear whether the entire foot (and leg) may be moved laterally to miss the brake and clutch pedals."

NHTSA agrees with Ford that avoiding the positioning of the passenger's right foot on the wheelwell is more of a concern, since if there is floor buckling, the passenger's right knee can be pushed upward and strike the head. Although the agency has not seen as much floor buckling on the driver's side of the car in its NCAP tests, such buckling can happen. Although the positioning procedures for the driver's left foot and leg and the passenger's right foot and leg are the same as far as the final positioning of those parts, Ford is correct that the standard does not specifically state that the driver's left foot should not be placed on the wheelwell. To correct this, the agency has amended the standard to specifically provide that the driver's left foot is not to be placed on the wheelwell.

NHTSA has not experienced in its NCAP testing the difficulty mentioned by Ford in placing the driver test dummy's left foot in the vicinity of the clutch or brake pedals. However, to

provide for a consistent positioning if there is pedal interference, the agency is making a minor amendment to the foot positioning procedure. The amendment provides that if there is pedal interference, the driver's left foot should be rotated about the tibia to avoid contact with the pedal. This simple action should avoid most problems. If that is not sufficient, the procedure provides that the left leg should be rotated about the hip in the outboard direction.

Driver Left Leg Placement

Ford noted that the agency did not adopt the requirement proposed in the April 1985 notice that the driver test dummy's left leg be placed in a vertical and longitudinal plane. Instead, in the March 1986 final rule, the agency provided that the driver's left leg need only be placed in a vertical plane. Ford said that if the leg is placed in a vertical plane with the knee 5.9 inches from the midsagittal plane, as called for in the initial knee spacing requirement for the driver, the leg will still be in a vertical longitudinal plane. Ford said it was unclear whether the agency intended the leg to remain in a vertical longitudinal plane or whether the 5.9 inch dimension is no longer appropriate.

The requirements are not inconsistent. As emphasized earlier in this notice, the requirement for the knee spacing is an *initial* setting. The agency recognizes that this initial placement will result in the driver's left leg being in a vertical longitudinal plane. However, to accommodate differences in vehicle designs, that spacing can be modified to achieve the other leg and foot placement requirements. The agency is retaining the requirement adopted in the March 1986 final rule that when the driver's left leg is in its final position it must be in a vertical plane.

Foot Rests

Ford said that its new Taurus/Sable models have a driver's foot rest, which is a flat area located low on the wheelwell projection. Ford said that placing the driver test dummy's left foot on the foot rest would mean that the dummy's left heel would be no higher than its right heel. Thus, Ford said that its foot rest is apparently different from the Honda foot rest discussed by NHTSA in the March 1986 notice. Ford asked the agency to clarify whether S10.1.1 of the standard would result in the driver test dummy's foot being placed on the Ford-type foot rest or whether the knee spacing and leg positioning requirements specified elsewhere in S10.1.1 would be controlling.

The foot rest positioning requirement adopted in the March 1986 final rule states that if the foot rest "does not elevate the left foot above the level of the right foot," then the left foot should be placed on the foot rest. If as it appears, the Ford foot rest does not elevate the left foot above the right foot, then the left foot should be placed on the foot rest.

Restraint Use During Testing

Ford said that the provisions of S10 regarding the restraint of the test dummy are inconsistent with the provisions of S4.1.2.1 for the testing of vehicles equipped both with automatic restraints and with manual Type 2 safety belts. The agency has modified S10 to make it consistent with S4.1.2.1. In brief, the new language provides that if a seating position in a vehicle is equipped with an automatic restraint to meet the frontal crash requirement and a manual safety belt to meet the lateral and rollover protection requirements, then the vehicle is subjected to two tests. First, the vehicle must pass a test in which the test dummy is restrained solely by the automatic restraint. In addition, the vehicle must pass a second test in which the test dummy is restrained by the automated restraint and the manual safety belt as well. To reduce unnecessary testing costs for vehicles equipped with driver-only, non-belt automatic restraint systems, the agency is providing manufacturers with the option of using a passenger test dummy during the Standard No. 208 compliance test.

Placement of the Test Dummy on the Seat

Ford said that the wording of S10.1 is unclear regarding the placement of a test dummy in a seat whose centerline is not positioned in the vertical longitudinal plane of the vehicle. Ford said that in its Econoline van-type vehicles, the centerline of the front passenger's seat is "oriented a few degrees outboard to comfortably accommodate occupants by avoiding the intrusion of the engine cover on foot placement space. It is unclear whether, in compliance testing, the dummy would be placed in the vertical longitudinal plane passing through the center of the seat cushion, as implied by the wording of S10.1. This would place the dummy's torso out of alignment with the seat back, and such a position may be unstable. Alternatively, it is unclear whether the dummy would be placed in the vertical longitudinal plane passing through the seating reference point. Or would the dummy's torso be centered in the seat and only the legs placed in vertical longitudinal planes."

The positioning procedures have two purposes; to ensure consistency in dummy placement and to have the test dummy reasonably simulate the posture of a human in the seat. As Ford noted, the seats in its Econoline vehicles are oriented only a few degrees outboard of the vehicle's centerline. Thus, regardless of how the test dummy is positioned, the few degrees difference in orientation should not make a significant difference. It appears unlikely that many persons would even notice a few degrees difference in the seat orientation and it thus would be natural for a person to sit so they are centered in the seat. The agency is modifying the positioning requirements to provide that the test dummy is centered with the centerline of the seat cushion.

Subjective Phrases

Ford said that many of the test dummy positioning requirements contained subjective phrases, such as "to the extent permitted," and "except as prevented." Ford said that these phrases make the procedures ambiguous and can lead to varying interpretations by different testers.

As discussed previously, manufacturers use a wide variety of interior design configurations and the agency has established a positioning procedure that attempts to accommodate those differing configurations. The purpose of such phrases as "to the extent permitted" is to permit reasonable, minor adjustments in the positioning requirements so that a test dummy can be positioned in a vehicle with design features which may make it impossible to position the test dummy in absolute conformance to the test procedure. By allowing for minor, necessary adjustments, the test procedure can be used in all vehicles, regardless of their differing design features.

Test Dummy Upper Torso Rocking

Ford said that the provisions of S10.4.4 are unclear as to how much force is to be applied to the test dummy's lower torso while the test dummy is being positioned in a seat. Ford asked whether the initial force application of 50 pounds is to be reduced only long enough to allow the test dummy to slide down the seat back into contact with the seat cushion and whether that force is to be maintained until the test dummy's arms and hands are positioned. Ford recommended that the agency specify one specific force and provide that this

force should be maintained during the upper torso force application.

The purpose of permitting testers to reduce the horizontal force on the test dummy during the settling procedure is to accommodate seats with differing frictional properties. In a vehicle with "slick" material, the test dummy may easily slide down the seat back without reducing the horizontal force much, if at all. If the seat has high friction material, the horizontal force must be reduced considerably to allow the test dummy to slide down the seat back. NHTSA, however, agrees with Ford that providing for use of a specific force should eliminate another possible source of test variability. NHTSA is thus modifying the settling procedure to provide that a force of 10 to 15 pounds of horizontal rearward force will be applied to the test dummy during the final upper torso positioning procedures (S10.4.4 and S10.4.5).

Test Dummy Position Fixture

Ford also asked the agency to specify the test dummy positioning fixture that will be used in accordance with the requirements of S10.4.2 to position the test dummy. Although the NCAP test procedures specify the use of a specific test positioning fixture, the agency does not believe it is necessary to specify such a device here. NHTSA believes that manufacturers should be permitted the option of devising their own positioning fixtures. This results in a more performance-oriented standard. Thus, the agency is not adopting Ford's recommendation for a specific test procedure but is making a minor change to S10.4.2 to delete any reference to a "dummy positioning fixture."

Arm and Hand Placement

Ford noted that S10.5 calls for placement of the test dummy's arms and hands prior to settling and asked that the requirements be changed to provide for arm and hand placement after settling. Ford also noted that the reference in S10.5 to the arm and hand placement requirements are incorrect.

NHTSA agrees with Ford that the procedure should be changed to provide for arm and hand placement after the test dummy has been settled. The agency has made the necessary change and has also corrected the references in the positioning procedure.

Vehicle Test Attitude

Ford said that the requirements of S8.1.1(d) require the cargo load to be centered over the longitudinal centerline of the vehicle. Ford said that the "longitudinal centerline of the vehicle marks the lateral center of the vehicle, and centering of the cargo on the longitudinal centerline of the vehicle only determines its lateral (side-to-side) position, but not its fore-and-aft position." Ford asked the agency to specify that the cargo be centered over the longitudinal centerline of the vehicle and at the longitudinal center of the cargo area.

Ford also asked the agency to clarify how to determine the longitudinal center of the cargo area in a station wagon or hatchback with a second seat that can be folded down to form a cargo area or in a multipurpose passenger vehicle with readily-removable rear seats.

NHTSA agrees with Ford that cargo should be centered on the vertical longitudinal centerline of the vehicle and in the center of the cargo area. In the case of vehicles with a folddown seat or with a readily-removable seat, the agency will consider the cargo area as the area that is available with a folddown seat in its upright position and a readily-removal seat anchored at its position. The agency will then determine the center of that position and place the cargo there.

Effective Date for New Test Procedures

Ford and the Automobile Importers of American (AIA), asked the agency to reconsider its decision to implement the test dummy positioning procedure changes prior to September 1, 1986. AIA said that while some manufacturers wanted the new procedures to go into effect as soon as possible, the 45 day effective date placed an unreasonable burden on other manufacturers that are currently producing automatic restraints. AIA said that the short effective date did not provide enough time for a manufacturer to determine whether the test procedure changes affect the compliance of its current vehicles. AIA asked the agency to allow the optional use of the test procedures now and set a later mandatory effective date.

By adoption a 45 day effective date, the agency did not intend to jeopardize the compliance testing that has already been done by manufacturers. NHTSA is adopting AIA's suggestion to allow the use, at the manufacturer's option, of either the old or new test procedure during the first year of the phase-in. Beginning September 1, 1987, the use of the new test procedure will become mandatory.

Revisions to Standard No. 210

Ford asked the agency to clarify the revision made to the safety belt anchorage location requirements of S4.3 of Standard No. 210, *Seat Belt Assembly Anchorages*. The March 1986 notice exempted anchorages for automatic belts and dynamically-tested manual belts from the anchorage location requirements of Standard No. 210. Ford asked whether a manufacturer must provide two sets of anchorages in vehicles with dynamically-tested manual lap/shoulder belts that have the anchorages located outside the zone specified in S4.3—one set of anchorages for Type 2 manual belt systems located within the anchorage zone set out in S4.3 of the standard, and the other set of anchorages for the dynamically-tested Type 2 manual belt systems.

NHTSA has recently responded to a petition from GM raising the same issue. In a letter of April 14, 1986, the agency explained that anchorages for Type 2 manual belt systems must be included for vehicles that have automatic or dynamically-tested manual belts located outside of the zone. (The agency's letter is available in the Standard No. 210 interpretation file in the NHTSA docket section). The agency did, however, grant GM's petition to amend the requirement, saying that GM had raised a number of reasons why the requirements of Standard No. 210 should be changed. NHTSA will shortly issue a notice of proposed rulemaking on this subject.

Labeling of Dynamically-Tested Safety Belts

Ford objected to the adoption, in Standard No. 209, *Seat Belt Assemblies*, of a requirement that dynamically-tested belts have a label identifying the vehicles in which it can be used. Ford said that the required label does not specifically identify the safety belt as a dynamically-tested belt and the label does not suggest that the belt may be safely used only in specific vehicles at specific seats. Ford asked the agency to rescind the labeling requirement.

Ford suggested that the intent of S4.6(b) could be accomplished by requiring the safety belt installation instruction required by S4.1(k) of the standard to specify both the vehicles for which the belt system is to be used and the specific type of seating position for which it is intended.

NHTSA still believes that it is important that a dynamically-tested safety belt be labeled to ensure that it is installed only in the type of vehicle for which it is intended. NHTSA agrees with Ford that providing the information in the installation instructions would address most of the problem of possible misuse. However, there still may be instances where the instruction would be lost. In addition, the installation instruction requirements apply only to aftermarket belts. There can be

situations where a safety belt may be taken from one vehicle and transferred to another. Given these considerations and the importance of alerting motorists that a safety belt may have been designed for use in one particular make and model vehicle, the agency has decided to retain the labeling requirement.

In response to Ford's comment, NHTSA believes that the statement appearing on the label should be changed to require a manufacturer to specify the specific vehicles for which the safety belt is intended and the specific seating position (e.g., "right front") in which it can be used.

Exemption of Dynamically-Tested Safety Belts

The March 1986 rule adopted a requirement that the manual lap/shoulder belts in the front seats of passenger cars must meet a dynamic crash test. The requirement would go into effect for those manual belts on September 1, 1989, if the automatic restraint requirements of the standard are rescinded. Three petitioners, the American Seat Belt Council (ASBC), the Narrow Fabrics Institute (NFI), and Phoenix Trimming Company, asked the agency to reconsider its decision to exempt dynamically-tested manual safety belts from the webbing width and breaking strength requirements of Standard No. 209, *Seat Belt Assemblies.* On August 4, 1986, ASBC petitioned the agency to rescind the current Standard No. 209 exemption for automatic safety belts. The three petitions for reconsideration on dynamically-tested manual safety belts and the new petition for rulemaking on automatic safety belts raise similar issues, which the agency is currently reviewing. The agency will respond to those petitions at a later date.

Effective Date for Dynamic Testing of Manual Lap/Shoulder Belts

Nissan asked the agency for a two year postponement, from September 1, 1989, to September 1, 1991, of the effective date of the dynamic test requirement for front seat manual lap/shoulder belts in passenger cars. The dynamic test requirement for passenger car manual belts will go into effect only if the automatic restraint requirement for passenger cars is rescinded. Nissan said that if a decision to rescind the automatic restraint requirements is not made until the end of March 1989, it will have only six months in which to develop a manual belt which can meet the dynamic test requirement. Nissan also said that having to develop a dynamically-tested manual safety belt prior to March 1989, places an unreasonable burden on manufacturers since they would have to be simultaneously developing both automatic restraints and dynamically-tested manual belts.

The agency has previously denied, in the March 21, 1986, final rule, a similar request from American Motors Corporation (AMC) for such an extension. In denying AMC's request, the agency noted that most of the vehicle components in passenger cars necessary for injury reduction are the same for automatic restraint vehicles and dynamically-tested manual belt vehicles. In addition, the agency noted that the New Car Assessment Program results show that approximately 40% of current model passenger cars can meet the injury criteria of Standard No. 208 in 35 mph crash tests, which involve 36 percent more crash energy than the 30 mph crash test used in Standard No. 208. Nissan has not provided any new data that would justify changing the agency's prior decision and therefore, Nissan's request for an extension of the effective date is denied.

Due Care Defense

The Center for Auto Safety (CFAS) and Ford petitioned the agency to reconsider its decision to adopt a due care defense in Standard No. 208. CFAS said that adoption of the defense contravenes the noncompliance notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act. In additon, CFAS said that the due care defense is not a standard for motor vehicle performance as required by the Vehicle Safety Act and is too broad to accomplish its intended purpose. Ford said that adoption of the due care defense does not sufficiently address its concerns about the objectivity and practicability of the standard's requirements. It urged the agency to adopt a design to conform requirement in the standard.

The agency is still reviewing the issues raised by CFAS and Ford about the due care defense. Because the automatic restraint phase-in requirement is imminent, NHTSA has decided to retain the due care provision for the first year of the phase-in, pending the agency's final decision on this issue. The agency will expedite its review of these issues.

To clarify its interpretation of the due care defense, the agency does want to address one issue raised by the CFAS. In its comments, CFAS offered an example of what it believed was a problem with the due care defense. The CFAS said:

> Consider, for example a scenario in which the agency's compliance test reveals a very high HIC score. The manufacturer's tests show complying results. It turns out that the manufacturer received from a supplier a shipment of poor quality restraint system components that resulted in the poor figure in the agency's test and would cause similarly poor results for most vehicles containing the components from that shipment. The poor quality components were not caught in the manufacturer's quality control program. Perhaps this failure to catch the poor quality component is because their problems only show up in dynamic crash testing. (The due care defense surely will not require manufacturers to crash test a vehicle containing components from each shipment.) Or perhaps the manufacturer's quality control by chance checked only some of the few units in the shipment that were of good quality. Under the due care exemption these vehicles could not be recalled for noncompliance despite clear evidence of a specific problem that will cause high HIC levels.

As stated in the preamble to the March 21, 1986 final rule, the due care defense is meant to address an instance where there is an isolated apparent failure and the manufacturer can demonstrate that it made a good faith effort in designing its vehicles and instituted adequate quality control measures. NHTSA considers the example used by CFAS as an instance in which the agency would *not* accept a due care defense and the vehicles would be subject to the noncompliance notification and remedy provisions of the Vehicle Safety Act. Clearly, the CFAS's shows there is a significant flaw in the manufacturer's quality control process which affects a widespread number of vehicles. Manufacturer's are capable of instituting quality control measures that will adequately test the performance of individual components without having to subject a vehicle containing that component to a crash test. Likewise, quality control measures are available so that manufacturers can statistically check a sufficient number of components to ensure that nearly all of the components of a particular shipment are of the required quality. For these reasons, the agency would *not* accept a due care defense in the example posed by CFAS.

Belt Contact Force Test Procedure

The March 21, 1986 notice renumbered the test dummy positioning procedure for the belt contact force test of the safety belt comfort and convenience requirements. In making that amendment, the following sentence was inadvertently left out, "Close the vehicle's adjacent door, pull 12 inches of belt webbing from the retractor and then

release it, allowing the belt webbing to return to the dummy's chest."

Nissan has recently wrtten the agency containing the deletion of the sentence. Nissan said that if the deletion was inadvertent and the requirement was reinstated, then the Agency should slightly modify the requirement. Nissan said that in systems where it is not possible to pull out 12 inches of belt webbing, the requirement should provide for pulling out the maximum available length of the belt webbing.

Nissan pointed out that, as stated by the agency in the April 12, 1985 notice proposing amendments to the comfort and convenience requirement, one purpose of pulling out the webbing is to reduce belt drag in the belt guide components prior to measuring the belt contact force. It further said that maintaining the 12 inch requirement would necessitate a complete redesign of some of the belt systems for its vehicles.

NHTSA agrees that the purpose of the belt webbing pull requirement can be adequately met by pulling out the maximum allowable amount of the belt, when the belt has less than 12 inches of available additional webbing. Pulling the belt in this way will ensure that the belt retractor is working and webbing drag is reduced. Thus, the agency is changing the requirement to provide that prior to measuring the belt contact force the agency will pull out 12 inches of webbing or the maximum amount of webbing available when the maximum amount is less than 12 inches.

The agency recognizes that manufacturers may have relied, in good faith, on the version of the belt contact force test procedure and based their certification of compliance on tests conducted according to that procedure. So as not to invalidate those compliance tests, the agency is amending the standard to allow the manufacturers to conduct the belt contact force test either with or without first pulling the webbing. Beginning September 1, 1987, the old test procedure will become mandatory.

Typographical Errors

The amendments made on March 21, 1986, contained a typographical error which is being corrected in this notice. In S4.1.3.2.2(b), the word "car" is corrected to read "cars."

Costs and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required.

The amendments adopted by this notice made some minor clarifying changes to the test dummy positioning procedures. In addition, the agency is providing increased flexibility to manufacturers by allowing them to use one of two sets of test procedures for a one year period. Use of either set of test procedures should have only minimal impact on a manufacturer's testing costs.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a full regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities and the test procedure changes made by this notice are minimal. Small organizations and governmental units should not be significantly affected since the costs, if any, associated with the test procedure changes should be minimal.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction

The information collection requirements of this notice are being submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Effective Date

NHTSA has determined that it is in the public interest to amend, upon publication of this final rule, the requirement of Standard No. 208 since the test dummy positioning options adopted by this notice affect manufacturer's plans for the 1987 model year.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, Part 571.208 of Title 49 of the Code of Federal Regulations is amended as follows:

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

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

§ 571.208 Standard No. 208, Occupant crash protection. [Amended]

1. In S4.1.3.2.2(b), the word "car" is amended to read "cars."

2. S10 through S10.9 is revised to read as follows:

S10 *Test dummy positioning procedures.* For vehicles manufactured before September 1, 1987, position a test dummy, conforming to Subpart B of Part 572 (49 CFR Part 572), in each front outboard seating position of a vehicle as specified in S10 through S10.9 or, at the manufacturer's option, as specified in S12 through S12.2.3.2. For vehicles manufactured on or after September 1, 1987, position a test dummy, conforming to Subpart B of Part 572 (49 CFR Part 572), in each front outboard seating position of a vehicle as set forth below in S10 through S10.9. Regardless of which positioning procedure is used, each test dummy is restrained during the crash tests of S5 as follows:

(a) In a vehicle equipped with automatic restraints at each front outboard designated seating position that is certified by its manufacturer as meeting the requirements of S4.1.2.1 (a) and (c)(1), each test dummy is not restrained during the frontal test of S5.1, the lateral test of S5.2 and the rollover test of S5.3 by any means that requires occupant action.

(b)(1) In a vehicle equipped with an automatic restraint at each front outbound seating position that is certified by its manufacturer as meeting the requirements of S4.1.2.1 (a) and (c)(2), each test dummy is not restrained during one frontal test of S5.1 by any means that require occupant action. If the vehicle has a manual seat belt provided by the manufacturer to comply with the requirements of S4.1.2.1(c), then a second frontal test is conducted in accordance with S5.1 and each test dummy is restrained both by the automatic restraint system and the manual seat belt, adjusted in accordance with S10.9.

(2) In a vehicle equipped with an automatic restraint only at the driver's designated seating position, pursuant to S4.1.3.4(a)(2), that is certified by its manufacturer as meeting the requirements of S4.1.2.1(a) and (c)(2), the driver test dummy is not restrained

during one frontal test of S5.1 by any means that require occupant action. If the vehicle also has a manual seat belt provided by the manufacturer to comply with the requirements of S4.1.2.1(c), then a second frontal test is conducted in accordance with S5.1 and the driver test dummy is restrained both by the automatic restraint system and the manual seat belt, adjusted in accordance with S10.9. At the option of the manufacturer, a passenger test dummy can be placed in the right front outboard designated seating position during the testing required by this section. If a passenger test dummy is present, it shall be restrained by a manual seat belt, adjusted in accordance with S10.9.

(c) In a vehicle equipped with a manual belt at the front outboard designated seating positions that is certified by its manufacturer to meet the requirements of S4.6, each test dummy is restrained by the manual safety belts, adjusted in accordance with S10.9, installed at each front outboard seating positions.

S10.1 *Vehicle equipped with front bucket seats.* Place the test dummy's torso against the seat back and its upper legs against the seat cushion to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10. Center the test dummy on the seat cushion of the bucket seat and set its midsagittal plane so that it is vertical and parallel to the centerline of the seat cushion.

S10.1.1 *Driver position placement.* (a) Initially set the knees of the test dummy 14½ inches apart, measured between the outer surfaces of the knee pivot bolt heads, with the left outer surface 5.9 inches from the midsagittal plane of the test dummy.

(b) Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the lower leg and place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. Except as prevented by contact with a vehicle surface, place the right leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane without inducing torso movement.

(c) Place the left foot on the toeboard with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toeboard and the floor pan and not on the wheelwell projection. If the foot cannot be positioned on the toeboard, set it initially perpendicular to the lower leg and place it as far forward as possible with the heel resting on the floor pan. If necessary to avoid contact with the vehicle's brake or clutch pedal, rotate the test dummy's left foot about the lower leg. If there is still pedal interference, rotate the left leg outboard about the hip the minimum distance necessary to avoid the pedal interference. Except as prevented by contact with a vehicle surface, place the left leg so that the upper and lower leg centerlines fall, as close as possible, in a vertical plane. For vehicles with a foot rest that does not elevate the left foot above the level of the right foot, place the left foot on the foot rest so that the upper and lower leg centerlines fall in a vertical plane.

S10.1.2 *Passenger position placement.*

S10.1.2.1 *Vehicles with a flat floor pan/toeboard.* (a) Initially set the knees 11¾ inches apart, measured between the outer surfaces of the knee pivot bolt heads.

(b) Place the right and left feet on the vehicle's toeboard with the heels resting on the floor pan as close as possible to the intersection point with the toeboard. If the feet cannot be placed flat on the toeboard, set them perpendicular to the lower leg centerlines and place them as far forward as possible with the heels resting on the floor pan.

(c) Place the right and left legs so that the upper and lower leg centerlines fall in vertical longitudinal planes.

S10.1.2.2 *Vehicles with wheelhouse projections in passenger compartment.* (a) Initially set the knees 11¾ inches apart, measured between the outer surfaces of the knee pivot bolt heads.

(b) Place the right and left feet in the well of the floor pan/toeboard and not on the wheelhouse projection. If the feet cannot be placed flat on the toeboard, initially set them perpendicular to the lower leg centerlines and then place them as far forward as possible with the heels resting on the floor pan.

(c) If it is not possible to maintain vertical and longitudinal planes through the upper and lower leg centerlines for each leg, then place the left leg so that its upper and lower centerlines fall, as closely as possible, in a vertical longitudinal plane and place the right leg so that its upper and lower leg centerlines fall, as closely as possible, in a vertical plane.

S10.2 *Vehicle equipped with bench seating.* Place the test dummy's torso against the seat back and its upper legs against the seat cushion, to the extent permitted by placement of the test dummy's feet in accordance with the appropriate paragraph of S10.1.

S10.2.1 *Driver position placement.* Place the test dummy at the left front outboard designated seating position so that its midsagittal plane is vertical and parallel to the centerline of the vehicle and so that the midsagittal plane of the test dummy passes through the center of the steering wheel rim. Place the legs, knees, and feet of the test dummy as specified in S10.1.1.

S10.2.2 *Passenger position placement.* Place the test dummy at the right front outboard designated seating position so that the midsagittal plane of the test dummy is vertical and longitudinal, and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the test dummy at the driver's position. Place the legs, knees, and feet of the test dummy as specified in S10.1.2.

S10.3 *Initial test dummy hand and arm placement.* With the test dummy at its designated seating position as specified by the appropriate requirements of S10.1 or S10.2, place the upper arms against the seat back and tangent to the side of the upper torso. Place the lower arms and palms against the outside of the upper legs.

S10.4 *Test dummy settling.*

S10.4.1 *Test dummy vertical upward displacement.* Slowly lift the test dummy parallel to the seat back plane until the test dummy's buttocks no longer contact the seat cushion or until there is test dummy head contact with the vehicle's headlining.

S10.4.2 *Lower torso force application.* Apply a rearward force of 50 pounds against the center of the test dummy's lower torso in a horizontal direction. The line of force application shall be 6½ inches above the bottom surface of the test dummy's buttocks.

S10.4.3 *Test dummy vertical downward displacement.* Remove as much of the 50 pound force as necessary to allow the test dummy to return downward to the seat cushion by its own weight.

S10.4.4 *Test dummy upper torso rocking.* Apply a 10 to 15 pound horizontal rearward force to the test dummy's lower torso. Then apply a horizontal forward force to the test dummy's shoulders sufficient to flex the upper torso forward until its back no longer contacts the seat back. Rock the test dummy from side to side 3 or 4 times so that the test dummy's spine is at any angle from the vertical in the 14 to 16 degree range at the extremes of each rocking movement.

S10.4.5 *Test dummy upper torso force application.* While maintaining the

10 to 15 pound horizontal rearward force applied in S10.4.4 and with the test dummy's midsagittal plane vertical, push the upper torso back against the seat back with a force of 50 pounds applied in a horizontal rearward direction along a line that is coincident with the test dummy's midsagittal plane and 18 inches above the bottom surface of the test dummy's buttocks.

S10.5 *Belt adjustment for dynamic testing.* With the test dummy at its designated seating position as specified by the appropriate requirements of S8.1.2, S8.1.3 and S10.1 through S10.4, place and adjust the safety belt as specified below.

S10.5.1 *Manual safety belts.* Place the Type 1 or Type 2 manual belt around the test dummy and fasten the latch. Pull the Type 1 belt webbing out of the retractor and allow it to retract; repeat this operation four times. Remove all slack from the lap belt portion of a Type 2 belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times so that the excess webbing in the shoulder belt is removed by the retractive force of the retractor. Apply a 2 to 4 pound tension load to the lap belt of a single retractor system by pulling the upper torso belt adjacent to the latchplate. In the case of a dual retractor system, apply a 2 to 4 pound tension load by pulling the lap belt adjacent to its retractor. Measure the tension load as close as possible to the same location where the force was applied. After the tension load has been applied, ensure that the upper torso belt lies flat on the test dummy's shoulder.

S10.5.2 *Automatic safety belts.* Ensure that the upper torso belt lies flat on the test dummy's shoulder after the automatic belt has been placed on the test dummy.

S10.5.3 *Belts with tension-relieving devices.* If the automatic or dynamically-tested manual safety belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer for normal use in the owner's manual for the vehicle.

S10.6 *Placement of test dummy arms and hands.* With the test dummy positioned as specified by S10.4 and without inducing torso movement, place the arms, elbows, and hands of the test dummy, as appropriate for each designated seating position in accordance with S10.6.1 or S10.6.2. Following placement of the arms, elbows and hands, remove the force applied against the lower half of the torso.

S10.6.1 *Driver's position.* Move the upper and the lower arms of the test dummy at the driver's position to their fully outstretched position in the lowest possible orientation. Push each arm rearward permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the test dummy's thumbs over the steering wheel rim and position the upper and lower arm centerlines as close as possible in a vertical plane without inducing torso movement.

S10.6.2 *Passenger position.* Move the upper and the lower arms of the test dummy at the passenger position to the fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the upper arm contracts the seat back and is tangent to the upper part of the side of the torso, the palm contacts the outside of the thigh, and the little finger is barely in contact with the seat cushion.

S10.7 *Repositioning of feet and legs.* After the test dummy has been settled in accordance with S10.4, the safety belt system has been positioned, if necessary, in accordance with S10.5, and the arms and hands of the test dummy have been positioned in accordance with S10.6, reposition the feet and legs of the test dummy, if necessary, so that the feet and legs meet the applicable requirements of S10.1 or S10.2.

S10.8 *Test dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 are obtained by positioning a test dummy in the driver's seat or passenger's seat in its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

S10.9 *Test dummy positioning for belt contact force.*

S10.9.1 *Vehicles manufactured before September 1, 1987.* To determine compliance with S7.4.3 of this standard, a manufacturer may use, at its option, either the test procedure of S10.9.1 or the test procedure of S10.9.2. Position the test dummy in the vehicle in accordance with the appropriate requirements specified in S10.1 or S10.2 and under the conditions of S8.1.2 and S8.1.3. Fasten the latch and pull the belt webbing three inches from the dummy's chest and release until the webbing is within one inch of the test dummy's chest and measure the belt contact force.

S10.9.2 *Vehicles manufactured on or after September 1, 1987.* To determine compliance with S7.4.3 of this standard, position the test dummy in the vehicle in accordance with the appropriate requirements specified in S10.1 or S10.2 and under the conditions of S8.1.2 and S8.1.3. Close the vehicle's adjacent door, pull either 12 inches of belt webbing or the maximum available amount of belt webbing, whichever is less, from the retractor and then release it, allowing the belt webbing to return to the dummy's chest. Fasten the latch and pull the belt webbing three inches from the test dummy's chest and release until the webbing is within one inch of the test dummys chest and measure the belt contact force.

3. A new section S12 is added to read as follows:

S12 *Optional position procedures for the Part 572, Subpart B test dummy.* The following test dummy positioning procedures for the Part 572, Subpart B test dummy may be used, at the option of a manufacturer, until September 1, 1987.

S12.1 *Dummy placement in vehicle.* Anthropomorphic test dummies are placed in the vehicle in accordance with S12.1.1 and S12.1.2.

S12.1.1 *Vehicle equipped with front bucket seats.* In the case of a vehicle equipped with front bucket seats, dummies are placed at the front outboard designated seating positions with the test device torso against the seat back, and the thighs against the seat cushion to the extent permitted by placement of the dummy's feet in accordance with the appropriate paragraph of S12.1. The dummy is centered on the seat cushion of the bucket seat and its midsagittal plane is vertical and longitudinal.

S.12.1.1.1 *Driver position placement.* At the driver's position, the knees of the dummy are initially set 14.5 inches apart, measured between the outer surfaces of the knee pivot bolt heads, with the left outer surface 5.9 inches from the midsagittal plane of the dummy. The right foot of the dummy rests on the undepressed accelerator pedal with the rearmost point of the heel on the floorpan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, it is set perpendicular to the tibia and placed as far forward as possible in the direction of the geometric center of the pedal with the rearmost point of the heel resting on the floorpan. The plane defined by the femur and tibia centerlines of the right leg is as close as possible to vertical without inducing torso movement and except as prevented by contact with a vehicle surface. The left foot is placed on the toeboard with the rearmost point of the

heel resting on the floorpan as close as possible to the point of intersection of the planes described by the toeboard and the floorpan. If the foot cannot be positioned on the toeboard, it is set perpendicular to the tibia and placed as far foward as possible with the heel resting on the floorpan. The femur and tibia centerlines of the left leg are positioned in a vertical plane except as prevented by contact with a vehicle surface.

S12.1.1.2 *Passenger position placement.* At the right front designated seating position, the femur, tibia, and foot centerlines of each of the dummy's legs are positioned in a vertical longitudinal plane. The feet of the dummy are placed on the toeboard with the rearmost point of the heel resting on the floorpan as close as possible to the point of intersection of the planes described by the toeboard and the floorpan. If the feet cannot be positioned flat on the toeboard they are set perpendicular to the tibia and are placed as far forward as possible with the heels resting on the floorpan.

S12.1.2 *Vehicle equipped with bench seating.* In the case of a vehicle which is equipped with a front bench seat, a dummy is placed at each of the front outboard designated seating positions with the dummy torso against the seat back and the thighs against the seat cushion to the extent permitted by placement of the dummy's feet in accordance with the appropriate paragraph of S12.1.1.

S12.1.2.1 *Driver position placement.* The dummy is placed at the left front outboard designated seating position so that its midsagittal plane is vertical and longitudinal, and passes through the center point of the plane described by the steering wheel rim. The legs, knees, and feet of the dummy are placed as specified in S12.1.1.1.

S12.1.2.2 *Passenger position placement.* The dummy is placed at the right front outboard designated seating position as specified in S8.12.1.1.2, except that the midasgittal plane of the dummy is vertical, longitudinal, and the same distance from the longitudinal centerline as the midsagittal plane of the dummy at the driver's position.

S12.2 *Dummy positioning procedures.* The dummy is positioned on a seat as specified in S12.2.1 through S12.2.3.2 to achieve the conditions of S12.1.

S12.2.1 *Initial dummy placement.* With the dummy at its designated seating position as described in S12.1 place the upper arms and palms against the outside of the thighs.

S12.2.2 *Dummy settling.* With the dummy positioned as specified in S10.1, slowly lift the dummy in the direction parallel to the plane of the seat back until its buttocks no longer contact the seat cushion or until its head contacts the vehicle roof. Using a flat, square, rigid surface with an area of 9 square inches and oriented so that its edges fall in longitudinal or horizontal planes, apply a force of 50 pounds through the center of the rigid surface against the dummy's torso in the horizontal rearward direction along a line that is coincident with the midsagittal plane of the dummy and 5.5 inches above the bottom surface of its buttocks. Slowly remove the lifting force.

S12.2.2.1 While maintaining the contact of the force application plate with the torso, remove as much force as is necessary from the dummy's torso to allow the dummy to return to the seat cushion by its own weight.

S12.2.2.2 Without removing the force applied to the lower torso, apply additional force in the horizontal, forward direction, longitudinally against the upper shoulders of the dummy sufficient to flex the torso forward until the dummy's back above the lumbar spine no longer contacts the seatback. Rock the dummy from side to side three or four times, so that the dummy's spine is at an angle from the vertical of not less than 14 degrees and not more than 16 degrees at the extreme of each movement. With the midsagittal plane vertical, push the upper half of the torso back against the seat back with a force a 50 pounds applied in the horizontal rearward direction along a line that is coincident with the midsagittal plane of the dummy and 18 inches above the bottom surface of its buttocks. Slowly remove the horizontal force.

S12.2.3 *Placement of dummy arms and hands.* With the dummy positioned as specified in S12.2.2 and without inducing torso movement, place the arms, elbows, and hands of the dummy, as appropriate for each designated seating position in accordance with S12.2.3.1 or S12.2.3.2. Following placement of the limbs, remove the force applied against the lower half of the torso.

S12.2.3.1 *Driver's position.* Move the upper and the lower arms of the dummy at the driver's position to the fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the dummy's thumbs over the steering wheel rim, positioning the upper and lower arm centerlines as close as possible in a vertical plane without including torso movement.

S12.2.3.2 *Passenger position.* Move the upper and the lower arms of the dummy at the passenger position to the fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the upper arm contacts the seat back and is tangent to the upper part of the side of the torso, the palm contacts the outside of the thigh, and the little finger is barely in contact with the seat cushion.

§ 571.209 Standard No. 209, Seat belt assemblies.

1. S4.6(b) of § 571.209 is revised to read as follows:

(b) A seat belt assembly that meet the requirements of 4.6.1 of Standard No. 208 of this part (§ 571.208) shall be permanently and legibly marked or labeled with the following statement:

"This dynamically-tested seat belt assembly is for use only in (insert specific seating position(s), e.g., "front right") in (insert specific vehicle make(s), and model(s))."

Issued on August 29, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-20065 Filed 9-3-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 60107-6045]

Atlantic Mackerel, Squid, and Butterfish Fisheries Management

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

ACTION: Notice of squid specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specification for *Illex* squid, making 2,500 metric tons (mt) available for Joint Venture Processing (JVP) and 1,000 metric tons (mt) available for total allowable level of foreign fishing (TALFF). Regulations governing the squid fisheries require publication of any specification adjustments, with reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic mackerel, squid and butterfish fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATES: This notice is effective September 2, 1986. Comments must be

received on or before September 17, 1986.

ADDRESSES: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on *Illex* Specifications 1986."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600 ext. 273.

SUPPLEMENTARY INFORMATION: Under § 655.22, final initial annual specifications for squid were published on May 9, 1986 (51 FR 17191) for the fishing year April 1, 1986 to March 31, 1987. Following the publication of these specifications, Amendment 2 to the FMP was implemented, changing the fishing year for squid to begin on January 1, 1986. On July 9, 1986, proposed adjustments to the final initial annual specifications were published (51 FR 24881) for the transitional squid fishing year ending December 31, 1986. The regulations at § 655.21(b)(1)(v) further provide that these final initial annual specifications may be adjusted by the Regional Director, NMFS, after consultation with the Mid-Atlantic Fishery Management Council.

Joint venture applications were reviewed by the Mid-Atlantic and New England Fishery Managment Councils (Councils) for foreign vessels to participate in the *Illex* fishery for fishing year 1986. Both Councils recommended that these applications be approved.

In accordance with § 655.22(f) notice is hereby given that the IOY for *Illex* squid of 14,340 mt is increased by 3,500 mt to total 17,840 mt. This allows the JVP to be increased from 2,500 mt to 5,000 mt and TALFF to be increased from 90 mt to 1,090 mt. The proposed specifications for the transitional fishing year mentioned above are likewise adjusted by 3,500 mt. Public comments are invited for 15 days after the effective date of this adjustment on whether this adjustment should be continued, modified, or rescinded. Timely and relevant comments on the adjustment will be considered and the results published in the **Federal Register** as soon as practicable.

Other Matters

This action is taken under 50 CFR Part 655 and is in compliance with Executive Order 12291.

In view of the need to avoid disruption of domestic and foreign fisheries, the Agency has determined that delaying the effective date of this notice is impractical, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–19968 Filed 9–2–86; 10:46 am]

BILLING CODE 3510-22-M

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50 CFR Part 655

[Docket No. 60107–6045]

Atlantic Mackerel, Squid, and Butterfish Fisheries; Management

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

ACTION: Notice of squid specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specification for *Loligo* squid by making 800 metric tons (mt) available for joint venture processing. Regulations governing the squid fisheries require publication of any specification adjustments, with reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATES: This notice is effective September 2, 1986. Comments are invited until September 17, 1986.

ADDRESSES: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on Squid Specifications 1986."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600 ext. 273.

SUPPLEMENTARY INFORMATION: Under § 655.22, final initial annual specifications for squid were published on May 9, 1986 (51 FR 17189) for the fishing year April 1, 1986 to March 31, 1987. Following the publication of these specifications, Amendment 2 to the FMP was implemented, changing the fishing year for squid to begin on January 1, 1986. On July 9, 1986, proposed adjustments to the final initial annual specifications were published (51 FR 24880) for the transitional squid fishing year ending December 31, 1986. The regulations at § 655.21 (b)(1)(v) further provide that these final initial annual specifications may be adjusted by the Regional Director after consultation with the Mid-Atlantic Fishery Management Council.

Two joint venture proposals were received. One between Unionpesca, an Italian fishing industry group, and International Seafood and Trading Company, a U.S. company, and one between Anavar, a Spanish fishing group, and Stonovar Trading, Inc., a U.S. company. These were presented to the Mid-Atlantic and New England Fishery Management Councils (Councils) for their recommendation. The proposals requested authorization for joint venture purchase "over-the-side", of 1,500 mt of *Loligo* squid by Italian processing vessels and 300 mt by Spanish processing vessels. Both Councils recommended approval for the amount of *Loligo* squid requested. The permits were approved. However, the entire amount of *Loligo* squid was not released to the joint venture operations in order for the Regional Director to retain the maximum amount of flexibility in real-locating squid should the joint ventures fail for lack of squid abundance.

The joint venture operations have been monitored and amounts of squid have been released as both joint venture partners have continued to perform. To date, the joint venture processing has been allocated 1,825 mt.

The joint ventures continue to perform and are reasonably expected to continue to perform successfully for some time, given the relatively good abundance of *Loligo* squid. Consultations with the Councils confirm their intent to grant 800 mt over and above their original recommendations, in order to keep the joint venture operations active. Additional releases of *Loligo* squid require adjustments to the annual specifications. After a review of the squid abundance, prevailing market conditions, and the circumstances of the joint venture, the Regional Director has determined that an increase in the IOY for *Loligo* squid to allow additional amounts to be released to the joint ventures will produce maximum net benefits to the United States.

In accordance with § 655.22(f) notice is hereby given that the IOY for *Loligo* squid of 24,057 mt is increased by 800 mt to total 24,857 mt. This allows the DAH to be increased from 23,950 mt to 24,750 mt, which will provide for an increase in the JVP amount from 1,825 mt to 2,625. The proposed specifications for the transitional fishing year mentioned above are likewise adjusted by 800 mt.

A prior opportunity for public comment before making this adjustment is not possible without delaying the release of the additional 800 mt of *Loligo*

squid which would bring the joint venture operations to a halt and disadvantage some U.S. harvesters. However, prior to this adjustment this issue was broadly debated before the Mid Atlantic Council. Public comments are invited, however, for 15 days after the effective date of this adjustment as to whether this adjustment should be continued, modified, or rescinded. Responses to public comments will be published in the **Federal Register** as soon as practicable.

Other Matters

This action is taken under the authority of 50 CFR Part 655 and is in compliance with Executive Order 12291.

In view of the need to avoid disruption of domestic and foreign fisheries, the Agency has determined that delaying the effective date of this notice is impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 29, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-19967 Filed 9-2-86; 10:46 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 51192-5219]

Pacific Coast Groundfish Fishery Management

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

ACTION: Notice of fishing restriction and request for comments; and technical corrections.

SUMMARY: NOAA issues this notice modifying restrictions on fishing for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and supersedes those provisions published on December 31, 1985, for these species. The intended effect is to allow fishing at levels that will achieve the harvest goal for 1986 and extend the fishery as long as possible throughout the year.

DATES: Effective 0001 hours (Pacific Daylight Time) August 31, 1986, until modified, superseded, or rescinded. Comments will be accepted through September 22, 1986.

ADDRESSES: Submit comments on this action to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E. Charles Fullerton at 213-514-6196, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: Implementing regulations at 50 CFR 663.22 and 663.23 for the Pacific Coast Groundfish Fishery Management Plan (FMP) provide for inseason adjustments of fishing levels by notice published in the **Federal Register.** The Pacific Fishery Management Council (Council) reviewed the progress of the groundfish fishery at its July 1986 meeting in Portland, Oregon, and recommended increasing the trip limit for the *Sebastes* complex of rockfish (all species of rockfish in the Scorpaenidae family except widow, Pacific ocean perch *(S. alutus)*, shortbelly *(S. jordani)*, and *Sebastolobus* species of rockfishes). This action supersedes those provisions in the **Federal Register** notice published December 31, 1985 (50 FR 53325), which limited landings of the *Sebastes* complex.

The Council's recommendations, actions taken by the Secretary on those recommendations, and technical revisions are presented below.

Council Recommendation: The Council recommended that the weekly trip limit for the *Sebastes* complex north of Coos Bay, Oregon, should be increased from 25,000 pounds, containing no more than 10,000 pounds of yellowtail rockfish, to 30,000 pounds, containing no more than 12,500 pounds of yellowtail rockfish. The biweekly and twice-weekly trip limit options are adjusted so that 60,000 pounds of *Sebastes* containing no more than 25,000 pounds of yellowtail rockfish may be landed once every two weeks, or 15,000 pounds of *Sebastes* containing no more than 6,500 pounds (rounded up from 6,250 pounds) of yellowtail rockfish may be landed twice in one week. As in the past, there are no restrictions on landings of the *Sebastes* complex less than 3,000 pounds and the trip limit south of Coos Bay remains at 40,000 pounds per trip with no limit on the number of trips. Except as noted below as technical corrections, no other changes are made.

Rationale: The fishery for the *Sebastes* complex of rockfish north of Coos Bay, Oregon, is managed by trip limits designed to produce landings close to the annual harvest goal ("harvest guideline") of 10,200 metric tons (mt), the sum of the 1986 estimates of acceptable biological catch (ABC) for the species in the complex. Data available in July indicate that landings are lower than expected. Under current trip limits, landings for the year of the *Sebastes* complex caught north of Coos Bay are projected to be from 11 to 25 percent below the harvest guideline, and landings for the year of yellowtail rockfish may be 7 to 31 percent below its ABC. Accordingly, the trip limits are increased by 20 percent for the *Sebastes* complex and 25 percent for yellowtail rockfish so that the harvest guideline and ABC may be achieved in 1986. Proportional increases also appear in the biweekly and twice-weekly trip limit options.

Technical Corrections: Three technical corrections also are made. First, the coordinate given for Coos Bay is more precisely determined at the north jetty and is changed from 43°22′ N. latitude to 43°21′34″ N. latitude in paragraph (2)(c). Second, an office was listed mistakenly as the proper place for fishermen to notify the State of Oregon of their choice of biweekly or twice-weekly trip limits. Accordingly, the phone numbers for the Coos Bay office are deleted from paragraph (3)(b). These phone numbers still are appropriate for notifications of operating both north and south of Coos Bay during a fishing trip, however, and so are included in paragraph (5). Third, confusion surfaced over whether or not notification to the State of Oregon is required from a fisherman who, during a fishing trip, fishes on one side of the Coos Bay boundary and possesses or lands those fish on the other side. The language in paragraph (5)(a) is clarified to confirm the intent of the Council that such notification is required.

Secretarial Action: The Secretary concurs with the Council's recommendations and, therefore, adjusts the trip limit provisions published in the **Federal Register** on December 31, 1985 (50 FR 53325) by increasing the poundage limits for the *Sebastes* complex and yellowtail rockfish in paragraphs (3)(a) (weekly trip limit), (3)(b) (biweekly trip limit), and (3)(c) (twice-weekly trip limit). The technical corrections outlined above are made to paragraphs (2)(c), (3)(b) and (5)(a). All other provisions in these paragraphs remain unchanged.

Because the vast majority of groundfish caught off Washington,

Oregon, and California are taken from the fishery conservation zone (FCZ) 3–200 nautical miles offshore, all groundfish taken in ocean waters off Washington, Oregon, and California and retained or landed in violation of these restrictions will be treated as though they were taken in the FCZ, the same as in 1984 and 1985.

For the convenience of the public, the complete text of the December 31, 1985, notice is repeated here, unchanged except in those specific paragraphs discussed above.

(1) Definitions

(a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch *(Sebastes alutus)*, widow rockfish *(S. entomelas)*, shortbelly rockfish *(S. jordani)*, and *Sebastolobus* species of rockfish (which includes idiot rockfishes).

(b) "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Sunday and ending 2400 hours Saturday, local time.

(d) All weights are round weights of the whole fish.

(2) General

(a) These restrictions apply to all fish of the *Sebastes complex taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.*

(b) There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(c) It will be presumed that all fish of the *Sebastes* complex which are possessed or landed north of the north jetty at Coos Bay, Oregon (43°21'34" N. latitude), hereafter referred to as Coos Bay, were caught north of Coos Bay unless compliance with paragraph (5) can be demonstrated.

(3) Restrictions on the Sebastes Complex Caught North of Coos Bay

(a) Weekly trip limit. Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 30,000 pounds of the *Sebastes* complex, including no more than 12,500 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one week period.

(b) Biweekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 60,000 pounds of the *Sebastes* complex, including no more than 25,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Coos Bay. Having so notified the appropriate agency, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that two-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the biweekly trip limit and must use only the biweekly trip limit unless rescinded in writing.

The State of Oregon or California must receive a written notice declaring intent to use the biweekly limits before the first day of the first two-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the two-week period in which this rescission is to occur. The State of Washington must receive written notice declaring intent to use the biweekly limits postmarked at least seven days before the first day of the first two-week period in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501.

(c) Twice weekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 15,000 pounds of the *Sebastes* complex, including no more than 6,500 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Coos Bay. Having so notified the appropriate agency, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the twice weekly trip limit and must use only the twice weekly trip limit unless rescinded in writing.

The State of Oregon or California must receive a written notice declaring intent to use the twice weekly limits before the first day of the first one-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the week in which this rescission is to occur. The State of Washington must receive a written notice declaring intent to use the twice-weekly limits postmarked at least seven days before the first day of the first week in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur. Notifications must be submitted to the same addresses given in paragraph (3)(b) of this section for biweekly trip limits.

(4) Restrictions on the Sebastes Complex Caught South of Coos Bay

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Coos Bay. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip

(a) Unless compliance with the notification requirements of this paragraph (5) can be demonstrated, no person fishing for any groundfish species during a single fishing trip may fish both north and south of Coos Bay, or fish in one area and possess or land fish in the other area, if more than 3,000 pounds of the *Sebastes* complex is landed from that fishing trip. The vessel owner or operator must notify the State of Oregon of intent to fish both north and south of Coos Bay, or to fish in one area and possess or land fish in the other area. Unless compliance with paragraph (5)(c) can be demonstrated, this notification must be given before leaving port on the fishing trip. If fishing is conducted both north and south of Coos Bay or if fish are caught north of Coos Bay and possessed or landed south of Coos Bay during the fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply.

(b) This notification, submitted by telephone or in writing, should be made to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(c) A vessel owner or operator at sea who has not made notification under this paragraph and who wishes to do so, or who wants to change the notification for the current fishing trip, may do so by radio telephone (which must be confirmed in writing immediately on return to port). In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all of the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Other Fisheries

These limits for the *Sebastes* complex apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions except as may be otherwise specified in the permits.

Landings of groundfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by regulations at § 663.28. If fishing for groundfish and spot or ridgeback prawns in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice in the **Federal Register** in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. If current fishing rates continue, the harvest guideline for the *Sebastes* complex and ABC for yellowtail rockfish will not be reached by the end of 1986. Prompt action to increase those fishing rates is necessary to allow fishermen the opportunity to achieve the harvest guideline for these species in 1986. Consequently, further delay of this action is impracticable and contrary to the public interest, and this action is taken in final form effective August 31, 1986.

The public has had opportunity to comment on this action at meetings of the Council and its advisory bodies in July 1986. Further public coments will be accepted for 15 days after publication of this notice in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 et seq.)

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–19969 Filed 9–2–86; 10:57 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-27-AD]

Airworthiness Directives; Empresa Brasileira De Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action supplements a notice proposing to adopt a new Airworthiness Directive (AD), applicable to EMBRAER Models EMB-110P1 and EMB-110P2 (up to Serial number 110467 inclusive) airplanes. The notice would require: (1) Inspections for jamming or seizure, and replacement as necessary, of certain bearings in the flight control system, (2) installation of a dual control rod assembly in the elevator trim tab system, (3) inspections for cracks in the left elevator front spar, and (4) installation of reinforcement angles in the left elevator front spar or repair, as appropriate, to preclude excessive vibration in the elevator, aileron and/or rudder, which could eventually result in loss of control of the airplane. It was published in the **Federal Register** on August 5, 1985 (50 FR 31609). Subsequent to the notice, the manufacturer extensively revised the service bulletins relating to the installation of the dual control rod assembly to the aileron and rudder trim tab control systems. The FAA has determined that the revised instructions, changes in part numbers and airplane serial number applicability covered by these revisions should be incorporated on all applicable airplanes. Therefore, the notice, as supplemented, includes these latest revisions.

DATE: Comments must be received on or before October 25, 1986.

ADDRESSES: Embraer Service Bulletins (S/B) 110-27-036, Revision 02, dated December 3, 1981; S/B 110-027-0060, Revision 02, dated July 3, 1986; and S/B 110-027-0068, Revision 02, dated April 9, 1986, applicable to this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP, 12.200, Sao Jose dos Campos, Sao Paulo Brazil, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this supplemental notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been four incidents of excessive vibration caused by failure or disconnection of the elevator tab rod on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. The failures were attributed to jamming or seizure of the rod end bearings. Also, one case of excessive free-play resulted in vibration severe enough to cause cracks on the elevator spar doubler. As a result, Empresa Brasileira de Aeronautica S.A. (EMBRAER) has revised S/B No. 110-027-0068 through Revision 02, dated April 9, 1986, which requires: (1) On those certain airplanes not yet modified with dual elevator trim tab control rods, an inspection of the left front elevator spar for cracks in the elevator trim actuator support attachment area and repair, if required, the installation of dual elevator trim tab control rod assembly and modification of the front and rear elevator spars including the replacement of the elevator trim tab actuator support attachment angles, replacement of the elevator trim tab rod assembly support, replacement of the elevator trim tab actuator rod connection, and the addition of lead balance weight and re-balance of the elevator, and (2) on those certain airplanes previously modified or with factory installed dual elevator trim tab control rods, replacement of the elevator trim tab actuator support, replacement of the interconnecting rod clamps, applying corrosion-inhibiting sealant, verification that one of the rod ends has a left hand thread, replacement of this rod if not so installed, and inspection of actuator to trim tab attachment point alignment. The reason for the service bulletin revision was to change the part number of the elevator trim tab control rod assembly and add instructions for the replacement of actuator support and rework of the old rod assembly. In addition, the test on the rods installation is altered extensively, so as to facilitate accomplishment of the service bulletin. Because of adverse service experience on the elevator, EMBRAER issued S/Bs No. 110-27-036, Revision 02, dated

December 3, 1981, and No. 110–27–060, Revision 01, dated August 29, 1984, which provide for inspection and replacement respectively of the bearings in the aileron and rudder control system. Subsequently, EMBRAER revised S/B No. 110–027–0060 through Revision 02, dated July 3, 1986, to: extend the airplane serial number applicability, change the control rod part number, rework the aileron and rudder trim tabs, and require balancing the rudder and left aileron. The Centro Technico Aeroespacial (CTA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Brazil 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 Brazilian 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 CTA 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 the EMBRAER service bulletins mentioned above and the mandatory classification of these service bulletins by Centro Technico Aeroespacial Airworthiness Directive (AD) dated February 7, 1985. The FAA issued a Notice of Proposed Rulemaking which was published in the **Federal Register** (50 FR 31609) on August 5, 1985. It proposed inspections and replacement of certain bearings in the flight control system, inspection for cracks and installation of reinforcement angles in the left elevator front spar, and installation of a dual control rod in the elevator trim tab assembly. Subsequently, the FAA has determined that the revised instructions and details, the new trim tab control rod assembly part numbers, rework of the aileron and rudder trim tabs, the rebalancing of the rudder and left aileron and the extended airplane serial number applicability specified in the revised EMBRAER service bulletins should be incorporated on all airplanes, by including these revised service bulletins in this supplement to the previously published Notice of Proposed Rulemaking. Based on the foregoing, the FAA considers that the conditions addressed by these service bulletins are unsafe conditions that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD as supplemented, would require inspections for jamming of the control rod bearings and for cracks in the left elevator front spar and modification as necessary, replacement of malfunctioning bearings in the flight control system, and installation of dual rods in the elevator trim tab assembly on EMBRAER Models EMB–110P1 and EMB–110P2 airplanes.

The normal comment period of 120 days to permit the foreign manufacturer EMBRAER and the foreign civil airworthiness authority the Centro Technico Aeroespacial (CTA) time to respond has been reduced to 45 days since the manufacturer and the CTA in effect agree with the proposed action by having already issued appropriate service bulletins and an Airworthiness Directive (AD).

The FAA has determined there are approximately 127 airplanes affected by the proposed AD. The cost of modifying, inspecting these airplanes as required by the proposed AD is estimated to be $2677 per airplane or an estimated total cost of $339,979 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the 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) if promulgated, 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 draft regulatory evaluation has been prepared for this action has been placed in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

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:

PART 39—[AMENDED]

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

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

2. By adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (Embraer): Applies to Models EMB–110P1 and EMB–110P2 (Serial Numbers 110001 through 110467 inclusive) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To preclude excessive vibration in the flight control surfaces and possible loss of control of the airplane accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, visually inspect for jamming or seizure of all bearings installed in the aileron trim tab bellcrank, actuator eyelets and the terminals of control rods for the elevator, rudder and aileron trim tab control systems in accordance with Section 2, "ACCOMPLISHMENT INSTRUCTIONS" of Embraer Service Bulletin (S/B) 110–27–036, Change 02, dated December 3, 1981. If a jammed or seized bearing is found, prior to further flight;

(1) Remove and replace the defective part with a serviceable part of the same Part Number (P/N), or

(2) Modify, inspect, replace and/or repair as required.

(i) The aileron and rudder trim tab control systems in accordance with paragraph (c)(1) of this AD, and

(ii) The elevator trim tab control system in accordance with paragraph (c)(2) of this AD.

(b) When the modifications and actions specified in paragraph (a)(2) of this AD have been accomplished, the actions required by paragraph (c) of this AD are no longer required.

(c) Within the next 250 hours time-in-service, after the effective date of this AD,

(1) Modify the aileron and rudder trim tab control systems in accordance with Section 2. "ACCOMPLISHMENT INSTRUCTIONS" of Embraer S/B 110–027–0060, Change 02, dated July 3, 1986.

(2) Modify, inspect, replace and/or repair the elevator trim tab control system and elevator

(i) on airplanes without dual control rods as described in Section 2. "ACCOMPLISHMENT INSTRUCTIONS", paragraphs 2.1 through 2.1.18 of Embraer S/B 110–027–0068, dated April 9, 1986, or;

(ii) on airplanes with dual control rods installed as described in Section 2, "ACCOMPLISHMENT INSTRUCTIONS", paragraphs 2.2 through 2.2.10 of Embraer S/B 110–027–0068, dated April 9, 1986.

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

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE–115A, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; telephone (404) 763–7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Empresa Brasileira de Aeronautica S.A. (Embraer), P.O. Box 343—CEP 12.200 Sao Jose dos Campos, Sao Paulo, Brazil, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 26, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-19959 Filed 9-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM86-12-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Staff Submittal

August 29, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking staff submittal.

SUMMARY: On July 21, 1986, the Commission issued a notice of proposed rulemaking involving the generic determination of rate of return on common equity for public utilities (51 FR 27050, July 29, 1986). By memorandum dated August 28, 1986, the Commission staff has placed in the record (1) A table of rates of return on common equity allowed by the Commission in fully adjudicated electric rate cases since 1977; and (2) Moody's and Standard and Poor's bond ratings for utility companies, appearing in First Boston's "Electric Utility Industry: Credit and Equity Analysis," for June 1981, June 1982, June 1983, May 1984 and May 1985.

DATES: These documents were made available August 29, 1986.

ADDRESS: Copies of these documents are available for inspection and copying through the Commission's Public Reference Branch, Room 1000, 825 North Capitol St., NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357-8400.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-20069 Filed 9-4-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 16-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act, 5 U.S.C. 552a. This system is the "United States Trustee Program Case Referral System, JUSTICE/UST-004." Records contained in this system relate to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

DATE: Submit any comments by November 4, 1986.

ADDRESS: Address all comments to J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "United States Trustee Program Case Referral System, JUSTICE/UST-004."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR Part 16 by adding § 16.77 as set forth below.

Dated: August 18, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

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

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.77 to read as follows:

§ 16.77 Exemption of United States Trustee Program System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g):

(1) United States Trustee Program Case Referral System, JUSTICE/UST-004.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in

establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) From subsections (e)(4) (G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k).

(8) From subsection (e)(8) because the individual notice requirement of this subsection could present a serious impediment to law enforcement in that this could interfere with the U.S. Attorney's ability to issue subpoenas.

(9) From subsections (f) and (g) because this system has been exempted from the access provisions of subsection (d).

[FR Doc. 86-19988 Filed 9-4-86; 8:45 am]
BILLING CODE 4410-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Entitlement Charges for Refresher, Remedial and Deficiency Courses

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: Current regulations do not state how to charge entitlement when a veteran or eligible person is pursuing some courses for which entitlement is charged concurrently with refresher, remedial or deficiency courses for which no charge is made against entitlement. This has led to confusion as to how entitlement should be charged in such situations. This proposal eliminates this confusion and ensures that veterans or eligible persons enrolled in the same courses will receive the same charge against their entitlement.

DATE: Comments must be received on or before October 6, 1986.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 15, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.1045(a)(4) provides that veterans, spouses and surviving spouses will not be charged entitlement while pursuing refresher, remedial or deficiency courses. 38 CFR 21.1045(b)(6) provides that these students will be charged entitlement for other courses. Confusion sometimes arises when, for example, a veteran enrolls in six credit hours of deficiency courses and nine credit hours of other courses. Sometime a charge is made against entitlement at the three-quarter-time rate on the grounds that nine credit hours is three-quarter-time according to 38 CFR 21.4270. Sometimes a charge is made against entitlement at the half-time rate because only six credit hours of nondeficiency training has to be added to the six credit hours of deficiency training in order to reach the full-time requirement of 12 credit hours contained in 38 CFR 21.4270. This proposal amends 38 CFR 21.1045(b) to show that the latter procedure is correct.

The Veterans Administration (VA) has determined that this proposal does not contain a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The proposal will not cause a major increase in cost or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs certifies that this amended regulations, if promulgated, will not have a significant economic impact on substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) this proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.This certification can be made because the proposal will affect only the entitlement of individuals to educational assistance allowance. It will have no effect at all on small entities.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation is 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 18, 1986.

Thomas K. Turnage,
Administrator

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended by revising the introductory portion of § 21.1045(c)(1) and by adding new paragraph (c)(3), so that the revised and added material reads as follows:

§ 21.1045 Entitlement charges.

* * * * *

(c) * * *

(1) For all other courses, after making any adjustments required by paragraph (c)(3) of this section, the VA will make a charge against entitlement

* * * * *

(3) When a veteran or eligible person enrolls concurrently in refresher, remedial or deficiency courses for which paragraph (a)(4) requires that no charge against entitlement be made, and courses for which paragraph (b) of this section requires that a charge be made against entitlement, the VA will

(i) Determine the training time of the veteran, spouse or surviving spouse using the provisions of §21.4270, and

(ii) Determine what the training time of the veteran, spouse or surviving spouse would be if it were based on the enrollment in his or her refesher, remedial or deficiency courses along, and

(iii) Subtract the training time determined in paragraph (c)(3)(ii) of this section from the training time determined in paragraph (c)(3)(i). The charge against entitlement is based on the resulting training time, using the provisions of paragraph (c)(1) of this section. For the purpose of making the calculations described in this

subparagraph, the VA will treat training which is less than one-half time training but more than one-quarter time training as though it were one-quarter time training.

(Authority: 38 U.S.C. 1661, 1677(b), 1691; Pub. L. 96-466)

[FR Doc. 86-20039 Filed 9-4-86; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 2947-5]

Standards for Emissions From Methanol-Fueled Motor Vehicles and Motor Vehicle Engines

Correction

In FR Doc. 86-19493 beginning on page 30984 in the issue of Friday, August 29, 1986, the equations appearing on pages 30987 and 30988 were reversed. The two equations on page 30987 should have appeared on page 30988 and the two equations on page 30988 should have appeared on page 30987.

BILLING CODE 1505-01-M

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

[SWH—FRL-3072-6]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Data on Land Disposal Restrictions and Request for Comments.

SUMMARY: On January 14, 1986, EPA proposed a regulatory program to implement the land disposal prohibitions (51 FR 1602), pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). During and following the comment period for the proposed rule, the Agency received data that will be considered in the development of the final rule. Therefore, the Agency is announcing the availability of additional treatment and capacity data, descriptions of statistical methodologies that will be used to analyze that data, and a treatability variance procedure that may be included in the final rule. By way of this Notice of Availability, the Agency is seeking comments on the data entered in the public docket for this Notice, and on the Agency's analysis of the data. The information and comments we receive will be used to aid the Agency in the final rulemaking.

DATES: Comments on this notice should be submitted on or before October 6, 1986.

ADDRESS: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20460.

Place the docket #F-86-LDR3-FFFFF on your comments. For additional details about the OSW docket see the "OSW Docket" section on "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 locally.

For information on specific aspects of this Notice contact: Stephen R. Weil, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. OSW Docket

The OSW docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460.

The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at 475-9327 or Kate Blow at 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

Background

The Hazardous and Solid Waste Amendments of 1984 (HSWA) prohibits the land disposal of a particular group of hazardous wastes beyond specified dates if the Agency has not established treatment standards under section 3004(m) for such wastes or granted a case specific petition. On January 14, 1986, the Agency proposed a framework for a regulatory program to implement land disposal restrictions under sections 3004 (d), (e), and (g) of HSWA. In addition, this action proposed treatment standards under section 3004(m) and associated effective dates for the F001-F005 solvent wastes and F020-F023 and F026-F028 dioxin-containing wastes.

Since the proposed rule was published in the **Federal Register**, the Agency has obtained additional data and has received a number of comments which include information pertinent to the development of a regulatory approach to prohibit land disposal of hazardous wastes. Furthermore, several statistical analysis techniques that may be used in establishing the technology-based levels (based on Best Demonstrated Available Technology, or BDAT) which were not included in the proposed rule are presented in today's notice. Discussions of the specific components of this Notice of Availability are presented below.

A. Statistical Methods for Establishing BDAT

The Agency proposed a general methodology for developing treatment standards under section 3004(m) of HSWA for wastes subject to the land disposal provisions. The proposed treatment standards for hazardous wastes were established by developing technology-based levels and screening levels. In addition, the Agency proposed specific technology-based treatment levels consistent with this methodology for spent solvent hazardous waste listed in Subpart D of Part 261 as F001 through F005.

Commenters on the proposed rule stated that the Agency, (1) Did not account for process variability in developing the treatment standards, (2) did not explain how they would assess whether a treatment system was well designed and operated even though EPA stated this was a requirement for data to be incorporated into the treatment standards, and (3) did not explain how the Agency would determine treatment standards where more than one technology applied to a waste.

In response to these comments, the Agency is considering using three statistical analyses not included in the proposal. Section III of this notice contains a description of each statistical method and an example of how each would be applied.

B. Database Modifications

In order to respond to comments on capacity estimates, the Agency is augmenting its original database by using the results of the 1986 National Screening Survey to identify commercial facilities and subsequently obtain additional information on their capacity. The Agency has contacted specific types of facilities identified by the National Screening Survey by telephone to gather information pertinent to capacity estimates. Also, the Agency is using data on fuel substitution developed for the Waste-As-Fuel tedhnical standards. A more thorough discussion of this data is included in Section III of this Notice.

The Agency is giving notice of several changes in the database used to derive

BDAT standards. These are: (1) Additional data on the treatment of methylene chloride in the pharmaceutical industry, (2) data from conducting the Toxicity Characteristic Leaching Procedure (TCLP) on the residual ash from 10 incinerators, and (3) a change in the data analysis used to establish BDAT levels. In addition, the Agency is giving notice of (1) data on the quantities of solvent wastes from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) activities to be considered in making capacity determinations, and (2) information collected to revise and update the "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981" (see reference #116 in the January 14, 1986, 51 FR 1602–1766).

The Agency is also including a North Atlantic Treaty Organization (NATO) publication in the docket to request public comment. The document in the docket (an appendix to the NATO publication) includes design capacity parameters for incineration facilities.

C. Variance From a Treatment Standard

Some commenters argued that, due to interfering waste characteristics, some treatment residues might be unable to meet the 3004(m) standards for hazardous constituents, regardless of the treatment method applied to the waste. The commenters recommended that the Agency provide a procedure for a person to petition for a variance from the treatment standard. Such a procedure is presented in Section III below.

III. Availability of Information

A. Statistical Methods for Establishing BDAT

To develop treatment standards by BDAT, the Agency is considering the use of three statistical methods that were not included in the proposed rule. These three methods are:

1. Variability Factor Calculation—to account for variability in performance of well-designed and well-operated systems.

2. Outlier Test—to determine whether a data point within a data set is representative of that data set.

3. Analysis of Variance—to measure whether differences between data sets are statistically discernable or homogeneous.

More detailed discussions of these methods follow below.

Variability Factor Calculation

The Agency is considering incorporation of a variability factor in the development of BDAT standards. To obtain the BDAT standard, the Agency would multiply the long term average treatment performance value by the variability factor. Variability in performance principally arises from inherent mechanical limitations in maintaining control parameters at the optimum setting.

An example would be an automatic pH control system used to maintain the proper pH range for precipitation of a toxic metal. In this system, a pH sensing device provides a signal to the controller that the pH is not at the set point (i.e., the optimum design point). The controller then changes (either pneumatically or electrically) the position of the valve that supplies the reagent(s) used to adjust pH. The Agency would consider such a system to be well-operated provided that it is properly designed, calibrated, and maintained. Nevertheless, this system cannot be operated without any variation in the level of performance. Control valves are not manufactured in such a way that they can precisely add the exact amount of reagent needed to be at the set point; either too much or too little reagent will be added. Also there is a lag time between the time that the sensing device detects a problem and the time the controller adjusts the position of the valve to correct the problem. Additionally, there can be process upsets that require greater changes to the system with corresponding greater variations in performance. Another, lesser source of variability, will be due to analysis of treatment samples; even EPA approved methods will have some variability in test results for the same samples. All of the above variations can occur even at well designed and operated treatment facilities.

The Agency may use the statistical calculation described below the account for these changes. This analysis is the same as has been used for the development of numerous regulations in the Effluent Guidelines Program.

$$VF = \frac{C_{99}}{\text{Mean}}$$

where:

VF—Estimate of maximum variability factor determined from a sample population of data

C_{99}—Estimate of performance values which 99 percent of the observations will be below. C_{99} is calculated using the following equation—

$$C_{99} = \text{Exp}(y + 2.33Sy)$$

Where y and Sy are the mean and standard deviation, respectively, of the logtransformed data.

Mean—Arithmetic average of the individual performance values.

Setting standards based on such a variability factor should not be viewed as "relaxing" BDAT requirements. Rather, it accommodates the normal variability of the processes. A plant will have to be designed to meet the mean achievable treatment level in order to be assured of not being out of compliance when the Agency samples the treatment residues.

Consistent with the reasoning in the discussion above, EPA is considering the use of the 99th percentile in developing the variability factor. The 99th and 95th percentiles are the two most common percentile values used in developing variability factors. The 95th percentile inherently represents a value that even well designed and operated facilities may not achieve 5% of the time. The Agency believes it would be more appropriate to use the 99th percentile in order to reduce the number of false positives I(i.e., the sampling events that incorrectly show noncompliance).

The equations for calculating the value for which 99% of the observations will be below (C_{99} above) when data form a lognormal distribution can be found in most statistical texts (see for example: *Distributions in Statistics—Volume 1* by Johnson and Kotz, 1970, John Wiley Publications, NY).

An example of the variability factor calculation is shown below for the 99th and 95th percentiles.

EXAMPLE

Influent (μg/l)	Effluent (μg/l)	ln (influent)	ln (effluent)
1,050.00	22.00	6.96	3.09
5,200.00	68.00	8.56	4.22
5,000.00	50.00	8.52	3.91
1,720.00	37.00	7.45	3.61
1,560.00	27.00	7.35	3.30
1,300.00	24.00	7.17	3.18
450.00	15.00	6.11	2.71
1,600.00	38.00	7.38	3.64
600.00	17.00	6.40	2.83
700.00	19.00	6.62	2.94
Sample size: 10	10	10	10
Mean	31.7		3.34
Standard deviation			.49

Variability factor: 99th Percentile—2.79; 95th Percentile—1.99.

By setting the variability factor at 2.79 (99th percentile), 99 out 100 sampling events will show compliance for a well designed and operated facility.

Outlier Test

An outlier in a data set is an observation (or data point) that is significantly different from the other data. The measure of difference is determined by the statistical method known as a Z-score. The Z-score is calculated by dividing the difference between the data point and the average of the data set by the standard deviation. For data that is normally distributed, 95.5 percent (or two standard deviations) of the measurements will have a Z-score between –2.0 and 2.0. A data point outside this range is not considered to be representative of the population from which the data is drawn. A more thorough discussion of this statistical method can be found in many statistics texts (see, for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY).

An example of the outlier test is shown below for methylene chloride data from a plant producing chlorine and chlorinated products.

EXAMPLE

Influent	Effluent	Logeff	Z-value
1,550	10	2.30	–.44
1,290	10	2.30	–.44
1,640	10	2.30	–.44
1,450	10	2.30	–.44
4,600	10	2.30	–.44
1,760	10	2.30	–.44
2,400	10	2.30	–.44
4,800	10	2.30	–.44
1,210	10	2.30	–.44
5,100	12	2.48	–.33
1,400	985	6.89	2.10
1,380	1,120	7.02	2.17

Twelve pairs of data points (influent and effluent) were used. The data are assumed to be a sample from a population that has a lognormal distribution. Because the outlier test assumes data to be normally distributed, it was necessary to transform the data by computing the logarithm of each data point. The mean, standard deviation and Z-values of the transformed effluent data were computed. The computed value of the mean was 3.093, with a standard deviation of 1.806. The results showed that the logarithms of the two effluent values (985 and 1,120) are more than two standard deviations from the mean and hence are outliers.

EPA may use this statistical method to confirm that certain data do not represent treatment by a well-operated system. The Agency envisions the use of this method only in cases where data on the design and operation of a treatment system are limited. This method is a commonly used technique for "cleaning up" data sets.

Analysis of Variance

EPA is considering the use of the statistical method known as analysis of variance in determining the level of performance that represents BDAT. This method provides a measure of the differences between data sets. If the differences are not statistically discernable, the data sets are said to be homogeneous.

This method may be used in two cases. The first case is where more than one technology can be used to treat a waste. In this case, the analysis of variance method would be used to determine whether BDAT would represent a level of performance achieved by only one technology or represent a level of performance achievable by more than one or all of the technologies.

If the Agency found that the levels of performance for one or more technologies are not statistically discernable, (i.e., the data sets are homogeneous), we would average the long term performance values achieved by each technology and then multiply this value by the largest veriability factor associated with any of the acceptable technologies. If we found that one technology performs significantly better (i.e., the data sets are not homogeneous), BDAT would be the level of performance achieved by the best technology multiplied by its variability factor.

The second case where the analysis of variance may be used is where different wastes with common constituents are treated with the same technology. We could use this statistical method to determine whether separate BDAT values should be established for each waste or whether the levels of performance are homogeneous and, therefore, amenable to a single concentration level for a given constituent.

To determine whether any or all of the treatment data sets are homogeneous using the analysis of variance method, it is necessary to compare a calculated "F value" to what is known as a "critical value". These critical values are available in most statistics texts (see for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY).

Where the F value is less than the critical value, all treatment data sets are homogeneous. If the F value exceeds the critical value it is necessary to perform a "pair wise F" test to determine if any of the sets are homogeneous. The "pair wise F" test would be done for all of the various combinations of data sets using the same method and equation as the general F test.

The F value is calculated as follows:

(1) All data needs to be logtransformed.

(2) The sum of the data points for each data set are computed (Ti).

(3) The statistical parameter known as the sum of the squares between data sets (SSB) is computed—

$$SSB = \sum_{i=1}^{k} \frac{Ti^2}{n_i} - \frac{T^2}{N}$$

where—

k = number of treatment technologies
n_i = number of data points for technology i
N = number of data points for all technologies
T = sum of data points for all technologies

(4) The sum of the squares within data sets (SSW) is computed.

$$SSW = \sum_{i=1}^{k} \sum_{j=1}^{n_i} x_{i,j}^2 - \sum_{i=1}^{k} \frac{Ti^2}{n_i}, \text{ where}$$

$x_{i,j}$ = the observations (j) for treatment technology (i)

(5) The degrees of freedom corresponding to SSB and SSW are calculated. For SSB, the degrees of freedom is given by k-1. For SSW, the degrees of freedom is given by N–k.

(6) Using the above parameters, the F value is calculated as follows:

$$F = \frac{MSB}{MSW},$$

where

MSB = SSB/(k-1) and
MSW = SSW/(N-k).

A computational table summarizing the above parameters is shown below.

COMPUTATIONAL TABLE FOR THE F VALUE

Source	Sum Of Squares	Degrees Of Freedom	Mean Square	F
Between	SSB	k-1	$MSB = \frac{SSB}{k-1}$	$\frac{MSB}{MSW}$
Within	SSW	N-k	$MSW = \frac{SSW}{N-k}$	

Below are two examples of the Analysis of Variance statistical method. The BDAT values are illustrative only; they are not based on available data.

EXAMPLE 1

Steam stripping				Biological treatment			
Influent (µg/l)	Effluent (µg/l)	ln (influent)	ln (influent)	Influent (µg/l)	Effluent (µg/l)	ln (influent)	ln (influent)
1,550.00	10.00	7.35	2.30	1,960.00	10.00	7.58	2.30
1,290.00	10.00	7.16	2.30	2,568.00	10.00	7.85	2.30
1,640.00	10.00	7.40	2.30	1,817.00	10.00	7.50	2.30
5,100.00	12.00	8.54	2.48	1,640.00	26.00	7.40	3.26
1,450.00	10.00	7.26	2.30	3,907.00	10.00	8.27	2.30
4,600.00	10.00	8.43	2.30				
1,760.00	10.00	7.47	2.30				
2,400.00	10.00	7.78	2.30				
4,800.00	10.00	8.48	2.30				
12,100.00	10.00	9.40	2.30				
Sample size: 10	10	10	10	5	5	5	5
Mean	10.2		2.32		13.2		2.49
Standard deviation			.06				.43
Variability factor	1.14				2.48		

ANALYSIS OF VARIANCE

Source	D.F.	Sum of squares	Mean squares	F ratio
Between Groups (SSB)	1	.0996	.0996	1.7032
Within Groups (SSW)	13	.7603	.0585	

Critical value equals 4.67: Since the computed F value is less than the critical value the means are not significantly different (i.e., they are homogeneous).
Treatment Standard equals average of the mean values for both treatments times largest variability factor equals 10.2 plus 13.2 times 2.48 divided by 2 equals 29 µg/l.

EXAMPLE 2

Steam stripping				Biological treatment			
Influent (µg/l)	Effluent (µg/l)	ln (effluent)	ln (effluent)	Influent (µg/l)	Effluent (µg/l)	ln (influent)	ln (effluent)
1650	11	7.41	2.40	1400	410	7.24	6.02
5200	22	8.56	3.09	6000	490	8.70	6.19
5000	19	8.52	2.94	4200	380	8.34	5.94
1720	16	7.45	2.77	1300	200	7.17	5.30
1560	14	7.35	2.64	1200	170	7.09	5.14
4000	20	8.29	3.00	2000	210	7.60	5.35
2400	17	7.78	2.83	5000	320	8.52	5.77
800	9	6.68	2.20	3000	190	8.01	5.25
Sample size:	8	8	8	8	8	8	8
Mean:	16		2.73		296.25		5.62
Standard deviation:			.31				.41
Variability factor:	1.97				2.40		

ANALYSIS OF VARIANCE

Source	D.F.	Sum of squares	Means squares	F ratio
Between Groups	1	33.28	33.28	255.37
Within Groups	14	1.82	0.13	

Critical value = 4.60: Since the computed F value is larger than the critical value the means are significantly different (i.e., they are not homogeneous).
BDAT = Lowest Mean value × Variability Factor = (16) (1.97) = 31.52 µg/l.

B. Database Modifications

Capacity

To improve the Agency's capacity estimates, EPA contacted and obtained information from facilities that (1) offer commercial tank treatment for solvents, (2) offer commercial incineration, or (3) accept hazardous waste from off-site to burn as fuel. These facilities were identified by the 1986 National Screening Survey. Information obtained on the type of commercial service and the facility capacity is compiled in the document entitled "Telephone Verification Survey of Commercial Facilities that Manage Solvents", August 1986, and included in the docket for this Notice. Our preliminary analysis (which is subject to change before the final rule) indicates; (1) An increase in fuel substitution treatment capacity, (2) no significant change in incineration capacity, and (3) an increase in wastewater treatment capacity (however, the increase does not change the proposed evaluation that there is insufficient capacity for wastewater treatment). It should be noted that

distillation and inorganic sludge treatment were not surveyed. Because some of the information is designated as confidential business information (CBI), the document contains two sections. Section I presents the non-CBI information and is available in the docket. Section II presents the CBI information, and consequently, access is restricted by the CBI confidentiality rules.

The Agency is using new data on fuel substitution that was developed for the Waste-As-Fuel technical standards. This data is presented in the "Regulatory Analysis for Waste-As-Fuel Technical Standards", August 1986. This document is also available in the docket.

The Agency may use the data available in an appendix to a publication entitled "NATO–CCMS Pilot Study on Disposal of Hazardous Wastes" to analyze the capacity of incinerators. The Agency is giving Notice of this information to request public comments. The appendix is entitled "ANNEX V Commercially Available Hazardous Waste Incinerators in the United States (as of August 1979)," and is included in the docket.

BDAT Standards

(a) Methylene Chloride. The Agency also is considering additional data on the treatment of methylene chloride in the pharmaceutical industry. In the comment submitted by the Chemical Manufacturers Association (CMA) (Comment #LDR–2–085, included in the docket), it was pointed out that the Agency had not considered all available data. Our preliminary evaluations of these data show that it may be appropriate to raise the treatment standard for methylene chloride for certain pharmaceutical wastewaters. The data referred to by CMA is contained in the document entitled "Data for Stream Stripping of Methylene Chloride in the Pharmaceuticals Industry" also included in the docket.

(b) Incineration Data. Subsequent to proposal, the Agency completed the analysis of residual TCLP ash leachate data from 10 incinerators. These data are being evaluated to establish final BDAT standards. These data, as well as information on the type of waste incinerated, type of incineration, and operating conditions are summarized in the document entitled "Characterization of Hazardous Waste Incineration Residuals" which is included in the docket.

(c) Change in Data Analysis. Since the January 14, 1986, proposed rule was published, the Agency has made a change in the use of data to derive BDAT standards. In the proposed rule, the Agency eliminated treatment values where the constituent in the influent was less than the screening level (generally about 2.0 ppm). We are now using data where influent treatment values are less than the proposed screening levels, provided that removal is demonstrated. While the inclusion of these values tends to lower the treatment standards, the reduction is more than offset by the variability factor.

CERCLA Wastes

In the proposed rule, the Agency stated that the impact of CERCLA wastes on capacity determinations would be assessed for the final rule. Data on the quantities of these CERCLA wastes are therefore included in the docket for this Notice. These data provide estimates of waste quantities that are projected to be sent off-site to commercial incinerators annually. Wastes from both removal and remedial action CERCLA sites are included in this analysis. Since the proposed rule included no estimate of the quantity of these CERCLA wastes, the quantities presented in this Notice are anticipated to reduce the available incineration capacity for F001–F005 solvent wastes not generated by CERCLA activities.

Survey of Selected Facilities

The "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981" was the primary source of data used to estimate the quantities of restricted wastes for the proposed rule. The Agency has since performed follow-up inquiries to several facilities which had responded to this survey in order to confirm descriptions of the physical/chemical forms of the wastes reported. While the physical/chemical forms of many of the wastes were confirmed, some large volume wastes were also determined to be solvent-water mixtures rather than organic liquids and/or sludges as previously believed. The Agency intends to utilize this information to reassess capacity requirements for F001 through F005 solvent wastes. The changes in physical/chemical forms from organic liquids and/or sludges to solvent-water mixtures are anticipated to reduce the overall quantities of wastes directed to incineration and to increase those directed to wastewater treatment. A collection of the contractor's telephone records of these conversations has been entitled "Follow-up Survey of Selected Facilities," and has been included in the docket for this Notice.

C. Variance From a Treatment Standard

Several commenters noted the need for a procedure to obtain variances from treatment standards in cases where the treatment levels set under section 3004(m) cannot be achieved for a particular waste stream. This variance may be necessary because a waste is not treatment to the level specified in the performance standard due to the particular composition of the waste stream, though the technology used to set the performance standard is appropriate, or because the treatment standard is based on inappropriate technology given the particular waste matrix. Such a variance would essentially set different performance standards for the particular waste stream, though still based on the performance achievable by the application of BDAT to the particular waste.

The Agency is not proposing to issue a regulation governing the processing of petitions for a variance from the treatment standards. Such a petition is in essence a request to the Agency to modify its regulations based on new data submitted by the petitioner. The Agency has authority to consider such petitions under section 7004(a) of RCRA, which states that "any person may petition the Agency for promulgation, amendment, or repeal of any regulation under this Act".

The Agency would expect that, at the minimum, the following information would be included in a petition for the variance in order to help the Agency decide whether the particular treatment technology is well-operated and appropriate for the applicant's waste stream and whether or not the BDAT standards are actually achievable:

(1). At least one representative analysis (including information on who conducted the testing, where and when the testing took place, and on the analytical methods used) of both the waste and the treatment residue (if treated),

(2) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the above samples.

(3) A description of the waste (such as composition, concentration of constituents, pH, viscosity, specific gravity, and boiling point) and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration.

(4) A detailed description of the treatment system used to treat the petitioner's waste (if treated), including process design and operating conditions and performances achievable by that system, and

(5) A description of alternative treatment technologies investigated (if any) and performances achievable by those technologies.

(6) A discussion of why the differences in the waste prevent the achievement of BDAT.

(7) A discussion of any relevant factors that support the petitioner's request for a variance.

Copies of the following data and comments on the January 14, 1986, proposed rule discussed in this Notice are available for inspection in the public docket:

Database Modifications

1. "Telephone Verification Survey of Commercial Facilities that Manage Solvents," August 1986; compiled by Pope-Reid Associates Inc., St. Paul, Minnesota and Radian Corporation, McLean, Virginia.

2. Comment on the proposed rule for the Chemical Manufacturers Association, 2501 M Street NW., Washington, DC; refer to pages III–25, 26, and 28

3. "Data for Stream Stripping of Methylene Chloride in the Pharmaceuticals Industry," excerpted from "Development Document for Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Point Source Category," EPA 440/1–83/084, September 1983

4. EPA, "Characterization of Hazardous Waste Incineration Residuals," June 1986, prepared by Acurex Corporation, Contract #68–03–3241

5. "Regulatory Analysis of Waste-As-Fuel Technical Standards," prepared by Industrial Economics, Inc.

6. "Analysis of the Quantity of Waste from CERCLA Actions," raw data supplied by Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

7. "Follow-up Survey of Selected Facilities," prepared by Radian Corporation, McLean, Virginia

8. "ANNEX V Commercially Available Hazardous Waste Incinerator in the United States (as of August 1979)", an appendix to "NATO–CCMS Pilot Study on Disposal of Hazardous Wastes", presented by the NATO Committee on the Challenges of Modern Society, Brussels (Belgium), 1981

Variance From a Treatment Standard

1. Comments on the proposed rule from the Chemical Manufacturers Association, 2501 M Street NW., Washington, DC; refer to pages III–45 to 50.

2. Comments on the proposed rule from Western Research Institutes, University Station, Laramie, Wyoming; refer to page 10.

Dated: August 26, 1986.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 86–19711 Filed 9–2–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

[Docket No. FEMA–GEN–10]

Environmental Considerations, Categorical Exclusions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) has determined that community-wide exceptions for floodproofed residential basements should be continued and also added to the specific category of exclusions from the preparation of environmental impact statements and environmental assessments.

DATE: Comments must be received on or before November 4, 1986.

ADDRESS: Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Associate General Counsel, FEMA 500 C Street, SW., Washington, DC 20472. Telephone (202) 646–4100.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 10.8(d), the Federal Emergency Management Agency (FEMA) proposes to amend its regulations to expand the list of categorical exclusions, actions which are not subject to the application of 44 CFR Part 10 of FEMA's regulations. That part implements the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508).

In the March 28, 1986, proposed rule published by FEMA in the **Federal Register**, FEMA included supplemental information on "Exceptions for Floodproof Residential Basements." The decision to cover that topic resulted from the Agency's careful review of procedures, data and requests from communities to make exceptions for ordinances for floodproofed residential basements. FEMA concluded that certain exceptions for floodproofed residential basements should be part of the categorical exclusions from the preparation of environmental impact statements and environmental assessments. Part 10 will be revised accordingly.

The National Flood Insurance Program (NFIP) regulations require that all new construction and substantial improvements of residential structures have their lowest floor, including the basement, elevated to or above the base flood elevation unless the community has been granted an exception to permit construction of floodproofed basements below the elevation [see § 60.3(c)(2)]. Under § 60.6(b), the Administrator of the Federal Insurance Administration (FIA), may grant an exception to the NFIP criteria where, "because of extraordinary circumstances, local conditions may render the application or certain standards the cause for severe hardship and gross inequity for a particular community."

FEMA reviewed the exception procedures used by communities, the numbers of exceptions granted (46) and a 1977 FIA study entitled, "Manual for the Construction of Residential Basements in Non-Coastal Flood Environs." That research enabled FEMA to determine that basements can be adequately and economically floodproofed under certain types of flooding conditions with minimal increases in flood damages and no increases in threats to public safety. However, this determination does not cover flood plains which are subject to significant depths of flooding, high velocity flood waters, or flash flooding conditions where there is insufficient time to ensure that residents receive warning of impending floods.

For the latter cases, the proposed rule would retain the requirement that a community obtain approval from FEMA prior to permitting the construction of residences with floodproofed basements below the base flood elevation, but would create a new category of exception at Paragraph (c) of § 60.6 (as noted in the March 28, 1986 **Federal Register**). For this new category of basement exception requests, the decision to grant or deny the exception would be based solely on a technical review by FEMA of flooding

characteristics in the community to determine if the community met criteria in § 60.6(c) of the proposed rule. If a community met the criteria set forth in the proposed rule at 44 CFR 60.6(c), no finding would be required that there would be severe hardship or gross inequity of the exception were denied and no special environmental clearance (environmental assessment or Environmental Impact Statement) would be prepared. The requirement for the environmental clearance can be eliminated because the decision would be based solely on the technical review referenced above. The elimination of the special environmental clearance is also based on the 46 environmental assessments prepared for basement exceptions. They have all concluded that there would be no significant effect on the human environment if the exception to permit basements were granted. In addition, these new procedures would substantially reduce the current administrative burdens on FEMA and communities.

This regulation is not a major rule within the meaning of the term in Executive Order 12291 nor will it have a significant economic impact in a substantial number of small entities. Hence, no regulatory impact statements have been prepared. Also there are no information collection requirements needing clearance under § 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, it is proposed to amend Part 10, Chapter 1, Subchapter A of Title 44 as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS—[AMENDED]

1. The authority citation for Part 10 continues to read:

Authority: 42 U.S.C. 4321 et seq. E. O. 11514 as amended by E. O. 11991; Reorganization Plan No. 3 of 1978, E. O. 12127, E. O. 12148.

§ 10.8 [Amended]

2. Section 10.8 is amended by adding a new paragraph (c)(2)(ix) to read as follows:

* * * * *

(c) * * *

(2) * * *

(ix) Community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program.

* * * * *

Dated: August 28, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-20000 Filed 9-4-86; 8:45 am]

BILLING CODE 6718-01-M

Notices

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Quail Mountain Winter Sports Site, San Isabel National Forest, Lake and Chaffee Counties, CO; Notice of Intent To Prepare an Environmental Impact Statement

The Forest Service, Department of Agriculture, and the Bureau of Land Management (BLM), Department of the Interior, in cooperation with other Federal, State, and local agencies will prepare an Environmental Impact Statement concerning development of the proposed Quail Mountain Winter Sports Site.

Twin Lakes Associates, Inc. proposes to develop an Alpine Skiing area with attendant facilities on both public and private lands. The area proposed for development, identified as Quail Mountain in the *Land and Resource Management Plan* for the Pike and San Isabel National Forests, is located south of Twin Lakes Reservoir about thirteen miles south of Leadville and sixteen miles north of Buena Vista, Colorado west of U.S. Highway 24. Upon completion, the proponent indicates the area could accommodate 14,000 skiers-at-one-time (SAOT) and would be served by a system of 17 chairlifts. The base area as proposed is located immediately adjacent to the skiing access lifts on private land. The base area would include lodging/residential development, retail, and other commercial facilities.

Two Federal actions are to be considered. First, the Forest Service will determine whether or not to allow skiing development on National Forest System land, amend the *Land and Resource Management Plan* to include certain other adjacent National Forest System lands in the area proposed for development, and issue a special use permit to authorize development. Second, the Bureau of Land Management must determine whether or not to amend the *Royal Gorge Management Framework Plan* to permit certain land tenure adjustments. Also, certain BLM lands located in the vicinity of the proposed Quail Mountain Development must be evaluated to determine their suitability for lease, sale, or exchange.

The alternatives of no action and of permitting development as proposed will be analyzed. Additional alternatives may be identified as the result of scoping and analyzed as appropriate. The environmental analysis of the proposal is being assisted and coordinated by a joint review committee. The Forest Service and Bureau of Land Management; State of Colorado; Lake and Chaffee Counties, Colorado; and Twin Lakes Associates, Inc. are participants on the Joint Review Committee.

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.

This process is called scoping. On September 17, 18, and 19, 1986, the Forest Service and the Bureau of Land Management will hold public scoping meetings in the towns of Salida, Leadville, and Buena Vista respectively, to identify issues and concerns related to the proposal. Times and places are as follows: Salida, 7:00 p.m., Chaffee County Bank Building; Leadville, 7:00 p.m., Public Library; Buena Vista, 7:00 p.m., Coummunity Center.

Jack A. Weissling, Supervisor, Pike and San Isabel National Forests, is the responsible official. The draft Environmental Impact Statement is expected to be available for public review in June 1987. The final Environmental Impact Statement is scheduled to be filed by January 1988. Records of Decision will be issued by the Forest Service and the Bureau of Land Management when the final Environmental Impact Statement is released. If the decisions allow development, construction could begin during the summer of 1988, at the earliest.

Questions about the proposed action and the Environmental Impact Statement should be directed to Gene Eide, District Ranger, Leadville Ranger District, San Isabel National Forest, P.O. Box 970, Leadville, Colorado 80461; phone (303) 486–0752.

Dated: August 26, 1986.

Jack A. Weissling,

Forest Supervisor.

[FR Doc. 86–19963 Filed 9–4–86; 8:45 am]

BILLING CODE 3410–11–M

Inyo National Forest; Cancellation of Meeting of Mono Basin National Forest Scenic Area Advisory Board;

The Mono Basin National Forest Scenic Area Advisory Board meeting, scheduled for September 11, 1986 (51 FR 29678), has been cancelled. It has been tentatively rescheduled for October 24, 1986. Notice of new meeting date will be published at a later date.

Dated: August 28, 1986.

Dennis W. Martin,

Forest Supervisor and Chairman.

[FR Doc. 86–20074 Filed 9–4–86; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Clarksville Memorial Hospital Flood Prevention, RC&D Measure, Tennessee; Finding of No Significant Impact.

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Clarksville Memorial Hospital Flood Prevention RC&D Measure, Montgomery County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203, telephone (615) 736–5471.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant

local, regional or natioinal impacts on the environment. As a result of these findings, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood prevention and flood water disposal at the Clarksville Memorial Hospital. The planned works of improvement include construction of a small (3.5 ac. ft.) impoundment, installation of two (2) 30-horsepower electric pumps and 2,550 feet of discharge conduit.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald C. Bivens.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Dated: August 25, 1986.

Billy K. Benson,

Deputy State Conservationist.

[FR Doc. 86-20019 Filed 9-4-86; 8:45 am]

BILLING CODE 3410-16-M

White Oak Creek Watershed, TN, Environmental Statement Availability

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the White Oak Creek Watershed, Chester, Hardin, Henderson and McNairy Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203, telephone (615) 736-5471.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for accelerated land treatment or erosion control and water quality maintenance. The planned works of improvement include conservation tillage systems, crop rotation, stripcropping, grassed waterways and outlets, tree planting, critical area treatment and accelerated technical assistance for land treatment).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald C. Bivens.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the consultation with state and local officials.)

Dated: August 25, 1986.

Billy K. Benson,

Deputy State Conservationist.

[FR Doc. 86-20020 Filed 9-4-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry Electron Microscopes

Correction

In FR Doc. 86-19621 appearing on page 30894 in the issue of Friday, August 29, 1986, make the following correction in the second column, first complete paragraph, fourth line: "BE" should read "EM".

BILLING CODE: 1505-01-M

National Bureau of Standards

[Docket No. 60855-6155]

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of decision regarding a construction testing services laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has decided to postpone indefinitely the development, under the National Voluntary Laboratory Accreditation Program (NVLAP), of a laboratory accreditation program (LAP) for laboratories that perform construction testing services. The decision is in response to a recommendation made by a Conference on Accreditation of Construction Materials Testing Laboratories.

FOR FURTHER INFORMATION CONTACT: Harvey W. Berger, Manager, Laboratory Accreditation, National Bureau of Standards, Admin A531, Gaithersburg, MD 20899, (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background

NVLAP currently has a laboratory accreditation program to accredit laboratories that test freshly mixed concrete (Concrete LAP). In a letter dated September 23, 1985, STS Consultants Ltd., Vienna, Virginia, requested that the Concrete LAP be merged into a more broadly defined Construction Testing Services LAP to include, but not be limited to, test methods for concrete, soils, asphalt, and geotextiles. An October 8, 1985, **Federal Register** notice (50 FR 40987-40989) published by NBS announced the LAP request and the opportunity for comment on the LAP on or before December 9, 1985.

In response to several written requests, NBS extended the comment period. On January 3, 1986, NBS published a **Federal Register** notice (51 FR 239) inviting additional comments until June 30, 1986.

On May 14-15, 1986, a Conference on Accreditation of Construction Materials Testing Laboratories was held under the sponsorship of the: American Society for Testing and Materials [ASTM Committee C-1 on Cement and ASTM Committee C-9 on Concrete and Concrete Aggregates), American Association of State Highway and Transportation Officials (AASHTO), American Concrete Institute, American Council of Independent Laboratories,

and Florida Concrete and Products Association.

One of the recommendations of the Conference was that "NVLAP should not move forward to establish an independent laboratory accreditation program for construction materials but, instead, NVLAP officials should enter the dialogue with sponsors of this Conference and help develop a coordinated laboratory accreditation system."

NBS has decided to postpone indefinitely the development of a construction materials testing laboratory accreditation program in response to the Conference recommendation. NVLAP staff will participate in any further ASTM sponsored deliberations on this subject and will seek industry participation in a cooperative laboratory accreditation program. NBS will announce establishment of a LAP at such time as there is appropriate industry support for that action.

Documents in Public Record

Copies of the comment letters are available for review and copying at the NBS Records Inspection Facility in the Administration Building, Room E106, Gaithersburg, Maryland.

Dated: August 19, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-19970 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program; Public Workshop

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Bureau of Standards will host an informal workshop on October 15, 1986, to provide interested parties an opportunity to participate in the development of the scope of accreditation for laboratories that perform food service equipment testing.

DATE: The workshop will be held on October 15, 1986, from 9:00 a.m. to 4:30 p.m.

PLACE: The workshop will be held at the National Bureau of Standards, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Sidney Fischler, Associate Manager, Laboratory Accreditation, National Bureau of Standards, ADMIN A531, Gaithersburg, MD 20899; (301) 921-3431, no later than October 3, 1986, if you plan to attend the meeting.

SUPPLEMENTARY INFORMATION: On June 19, 1985, the National Bureau of Standards published in the **Federal Register** (50 FR 25440) a request to establish a laboratory accreditation program (LAP), under the Procedures of the National Voluntary Laboratory Accreditation Program (NVLAP), to accredit laboratories that test food service equipment. Based upon public comments the Director of NBS, on September 3, 1985, determined that there is a need to establish the LAP and approved its development.

The following have been established for the workshop:

1. Purpose: The purpose of the workshop is to provide all interested persons with an opportunity to participate in the development of the scope of accreditation to be offered to laboratories that perform food service equipment testing.

2. Procedure: The workshop will be an informal nonadversarial meeting. The presiding NBS chairman shall allocate the time available for discussion of each issue to be addressed, and exercise such authority as may be necessary to insure the equitable and efficient conduct of the workshop and to maintain order. National Sanitation Foundation (NSF) and other pertinent standards will be reviewed and recommended for inclusion in the LAP. Generic tests required by the selected standards will be defined and specific test methods (NSF, ASTM, UL, etc.) that should be used to perform those tests will be identified.

3. Provisions: This workshop will be open to the public.

Documents in Public Record

Summary minutes of the meeting will be prepared and made available for inspection and copying in the Freedom-of-Information Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: August 28, 1986.

Raymond Kammer,

Acting Director.

[FR Doc. 86-20063 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Information pertaining to the location of the Gulf of Mexico Fishery Management Council's public meeting (September 10-11, 1986), as published August 12, 1986, on page 28860 of the **Federal Register**, has been changed. The Council meeting will take place *only* at the Fort Brown Motor Hotel, 1900 East Elizabeth Street, Brownsville, TX, and not at the Stokley Hall location. All other information remains unchanged. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL (813) 228-2815.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20025 Filed 9-4-86; 8:45 am]

BILLING CODE: 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Kings Grant Inn, Danvers, MA, to discuss reports of the foreign fishing, salmon, large pelagics, surf clams/ocean quahog, and gear conflict oversight committees, as well as to discuss other fishery management and administrative matters. The public meeting will convene September 9, 1986, at 10 a.m. and will adjourn at approximately 6:30 p.m. If circumstances warrant, the meeting may be extended to the morning of September 10. For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20026 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will convene separate public meetings September 22-26, 1986, at the Sheraton Anchorage Hotel in Anchorage, AK, as follows:

Council—will convene September 24 at 9 a.m. to elect officers for the coming year, to receive status of stocks reports for groundfish in the Gulf of Alaska and the Bering Sea/Aleutian Islands, and to make initial apportionments for domestic and foreign fisheries for 1987. Final approval of harvest levels will be made in December. The Council meeting will continue through at least the morning of September 26.

The Council also will consider approval of Amendment 15 to the Gulf of Alaska Groundfish Fisheries Management Plan (FMP) and Amendment 10 to the Bering Sea/Aleutian Islands Groundfish FMP.

Results of the 1986 Bering Sea/Aleutian Islands crab survey will be presented and the Council will discuss its future role in king and Tanner crab management off Alaska. The Council will convene an executive session once during the week (not open to the public) to review ongoing litigation and foreign affairs.

SSC and AP—will convene September 22 at 9 a.m. at the Sheraton, and will continue through at least September 23. The SSC and AP agendas will be generally the same as that of the Council.

Other plan team and workgroup meetings may be convened on short notice during the week.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20027 Filed 9-4-86; 8:45am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory bodies will convene separate public meetings, September 15–18, 1986, at the Metro Center, 2000 SW. First Avenue, Portland, OR, as follows:

Council—will convene at 9 a.m., September 17 with an executive session (not open to the public) to discuss litigation and personnel matters. The subsequent general session (open to the public) will convene at 10 a.m. to consider administrative matters, including the election of a chairman and vice chairman for FY 87; appointment of a member to fill the vacancy on the Council's Scientific and Statistical Committee (SSC), and discussion of the National Oceanic and Atmospheric Administration's "Fishery Management Study". The Council also will hear reports on the 1986 groundfish fishery and the preliminary 1987 estimates of groundfish acceptable biological catch, optimum yield, harvest guidelines, preliminary estimates of domestic annual harvest, domestic annual processing, and total allowable level of foreign fishing. A report on the National Marine Fisheries Service's study of groundfish alternative management studies will be presented also. The Council will adopt the second amendment to the groundfish fishery management plan (FMP) and conduct a "scoping" session for further possible amendments to the FMP. There will will be a public comment period at 4 p.m.

On September 18 the Council will hear reports on the 1986 ocean salmon fisheries, adopt the seventh amendment to the salmon FMP, conduct a "scoping" session for further possible amendments to the FMP, and hear a report on habitat matters.

SSC—will convene at 1 p.m., September 15 to consider matters on the Council's agenda. On September 16 the SSC will reconvene at 8 a.m.

Budget Committee—will convene at 4 p.m., September 16 to review the new budget format for the Council's FY 87 budget request.

Habitat Committee—will convene at 5 p.m., September 16 to consider habitat matters including the format for the habitat section in the FMPs.

Salmon Plan Development Team—will convene at 1 p.m., September 17 to consider matters on the Council's agenda.

Detailed agendas for all of the above meetings will be available to the public on September 5. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland OR 97201; telephone: (503) 221-6352.

Dated: August 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-20028 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammal Permit: Dr. William A. Watkins (P70C)

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: Dr. William A. Watkins.

b. Address: Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543.

2. Type of Permit: Scientific research.

3. Name and Number of Marine Mammals: Sperm whale (Physeter catodon), 25.

4. Type of Take: Five (5) sperm whales will be tagged and tracked with high-frequency sonar transponder and radio tags. Twenty (20) of the whales will be inadvertently harassed during the tagging process.

5. Location of Activity: Southeast Caribbean, Grenada Basin, west of Dominica Island.

6. Period of Activity: One year.

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, DC 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:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW, Washington, DC

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930, and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St Petersburg, Florida 33702

Dated: August 29, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86-20029 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; American Home Products Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to American Home Products Corporation through its Wyeth Laboratories Division, having a place of business in Philadelphia, PA 19101, an exclusive right in the United States to make, use, and sell the vaccine disclosed and claimed in U.S. Patent Application Serial Number 6-769,074, "Vaccine Against Rotavirus Diseases." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified sixty-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-19961 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Arizona State University

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Arizona State University, having a place of business in Tempe, Arizona 85287, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,306,071, "1,4-Bis (2-Haloethyl)-1,4-Diazabicyclo (2.2.1)-Heptane Dihydrogen Dimaleate and Selected Salts." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified 60-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-19962 Filed 9-4-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 2, 1986; Tuesday, September 9, 1986; Tuesday, September 16, 1986; Tuesday, September 23, 1986; and Tuesday, September 30, 1986; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 8, 1986.

[FR Doc. 86-19965 Filed 9-2-86; 12:32 pm]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Meeting of the National Advisory Council on Continuing Education

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 17-19, 1986.

ADDRESS: Ramada Renaissance Hotel 1143 New Hampshire Ave., NW. Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Dr. George J. Nolfi, Executive Director Designate, National Advisory Council on Continuing Education, 2000 L Street,

NW., Suite 560, Washington, DC 20036. Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) the preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The Council will meet from 9:00 A.M. to 5:00 P.M. on September 17, 9:00 A.M. to 4:00 P.M. on September 18, and from 9:00 to 12:00 Noon on September 19, 1986.

The Executive Committee will meet from 6:30 P.M. to 9:00 P.M. on September 16, 1986.

The proposed agenda includes:

—Review of the Council's Future Budget and personnel plans
—Discussion of 1986 Report
—Discussion and selection of issues to be priorities for Council work in 1987
—Assessment of Options for use of telecommunications-based meeting modes in lieu of travel
—Council Chairman's and Executive Director's Reports and recommendations regarding miscellaneous Council business.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC.

Signed at Washington, DC, on August 25, 1986.

George J. Nolfi,

Executive Dir. Designate.

DEPARTMENT OF ENERGY

Office of Secretary

Record of Decision for Remedial Actions at the Niagara Falls Storage Site, Lewiston, NY

AGENCY: Department of Energy.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the Department of Energy's (DOE) guidelines for compliance with NEPA (45 FR 20694, March 28, 1980), the Office of Assistant Secretary for Nuclear Energy of DOE is issuing a Record of Decision for remedial actions at the Niagara Falls Storage Site (NFSS), described in the "Final Environmental Impact Statement, Long-Term Management of the Existing Radioactive Wastes and Residues at the Niagara Falls Storage Site," (DOE/EIS–0109F).

Decision: For the radioactive wastes at the NFSS, the DOE has selected long-term in place management consistent with the guidance provided in the Environmental Protection Agency (EPA) regulation for uranium mill tailings (40 CFR 192). For the radioactive residues at the NFSS, it is the DOE intent to provide for long-term in place management consistent with future applicable EPA guidance. If future analyses show that in place management cannot meet EPA guidance, long-term in place management of the residues would need to be replaced by another option which meets EPA guidance and is environmentally acceptable. Further NEPA review is anticipated subsequent to additional design of the long-term in place management project for the radioactive residues.

Background

The Niagara Falls Storage Site (NFSS) is located in the Town of Lewiston, Niagara County, New York, about 19 miles north of Buffalo. The current site is part of a former Manhattan Engineer District (MED) site, which in turn was part of the former Lake Ontario Ordnance Works. Beginning in 1944, the MED used the site for storage of radioactive residues that resulted from the processing of uranium ores during development of the atomic bomb. Additional residues were brought to the site for several years after World War II. The contaminated materials at the site consist of 15,000 cubic yards of "residues" from the processing of uranium ores (total radium-226 inventory of 871 curies) and 240,000 cubic yards of "wastes," mostly very slightly contaminated soils (total radium-226 inventory of 7.8 curies).

The Department initiated interim remedial actions in the 1982 to consolidate and safely store all radioactive materials on the site and on adjacent properties. When interim remedial actions are completed in the fall of 1986, all the radioactive residues and wastes will be consolidated within the interim waste containment areas in the southwest corner of the site. The residues are located within a reinforced concrete structure within the interim facility. The interim facility, with a service life of 25–50 years, will safely contain the radioactive wastes and residues until the long-term management alternative is implemented. The interim facility cap is designed to retard radon emissions and minimize water infiltration into and consequent leaching of radioactive contaminants from the wastes and residues. The clay dike and below-grade clay cutoff wall surrounding the wastes are designed to minimize lateral migration of contaminants. The cutoff wall is keyed into a natural layer of low permeability clay. The interim facility is described in detail in "Design Report for the Interim Waste Contaminant Facility at the Niagara Falls Storage Site," DOE/OR/20722–21, May 1986.

Both a performance monitoring system and environmental monitoring system will go into effect when the interim facility is completed. The objective of the performance monitoring system will be early detection of trends that could indicate weaknesses developing in the containment structures so that corrective actions could be taken. This system is described in detail in "Report on the Performance Monitoring System for the Interim Waste Containment at the Niagara Falls Storage Site," DOE/OR/20722–71, May 1986. The enviornmental monitoring system will include sampling and analyses of ground and surface water, sediments and air. Proposed monitoring locations and planned sampling frequencies and parameters to be measured are detailed in "Environmental Monitoring Plan for the Niagara Falls Storage Site and the Interim Waste Containment Facility," DOE/OR/20722–86, April 1986.

Project Description

The purpose of the project is to provide for in place long-term management of the radioactive wastes and residues at NFSS. To do this, a long-term multilayered engineered cap will be constructed over the interim waste containment area. The long-term cap will be designed to minimize infiltration over a long period of time and to impede inadvertent intrusion into the residues and wastes. The design of the long-term cap will result in enlargement of the interim waste containment area and will necessitate relocation of the central drainage ditch. The long-term waste containment area will be 302 meters

long, 137 meters wide and 8.9 meters high, with a side slope of 1 vertical to 5 horizontal. The DOE intends to manage only NFSS material at the site. The DOE will retain ownership and control of the waste containment area, plus a small buffer zone and service area. Thus, approximately 150 acres of the 190-acre site will be released for other uses.

Design options for the containment cell and for the waste form of the residues will be selected after consultation with EPA. Such options could include but are not limited to physical or chemical modification of the residues and the addition of a concrete top to the concrete structure that holds the residues. Selection from these and other options will be made after a full consideration of any future EPA standards (such as 40 CFR 193) and/or guidance that could be applicable to the residues.

Description of Alternatives

The following alternatives were considered in detail by DOE in reaching its decision for long-term management of the residues and wastes at the Niagara Falls Storage Site (NFSS).

1. No Action

This alternative consists of performing no additional remedial actions and continuing to store the radioactive residues and waste as they will be at the end of the interim remedial actions in the fall of 1986. This alternative does not meet the passive design requirements of 40 CFR 192.

2. Decontamination of the NFSS, transport, and long-term management of the radioactive wastes and residues at the DOE site in Hanford, Washington

Both the residues and the wastes will be excavated from the containment area at NFSS and transported on trucks to a waste-management site on the DOE Hanford Reservation near Richland, Washington. The residues will be packaged in large metal boxes and transported either on flatbed trailers or in shielded vans. The wastes are classified as nonradioactive under current transportation regulations and will be shipped in large dump trucks. About 16,000 truckloads will be needed to transport all 250,000 yd^3 of wastes and residues. Major interstate highway systems will be followed through 11 States, over a distance of approximately 2500 miles. Following transport of all wastes and residues to the Hanford site, the excavated areas will be filled and regraded, and NFSS will be released for other use.

At Hanford, the contaminated materials will be buried in trenches in a manner similar to current practices for other types of solid radioactive wastes on the Hanford Reservation. Burial of the NFSS wastes and residues will require approximately 42 trenches. The waste management site at Hanford will cover about 140 acres, including 95 acres in the actual waste containment area.

3. Decontamination of the NFSS, transport, and long-term management of the radioactive wastes and residues at a DOE site in Oak Ridge, Tennessee

The NFSS wastes and residues will be excavated and transported by truck to the Pine Ridge Knolls site on the DOE Oak Ridge Reservation near Oak Ridge, Tennessee. Approximately 16,000 truckloads will be transported over major interstate highway systems, crossing five States, and covering approximately 750 miles. Following transport of all wastes and residues to the Oak Ridge site, excavated areas as NFSS will be filled and regraded and NFSS will be released for other use.

The wastes and residues will be stabilized in several mounds on top of the knolls at the Pine Ridge Knolls site. The mounds will be covered with a long-term cap similar to that described for NFSS. A total of 60 acres will be needed at the Oak Ridge site, including 29 acres for the actual waste containment area. A major technical uncertainty in implementing this alternative is whether or not there will be enough space on top of the knolls.

4. Removal, transport, and long-term management of the radioactive residues at Hanford, Washington, and long-term management of the radioactive wastes at NFSS

The residues will be excavated, packaged, and transported to Hanford in 1600 truck trips. The packages will be buried in 10 trenches. About 53 acres, including 23 acres for the actual waste containment area, will be required at Hanford.

The wastes will remain at NFSS and will be covered with a long-term cap.

5. Removal, transport, and long-term management of the radioactive residues at Hanford, Washington, and removal and ocean disposal of the radioactive wastes

The residues will be removed, packaged, and transported to Hanford as described in alternative 4 above. All remaining wastes will be excavated, transported in bulk in dump trucks to a dock in the New York/New Jersey harbor area, loaded onto barges, and transported to the 106-mile Ocean Waste Disposal Site (Site 106) for disposal.

Following excavation and removal of all wastes and residues from NFSS, the excavated areas will be filled and graded and the site will be released for other use. A potential institutional obstacle to implementation of this alternative is the need to obtain an ocean dumping permit from the U.S. EPA and the uncertainty as to how the wastes will be classified for ocean disposal purposes.

6. Removal, transport, and long-term management of the radioactive residues at Oak Ridge, Tennessee, and long-term management of the radioactive wastes at NFSS

The residues will be shipped to Oak Ridge, Tennessee, stabilized in one or two large mounds on the knolls at the Pine Ridge Knolls site, and covered with a long-term cap. About 33 acres of land will be needed, including 6.7 acres for the actual waste containment area. The procedures for managing the remaining contaminated wastes at NFSS will be identical to those described for alternative 4 above.

7. Removal, transport, and long-term management of the radioactive residues at Oak Ridge, Tennessee, and removal and ocean disposal of the radioactive waste

The residues will be removed, packaged, and transported to Oak Ridge, Tennessee, stabilized in one or two large mounds on the knolls at the Pine Ridge Knolls site, and covered with a long-term cap. About 33 acres of land will be needed, including 6.7 acres for the actual waste containment area. The radioactive wastes will be excavated, transported in bulk in dump trucks to a dock in the New York/New Jersey area, loaded onto barges, and transported to the 106-mile Ocean Waste Disposal Site for disposal. Following excavation and removal of all wastes and residues from NFSS, the excavated areas will be filled and graded and the site will be released for other sites. A potential institutional obstacle to implementation of this alternative is the need to obtain an ocean dumping permit from the U.S. EPA and the uncertainty as to how the wastes will be classified for ocean disposal purposes.

Basis for Decision

Consistent with the waste management guidance in DOE Order 5820.2, DOE is using the EPA standard 40 CFR 192 as guidance for long-term management of the radioactive wastes at the NFSS on land. These wastes are contaminated with naturally occurring radionuclides, and we conclude that the

EPA standard developed for disposal of uranium mill tailings on land, 40 CFR 192 is the relevant standard. For the radioactive residues, there is no applicable EPA standard. Compliance with future applicable requirements is uncertain until those requirements are known and compared with the in place management design.

Long-term management in place has less environmental impacts for the action alternatives for (1) transportation and occupational injuries and deaths, and (2) additional imputed radiological health effects during the action period to the general public and workers. For the long term, several of the alternatives, including in place management at NFSS, have less projected health effects than the other alternatives. Considering the action period and long term in toto, in place management at NFSS is the environmentally perferable alternative. Further, in place long-term management at NFSS is shown in the EIS to be far less costly than the other alternatives.

Considerations in the Implementation of the Decision

The DOE is cognizant of potential environmental and health impacts which could result in implementing the decision. These impacts will be minimized or avoided through strict compliance with applicable Federal, State, and local regulations.

Near the time of implementation of the decision, DOE will evaluate design options for long-term in-place management of the wastes and residues. DOE will consult with EPA on the selection of the specific on-site containment option and provide EPA with assurance that the selected option will meet applicable standards and/or guidance and will be environmentally acceptable. Detailed engineering plans and environmental health and safety operations plans, as well as long-term maintenance and monitoring plans, will be developed consistent with the selected option. The appropriate NFPA review will be conducted. The existing maintenance and environmental monitoring programs will be modified as necessary, to reflect the monitoring experience gained during the intrim waste containment period and to reflect any additional monitoring necessitated by disturbance of the residues.

Subject to the requirements of the selected option, the following are representative measures which will be employed to avoid or minimize impacts during the remedial action:

• *Mitigation of contaminate exposure and release through air and land pathways*—The release of contaminated particulates will reduced by dampening contaminated material with water and/or dust suppressants, by stopping contaminated material-handling operations during adverse weather conditions, and by using equipment designed and/or selected to minimize particulate releases.

The inadvertent off-site transportation of radioactively contaminated material will be controlled by the use of decontamination facilities (e.g., truck wash stations) to clean trucks and other vehicles before leaving the site. Human exposure to residual radioactive material will be reduced by restricting access, and by providing the monitoring and protective equipment and training programs necessary for use by the remedial action workers. Radon, in and around the site, will be monitored as part of the process to minimize exposure.

• *Mitigation of contaminate release through water pathways*—To prevent possible off-site migration of contaminated water during excavation and handling of the contaminated material, protective dikes isolating the distrubed material from surface-water systems will be installed. The construction of collecting and settling basins will permit the collection and treatment of waste-water resulting from washing vehicles and equipment. All effluent water will be monitored and treated to meet water-quality release criteria before being discharged. Sediment from sedimentation basins will be stabilized and disposed of in the Waste Containment Cell.

Issued in Washington, DC on August 27, 1986.

This long-term management project at the NFSS is expected to be implemented in the next 5 to 10 years based on the availability of funds and other priorities within the Surplus Facilities Management Program. In the meantime, the interim waste containment facility to be completed in the fall of 1986 will contain the radioactive material and protect the public health and safety.

A. David Rossin,

Assistant Secretary for Nuclear Energy.

[FR Doc. 86-20103 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-11-NG]

Order Approving Authorization To Import Natural Gas; Petro-Canada Hydrocarbons Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Approving Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order to Petro-Canada Hydrocarbons Inc. granting authorization to import up to 20,500 Mcf per day of Canadian natural gas, not to exceed a total of 150 Bcf, over a 20-year period beginning on the date of first delivery. All of the gas imported pursuant to the authorization will be resold directly to the United States Borax & Chemical Corporation for use at Borax's sodium borate ore processing facilities at or near Boron, California.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-20047 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-38-NG]

Spot Market Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Spot Market Corporation (SMC) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 86-38-NG authorizes SMC to import up to 50 Bcf per year over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. 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, DC, August 27, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-20102 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-53; OFP Case No. 61056-9296-01,02-12]

Acceptance of Petition From Basic American Foods for Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance.

SUMMARY: On August 12, 1986, Basic American Foods (Basic) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" of "the Act") based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum for two (2) auxillary boilers to be located at its proposed American I Cogeneration Project in King City, California. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the exemption based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum are found at 10 CFR 503.32

The project for which the exmption is requested is an auxillary boiler system consisting of two (2) oil/gas fired boilers, each capable of 110,000 pounds per hour steam peak rating.

ERA has determined that the petition for exemption is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and 501.63. ERA retains the right, however, to request additional relevant information from Basic any time during the proceeding as circumstances may require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before October 20, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket ERA-C&E-86-53 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-076, Washington, D.C. 20585, Telephone: (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone: (202) 252-6947.

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. Basic has filed a petition with ERA requesting a permanent exemption to permit the use of natural gas or No. 2 fuel oil as the primary energy source of an auxillary boiler steam system proposed for its American I Cogeneration Project in King City, California, in order to provide an alternative steam supply during unscheduled outages of the congeneration plant and during certain periods of the year when it is uneconomical to produce power.

Exemption Petition

Section 212(a)(1)(A)(ii) of the Act and 10 CFR § 503.32 provide for a permanent exemption for lack of alternate fuel supplies at a cost which does not substantially exceed the cost of using imported petroleum. In accordance with the requirements of § 503.32(c), Basic's petition includes the following evidence in order to make the demonstration required by this section:

(1) The unit will be operated less than 1500 full load hours annually;

(2) Use of mixtures is not feasible, as required under § 503.9 of these regulations; and

(3) Environmental certifications, as required under § 503.13(b) of these regulations.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for lack of alternate fuels for units operated less than 1500 hours, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Basic has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Basic pursuant to 10 CFR § 503.13, together with other relevant information. Unless it appears during the proceeding on Basic's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Basic is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on August 25, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-20104 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-04; OFP Case No. 66017-9266-01-23]

Exemption Petition; Power Developers, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Extension of Decision Period on Petition for Exemption by Power Developers, Inc. for a Proposed Facility Near Scottsdale, Arizona.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by forty-five (45) days to October 4, 1986, the Decision Period within which to either grant or deny the request for a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act) filed by Power Developers, Inc. for its proposed electric power production facility to be located near and east of Scottsdale, Arizona.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a specified date by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary to properly consider issues associated with this case.

Issued in Washington, DC, on August 28, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-20048 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-46; OFP Case No. 67043-9280-21-22]

Order Granting the City Santa Clara, CA, Proposed Peaking Facility, Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Exemption.

SUMMARY: On June 5, 1986, 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 enegy 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 exemptions 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 with a net design capacity of 28.1 MW, together with 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 utilize natural gas as its primary fuel with distillate fuel serving as a back-up emergency fuel.

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.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on November 4, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-093, 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 June 24, 1986 (50 FR 22967), 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 or requesting a public hearing closed August 8, 1986. 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 facility will be operated as a peakload powerplant, with its annual operation not to exceed 28,100 MW hours.

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, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency 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.

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 August 27, 1986.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 86-20049 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP83-8-006 and CP84-441-017]

Columbia Gas Transmission Corp. v. Tennessee Gas Pipeline Co.; a Division of Tenneco, Inc.; Complaint and Motion for Summary Disposition or Alternatively Request for Hearing

September 2, 1986.

Take notice that on July 28, 1986, Columbia Gas Transmission Corporation (Columbia) tendered for filing a Complaint And Motion For Summary Disposition Or Alternatively Request For Hearing Against Tennessee Gas Pipeline Company (Tennessee). Columbia, pursuant to the terms of the stipulation and agreements (Stipulations) filed May 2, 1984 in Docket No. RP83-8-000, *et al.* and February 5, 1985 in Docket No. CP84-441-000, *et al.*, hereby complains and objects to the take-or-pay costs recovered under those Stipulations which are purportedly detailed in the reports filed by Tennessee pursuant to said Stipulations.

In particular, Columbia hereby protests that Tennessee's take-or-pay costs recovered under those Stipulations which are purportedly detailed in the reports filed by Tennessee pursuant to said Stipulations.

In particular, Columbia hereby protests the Tennessee's take-or-pay costs recovered under those Stipulations are unjust, unreasonable and imprudently incurred, and that Tennessee's related gas reserve acquisitions and purchase practices are also imprudent. Pursuant to the terms of the Stipulations, Columbia hereby requests the Commission to summarily find that said take-or-pay costs have been imprudently incurred and should be refunded. Alternatively, Columbia requests the Commission to establish procedures for examining the reasonableness and prudence of Tennessee's take-or-pay payments and to determine whether refunds of payments made by Columbia to Tennessee related to such take-or-pay is required.

Any person desiring to be heard to to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before October 2, 1986. 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. Answers to the July 28, 1986, shall also be due on or before October 2, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20071 Filed 9-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2640-001 et al.]

Phillips Petroleum Co. et al.; Applications for Abandonment and Blanket Limited-Term Certificate With Pre-Granted Abandonment Authorization

September 2, 1986.

Take notice that each of the applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service or for a blanket limited-term certificate with pre-granted abandonment authorization to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register,** file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
G-2640-001, B, Aug. 20, 1986	Phillips Petroleum Co., 336 Home Savings & Loan Bldg., Bartlesville, OK 74004.	United Gas Pipe Line Co., Carthage Field, Panola County, TX.	[2]	
CI86-690-000, A, Aug. 20, 1986	do	do [3]		
CI86-686-000, B, Aug. 20, 1986	Franks Petroleum Inc., *et al., KP.O. Box 7665, Shreveport, LA 71137-7665* [4].	United Gas Pipe Line Co., Sibley Field, Webster Parish, LA [5].	[6]	
CI86-687-000, B, Aug. 20, 1986	do [7]	United Gas Pipe Line Co., Castor Field, Bienville Parish, LA [8].	[6]	
CI86-694-000, B, Aug. 21, 1986	do [9]	United Gas Pipe Line Co., Driscoll Field, Bienville Parish, LA [10].	[6]	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI86-697-000, B, Aug. 22, 1986 [11]	Reading & Bates Petroleum Co., 3200 Mid-Continent Tower, Tulsa, OK 74103.	ANR Pipeline Co., Block 504, West Cameron Area, offshore Louisiana.	([12])	
CI86-685-000, B, Aug. 19, 1986 [13]	Richard B. Nelson, 401 Edward Street, Suite 2100, Shreveport, LA 71101-3140.	Arkla Energy Resources, a Division of Arkla, Inc., Ada and Sibley Fields, Bienville and Webster Parishes, LA [14].	([15])	
CI66-172-004, B, Aug. 11, 1986 [16]	Sun Exploration & Production Co., *et al.*,[17] P.O. Box 2880, Dallas, TX 75221-2880.	Texas Gas Transmission Corp., MIOGYP RA SU B, Trahan No. 1 well, Maurice Field, Lafayette Parish, LA.	([18])	
CI86-644-000, A, Aug. 11, 1986	do	do [19]		
CI86-663-000, B, Aug. 12, 1986 [20]	M.H. Marr, 2500 Republic National Bank Building, Dallas, TX 75201, James M. Forgotson, 1200 Slattery Building, Shreveport, LA 71101.	United Gas Pipe Line Co., M.H. Marr King Estate Unit No. 1 well, W/2 Section 17-T21N-R4W, and Amoco Production Co. Clements No. 1 Well, Section 21-T21N-R4W, Lisbon Field, Claiborne Parish, LA.	([21])	

[1] Not used.

[2] Applicant requests authorization for a limited-term abandonment for a 2-year period of a sale of gas to United Gas Pipe Line Co. covered under contract dated Feb. 25, 1983, and Applicant's FERC Gas Rate Schedule No. 13. Applicant states that all the wells subject to the contract have been shut-in since June 1986, and that the situation involves substantially reduced takes without payment. Applicant states that the maximum lawful price is the interstate rollover price, and that the wells and volumes attributable to its interest are as follows:

Well name	Monthly volume (Mcf)
Ashton No. 1	408
Beasley No. 1	310
Callow No. 1	200
Naomi No. 1	563
Panola No. 1	230
Daniels A No. 1	285
Panola No. 1-C	238
Total	2,234

Applicant states that it expects to make sales in the interstate spot market and has therefore filed for a blanket certificate in Docket No. CI86-690-000.

[3] Applicant requests authorization in Docket No. CI86-690-000 for a limited-term blanket certificate with pre-granted abandonment to make sales for resale in interstate commerce of gas subject to the limited-term abandonment requested in Docket No. G-2640-001. Applicant requests that the terms be for a two year period to run concurrently with Applicant's requested limited-term abandonment. Applicant also states that it will file any rate schedules required by the order granting the certificate, however Applicant requests a reporting requirement in lieu thereof.

[4] Applicant states that this temporary abandonment is requested for all parties for whom Applicant operates including Osias Biller, L.R. Brammer, Jr., John C. Ellis, G.E. Huggs, Hurley Oil & Gas Co., William Jarratt, LPC Energy, Inc., Wanda L. McIntyre, Petrofunds, Inc., White Parrino Resources, Herman Williamson, Jr., James C. Galbraith, 1984 Galbraith Ltd. Partnership, Sinbad Oil & Land Co., Ed H. Stevens, Agnes E. Stevens, W.G. Anderson, H.E. Anderson, H.H. Alford, IV, Marjorie Alvord, Jack S. Coussons, Drovia Oil Corp., Robert A. Flynt, Frank J. Hall, William H. Hendrick, M&V Oil Co., Carl R. Corley, Fred H. Plitt, Randal Lewis, A.T. Dickerson and John Franks.

[5] Applicant requests authorization to abandon a sale of gas for a 3-year period to United Gas Pipe Line Co. Applicant states that by letter dated June 11, 1986, United informed Applicant that it would not purchase gas until further notice from wells covered by their Aug. 21, 1971, contract (United Contract No. 5129). Applicant states that the wells and their current deliverability are as follows:

Well name	NGPA classification	Current deliverability Mcf/d
HOSS B SUB; Bodcaw No. 1	104 Flowing—Small Producer	480
HOSS A SUB; Bodcaw No. 2	104 Post 1974	500
HOSS A SUN; Burson No. 1-D	104 1973-74 biennium	110
HOSS A SUO; P.V. Smith No. 1	104 1973-74 biennium	Shut-in
HOSS B SUC; Crichton No. 1	104 Flowing—Small Producer	575
HOSS A SUC; Crichton No. 1-D	104 Flowing—Small Producer	225
HOSS A SUA; Crichton No. A-1	104 Flowing—Small Producer	180
HOSS B SUP; Crichton No. B-1	104 Flowing—Small Producer	360
HOSS A SUH; Fogle No. 1 and 1-D	104 1973-74 biennium	450
HOSS B SUI; Irene Gray No. 1	104 1973-74 biennium	Shut-in
HOSS A SUI; Irene Gray No. 1-D	104 1973-74 biennium	800
HOSS A SUG; La. Meth. Orph No. 1-D	104 Flowing—Small Producer	Shut-in
HOSS B SUE; Reed No. A-1	104 Flowing—Small Producer	240
HOSS A SUE; Reed No. A-1-D	104 Flowing—Small Producer	320
HOSS B SUD; Reed No. B-1	104 Flowing—Small Producer	600
HOSS B SUF; Sims No. 1	104 Flowing—Small Producer	550
HOSS B SUJ; Effie Smith No. B-1	104 1973-74 biennium	450

Applicant states that United is not paying for gas not taken. Applicant also states that the term of the contract expires June 1, 1991, but that it has given United written notice of cancellation effective concurrent with any issuance of a certificate of temporary abandonment herein. Applicant plans to market the gas to another purchaser.

[6] Applicant operates under a small producer certificate in Docket No. CS71-1014.

[7] Applicant states that this temporary abandonment is requested for all parties for whom Applicant acts as operator including Herschel M. Downs, Robert P. Evans, 1975 Galbraith Ltd. Partnership, T.L. James & Co., Inc., LPC Energy, Inc., Louisiana-Hunt Petroleum, Placid Oil Co., Rosewood Resources, SWEPCO Fuel Group, Wheless Industries, Inc., Tensas Delta Land Co., White-Parrino Resources Partnership, William Beasely, Jr., Carl R. Corley, Fred H. Plitt and John Franks.

[8] Applicant requests authorization to abandon a sale of gas for a 3-year period to United Gas Pipe Line Co. Applicant states that United has ceased taking gas from the wells covered by their Dec. 8, 1977, contract (United Contract No. 6276). Applicant states that the wells and their current deliverability are as follows:

Well name	NGPA classification	Current deliverability Mcf/d
PET RA SUA; Bodcaw No. C-1	104 Post 1974	150
FLA RA SUB; Pardee Co., No. A-1	104 Post 1974	73

Applicant states that United is not paying for gas not taken. Applicant also states that the term of the contract expires Dec. 8, 1987, but that it has given United written notice of cancellation effective concurrent with issuance of temporary abandonment herein. Applicant plans to market the gas to another purchaser.

[9] Applicant states that this temporary abandonment is requested for all parties for whom Applicant acts as Operator including Osias Biller, G.E. Huggs, Kelly Oil Acquisition Venture, LPC Energy, Inc., Petrofunds, Inc. and John Franks.

[10] Applicant requests authorization to abandon a sale of gas for a 3-year period to United Gas Pipe Line Co. Applicant states that by letter dated June 11, 1986, United informed Applicant that it would not purchase until further notice gas from wells covered by their June 22, 1966, contract (United Contract No. 4630). Applicant states the wells and their current deliverability are as follows:

Well name	NGPA classification	Current deliverability Mcf/d
HOSS SUU; Con Can No. C-1	104 Flowing—Small Producer	62
HOSS SUI; Davis Bros. Lumber Co. No. 1	104 Flowing—Small Producer	244
U PET SUQ; Davis Bros. Lumber Co. No. B-1	107 Prod. Enhancement	76
U PET SUH; Davis Bros. Lumber Co. No. F-1	104 Flowing—Small Producer	224
U PET SUE; Davis Bros. Lumber Co. No. 1-1	104 Flowing—Small Producer	80
U PET SUJ; Davis Bros. Lumber Co. No. C-1 Alt	107 Prod. Enhancement	328
HOSS SUE; Holland No. 1	104 Flowing—Small Producer	540
HOSS SUN; Smelly No. 1	107 Prod. Enhancement	1,537
U PET SUN; Smelly No. 1-D	107 Prod. Enhancement	364
HOSS SUO; W.G. Smelly No. A-1	104 Recomp. Small Producer	1,162
U PET SUP; Williams No. A-1	104 Prod. Enhancement	84

Applicant states that United is not paying for gas not taken. Applicant also states that the term of the contract expires Jan. 1, 1990, but that it has given United written notice of cancellation effective concurrent with any issuance of a certificate of temporary abandonment herein. Applicant plans to market the gas to another purchaser.

[13] Additional information received Aug. 27, 1986.

[12] Applicant, a small producer certificate holder in Docket No. CS71-522, requests a limited-term abandonment, for a period of three years of excess gas not taken by ANR Pipeline Co. from Applicant's 30 pct interest in certain wells located in Block 504, West Cameron Area, offshore Louisiana, that are subject to an Oct. 27, 1977, contract. Applicant states actual takes for the last 12 months have been far below contract requirements, and the purchaser indicates that this trend will continue and therefore has provided Applicant an excess release agreement for those quantities of surplus gas that the purchaser is unable to take. Applicant states ANR is not paying for gas volumes not being taken. Applicant proposes to sell the abandoned volumes on the spot market to Hadson Gas Systems, Inc. and/or Seagull Energy Corp. The wells involved are shown below:

Well name	NGPA category	Approximate deliverability from 30 pct interest (Mcf/d)	Approximate volumes during 3-year period (Mcf)
A-1D	104 Post-1974	630	689,850
A-3	104 Post-1974	750	821,250
A-6	102(d)	450	492,750
Total		1,830	2,003,850

[13] Additional information filed August 26, 1986.

[14] Applicant requests authorization for permanent abandonment of a sale of gas to Arkla, from certain existing wells and any wells hereafter drilled in the acreage covered under three contracts dated Mar. 5, 1975, Apr. 4, 1979, and Aug. 1, 1978. Applicant states that by letter agreement dated July 9, 1986, Arkla and Applicant permanently released each other from all further obligations under these contracts, and Applicant has agreed to waive any accrued take-or-pay liability on the part of Arkla. Applicant states that Arkla is not paying for gas not taken, and that because of Arkla's take situation, the sales cannot be economically maintained. Applicant states that the wells are as follows:

Well name	Estimated deliverability	NGPA pricing (last effective rate)
Coussins No. 1	1,500 Mcf/day	Section 104 ($2.18).
Doris White No. 1	300 Mcf/day	Section 104 ($2.18).
Archie Davis No. 1	150 Mcf/day	Section 106(a) ($0.958).
Bates No. 1	400 Mcf/day	Section 106(a) ($0.958).
Bates No. 1-D	100 Mcf/day	Section 106(a) ($0.958).

Applicant plans to sell the gas into the spot market in the short term, and it is still negotiating for potential customers.

[15] Applicant holds a small producer certificate in Docket No. CS71-960.

[16] Additional information received Aug. 22, 1986.

[17] *Et al.* parties are Thelma Bauerdorf and Constance Cartwright TTS UW George Bauerdorf, Glen Hamner, A.M. Jackson, Marcel D. Landry, Estate of Gordan M. Mace, Laura & Felicia C. Trahan, Ralph T. Anderson, George C. Francisco III and Tom T. Moore.

[18] Applicant requests a 2-year limited-term abandonment authorization to Texas Gas from the MIOGYP RA SU B of the Trahan No. 1 well, Maurice Field, Lafayette Parish, LA, in order to seek other markets. Involved is NGPA section 104 minimum rate gas, and Applicant states the well has not produced since Jan. 13, 1981. However for the 90-day period prior to temporary abandonment of the subject well, the subject zone produced an average of 435 Mcf/d. Applicant states it plans to rework the MIOGYP RA SU B of the Trahan No. 1 well, but the current contract price is not enough to justify such work. Applicant estimates that the deliverability from the well, after enhancement work, will be approximately 5,000 Mcf/d. Applicant states it will be facing a most difficult situation with the NGA gas that could be made available to the marketplace but will not be taken by Texas Gas over the next 2 years, and that Applicant will suffer a significant loss of cash flow that might otherwise be used to fund additional exploration and production activities. Applicant states Texas Gas has agreed to release the gas available from the subject well for a 2-year period and has agreed to support its application.

[19] Applicant requests expeditious consideration for a 2-year blanket limited-term certificate to make sales to other markets for resale in interstate commerce of volumes of gas which Texas Gas agreed to release and are subject to the limited-term abandonment in Docket No. CI66-172-004. Applicant states without expeditious consideration, Applicant would be unable to move these reserves and would be suffering a loss of cash flow.

[20] Additional information received Aug. 27, 1986.

[21] M.H. Marr, small producer certificate holder in Docket No. CS71-671, and James M. Forgotson, small producer certificate holder in Docket No. CS75-372 request permanent abandonment of certain sales to United that are covered under a gas purchase contract dated Feb. 22, 1982. Applicant states United has advised Applicants it intends to suspend all purchases of NGA gas covered by the contract as of Aug. 14, 1986, the date the contract expires. Applicants state United has not paid for that portion of the annual minimum quantity which United has failed to take during any contract year during the term of the contract. The wells involved are shown below:

Well name	NGPA category	Approximate deliverability (Mcf/d)
M.H. Marr King Estate Unit No. 1	104—recompletion	280
Amoco Production Co. Clements No. 1	104 Post-1974	92
Total		372

Applicants state they do not yet have a commitment for the sale of the gas from said wells, however they have contacted Mid-Con Services Corp. for possible sale of the subject gas in the intrastate market. Applicants state that in view of the fact that United has advised Applicants that they are precluded from making any deliveries to United from the subject wells, Applicants will suffer a severe economic hardship by being required to shut-in the subject wells, and, therefore, request expeditious consideration of their abandonment application.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial succession.

[FR Doc. 86-20072 Filed 9-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM83-71-040 and RM83-71-041]

Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions; Order Granting Rehearing For Purpose of Further Consideration

Issued August 25, 1986.

Before Commissoners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On June 30, 1986, the Commission issued Order No. 380–E, [1] in the captioned proceeding, on remand from *Wisconsin Gas Co. v. FERC.* [2] In its order, the Commission reiterated its position that § 154.111 of its regulations [3] bars a downstream pipeline from passing through upstream pipeline minimum commodity bill charges in its own minimum commodity bill charges. On July 24, 1986, Midwestern Gas Transmission Company (Midwestern) and Indiana Gas Company, Inc,. (Indiana Gas) filed request for rehearing of Order No. 380–E pursuant to Rule 713 of the Commission's Rules of Practice and Procedure. [4] Midwestern requests that the Commission grant rehearing and permit it to pass such upstream charges through its minimum commodity bill. Indiana Gas seeks rehearing to the extent that Order No. 380–E precludes consideration, in individual downstream pipeline rate cases, of the type of fixed-costs and the appropriate methodology for allocating such costs in the downstream pipeline's rates.

In order to afford additional time to consider the respective requests for rehearing, it is necessary to grant rehearing solely for the limited purpose of further consideration.

The Commission orders: Rehearing of Order No. 380–E is granted solely for the limited purpose of further consideration. As provided in Rule 713(d) [5] of the Commission's Rules of Practice and Procedure, no answers to the respective requests for rehearing are permitted.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20070 Filed 9–4–86; 8:45 a.m.]

BILLING CODE 6717-01-M

[1] 35 FERC ¶ 61,348 (1986).

[2] 770 F.2d 1144 (D.C. Cir. 1985).

[3] 18 CFR 154.111 (1985).

[4] 18 CFR 385.713 (1986).

[5] 18 CFR 713(d) (1985).

Office of Hearings and Appeals

Cases Filed the Week of August 1 Through August 8, 1986

During the Week of August 1 through August 8, 1986 appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director Office of Hearings and Appeals.

August 27, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 1 through Aug. 8, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 4, 86	Molo Oil Company, Dubuque, IA	KEE-0060	Exception to the Reporting Requirements. If Granted: Molo Oil Company would not be required to file Form EIA-782B, "Resellers/Retailers Monthly Petroleum Product Sales Report."
Aug. 7, 86	Nourse & Associates, P.S., Seattle, WA	KFA-0040	Appeal of an Information request denial. If Granted: the July 17, 1986 Freedom of Information Request Denial Issued by the Office of Management Services would be rescinded and Nourse & Associates, P.S. would receive access to documents concerning the Fort Peck-Havre 230/KV transmission line, Contract No. DE-AC65-84WP 15857 with American Line Builders, Inc.
Aug. 7, 86	Texaco, Inc., White Plains, NY	KRZ-0043	Interlocutory. If Granted: The July 9, 1986 Special Report Order issued to Texaco, Inc. (CAS No KRX-0016) would be rescinded.
Aug. 5, 86	Empire Gas Corp. Washington, DC	KEF-0048	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the January 6, 1986 Consent Order entered into with Empire Gas Corporation.

REFUND APPLICATIONS RECEIVED

7/31/86	Gulf/Eddie's Gulf	RF40-3227
7/31/86	Gulf/Rudy's Gulf	RF40-3228
7/31/86	Gulf/Cloverdale Gulf	RF40-3229
7/31/86	Gulf/Don's Service Center	RF40-3230
7/31/86	Gulf/Eva Lindsay Gulf Service	RF40-3231
7/31/86	Gulf/Van Meter's Grocery	RF40-3232
7/31/86	Gulf/Graymart, Inc.	RF40-3233
7/31/86	Gulf/Riggs Gulf Service	RF40-3234
7/31/86	Gulf/Bob's Holiday Gulf Service	RF40-3235
7/31/86	Gulf/Parrish Gulf Service	RF40-3236
7/31/86	Gulf/Fairmont Gulf Service	RF40-3237
7/31/86	Gulf/Holmes Gulf Station	RF40-3238
7/31/86	Gulf/Perry's North Main Gulf	RF40-3239
7/31/86	Gulf/Jerry's Gulf	RF40-3240
7/31/86	Gulf/Nazionale Gulf Station	RF40-3241
7/31/86	Gulf/Plagens Gulf Station	RF40-3242

REFUND APPLICATIONS RECEIVED—Continued

7/31/86	Gulf/Knight Gulf Station	RF40-3243
7/31/86	Gulf/Baker's Walkwick Gulf	RF40-3244
7/31/86	Gulf/Leighty's Gulf	RF40-3245
7/31/86	Gulf/Benben's Gulf	RF40-3246
7/31/86	Gulf/Bryant Enterprises, Inc.	RF40-3247
7/31/86	Gulf/Alamo Gulf Service	RF40-3248
7/31/86	Navajo/Atchison, Topeka & Santa Fe Railroad.	RF203-8
8/4/86	Gulf/Hendricks Oil Co., Inc.	RF40-3250
8/4/86	APCO/Atchison, Topeka & Santa Fe.	RF83-150
8/4/86	Beacon/Automatic Gasoline Systems.	RF238-68
8/4/86	Beacon/Westside Beacon	RF238-69
8/4/86	Beacon/Gas-O-Teria	RF238-70
8/4/86	Beacon/Don Rose Oil Co., Inc.	RF238-71

REFUND APPLICATIONS RECEIVED—Continued

8/4/86	Elm City/Ultramar Petroleum, Inc.	RF255-2
8/4/86	Gulf/United Illuminating Co.	RF40-3249
8/4/86	Amoco/Public Service Co., of Indiana.	RF21-12622, RF21-12623
8/4/86	Amoco/Rosebud Sioux Tribe	RF21-12624, RQ21-321
8/4/86	Gulf/Farrell Lines	RF40-3251
8/4/86	Marine/Maffitt Oil Co.	RF257-1
8/4/86	Marine/Len Theoele Service	RF257-2
8/5/86	Sid Richardson/Boyd's, Inc.	RF26-47

REFUND APPLICATIONS RECEIVED—Continued

8/1/86 thru 8/8/86	Marathon Refund Applications	RF250-832 thru RF250-936
8/1/86 thru 8/8/86	Mobil Refund Applications	RF225-9894 thru RF225-10032

[FR Doc. 20050 Filed 9-4-86; 8:45 am]
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Issuance of Decisions and Orders; Week of July 7 through July 11, 1986

During the week of July 7 through July 11, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Natural Resources Defense Council, 7/11/86; KFA-0031

The Natural Resources Defense Council (NRDC) filed an appeal from a partial denial by the Nevada Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the appeal, the DOE found that the Nevada Operations Office had adequately searched for the requested document. In addition, the DOE found that the NRDC's request for a waiver of search and copying fees should be granted. Important issues that were considered in the Decision and Order were (i) the adequacy of the search, and (ii) whether the sale of a publication derived from the information gained through a FOIA request bars a request for a fee waiver.

Remedial Order

Texaco Inc., 7/9/86; BRO-1467

Texaco Inc. objected to a Proposed Remedial Order in which the Office of Special Counsel for Compliance (OSC) alleged that Texaco violated the refiner price rules contained in Part 212, Subpart E in sales of motor gasoline to the Office of General Services (GS), an agency of the State of New York. The PRO alleged that Texaco overcharged GS by $260,147 as a result of Texaco's improper class of purchaser assignment of GS. The PRO stated that during the audit period, Texaco charged GS prices for motor gasoline which were established for a bulk plant operated by a Texaco consignee-distributor even though GS did not receive gasoline from that bulk plant. During the course of the proceeding, OSC argued further that, even if the gasoline delivered to GS passed through the bulk plant owned by the Texaco consignee distributor, Texaco was obligated to assign GS to a class of purchaser at the Texaco bulk plant from which the gasoline was initially lifted. In rejecting the OSC arguments, the DOE found that OSC failed to support its contention that GS received deliveries directly from a Texaco bulk plant during the audit period. The DOE also found that Texaco's assignment of GS to a class of purchaser at the consignee-distributor's bulk plant was reasonable and in accord with DOE Regulations. Accordingly, the Texaco Statement of Objections was sustained and the Proposed Remedial Order issued to Texaco on August 6, 1981 was rescinded.

Vanderbilt Energy Corp., 7/9/86; HRO-0080

Vanderbilt Energy Corporation objected to a Proposed Remedial Order which the Southwest Regional Office of the Economic Regulatory Administration issued to the firm on June 28, 1982. In the Proposed Remedial Order, the Economic Regulatory Administration found that the firm had improperly certified as stripper well properties four properties which it operated. These certifications were based upon the firm's use of sales data rather than production data to calculate the average daily production (ADP) for the properties. After considering the firm's Statement of Objections, the DOE concluded that the allegations with respect to one of the four properties should be withdrawn based upon a calculation of ADP using production data from a 12-month period not previously considered. The DOE concluded that the Proposed Remedial Order with respect to the other three properties, should be issued as a final Order. In doing so, the DOE found that ADP for purposes of determining eligibility for the stripper well exemption must be calculated using available production data, not sales data. The DOE also found that the firm had not shown sufficient recoupment of down days during the measuring year to qualify the properties for the stripper well exemption.

Supplemental Order

Texaco Inc., 7/9/86; KRX-0016

As an administrative convenience to the Economic Regulatory Administration, a Deputy Director of the Office of Hearings and Appeals issued a Special Report Order (SRO) to Texaco Inc. The SRO concerns Texaco's sales of middle distillates and motor gasoline to customers that purchased those products on or before May 15, 1973 pursuant to variable-priced contracts. The SRO requires that Texaco identify those customers and, with respect to each customer, provide the following information: (i) The May 15, 1973 selling price that Texaco assigned to the customer for the product in question; (ii) the price that Texaco charged the customer for that product in an actual sale on or before May 15, 1973; and (iii) the volume of the product sold to the customer in sales in which Texaco used a May 15, 1973 selling price other than that set forth in item ii. The SRO does not request information for customers that are the subject of *Texaco Inc.*, 14 DOE ———, No. HRO-0272 (July 23, 1986).

Implementation of Special Refund Procedures

Port Oil Co., Inc., 7/9/86; HEF-0153

The DOE issued a Decision and Order implementing a plan for the distribution of $20,965.53, plus accrued interest, received as the result of a consent order entered into by Port Oil Company, Inc. and the DOE. The DOE determined that the Port settlement fund should be distributed to customers that were injured as a result of purchases of motor gasoline from Port during the period April 1, 1979 through December 31, 1979. The Decision discusses specific information to be included in refund applications.

Refund Applications

Bayside Fuel Oil Depot Corp., v. Savino Oil & Heating Co., Inc., 7/11/86; RF244-1

The DOE issued a Decision and Order concering an Application for Refund in the Bayside Fuel Oil Depot Corp. special refund proceeding. The applicant was a reseller whose purchases of No. 2 heating oil from Bayside rendered it eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the application under the standards specified in *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 (1985). The refund granted totals $2,667, representing $1,938 in principal and $729 in interest.

Breckenridge Gasoline Co., Warren Petroleum Co., E.I. Du Pont De Nemours & Co., 7/9/86; RF60-1, RF60-2

Warren Petroleum Company filed an Application for Refund seeking a portion of funds remitted by Breckenridge Gasoline Company pursuant to a consent order that Breckenridge entered into with the DOE. Warren purchased 31,427,430 gallons of natural gas liquid products from Breckenridge during the consent order period. The DOE found that for a major portion of the NGLPs that Warren purchased, Warren was charged prices below the average market price levels. As a result, Warren obtained a substantial cost benefit. Considering the competitive advantage that Warren enjoyed from its purchases from Breckenridge, the DOE limited the refund to Warren to an amount equal to the number of gallons that Warren purchased at above market prices multiplied by the per gallon refund rate. The total amount of refund granted to Warren was $120,490.00 which includes $88,294.11 in principal and $32,195.89 in accrued interest.

E.I. du Pont de Nemours & Co. also filed an Application for Refund in the Breckenridge refund proceeding on the basis that it purchased the Breckenridge products from Warren. Du Pont used the Breckenridge products in its petrochemical production process. Since Du Pont was an end-user, the DOE determined that the firm should receive a refund in proportion to the volume that the firm purchased without a detailed showing of injury. The amount of refund granted to Du Pont was $4,620.60 in principal and $1,685.40 in accrued interest.

Conoco, Inc., Consumers, Inc., 7/10/86; RF34-33

The DOE issued a Decision and Order concerning an Application for Refund filed on the basis of the procedures outlined in *Office*

of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco). Consumers, Inc., applied for a refund based on purchases averaging less than 50,000 gallons per month, and was presumed to have been injured as a result of the alleged overcharges. After examining the evidence and supporting documentation, the DOE determined that the applicant's claim was meritorious, and that the firm should be granted a refund. The total amount of the refunds granted in this decision was $6,333 including interest.

Earth Resources Co., Chevron U.S.A., Inc., 7/9/86; RF-239-15

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron U.S.A. Inc. The firm applied for a refund based on the procedures outlined in *Earth Resources Company*, 13 DOE ¶ 85,384 (1984), governing the disbursement of settlement funds received from Earth Resources pursuant to a 1981 consent order. In its Application, Chevron claimed a refund based on a single purchase of Earth Resources product. The DOE initially determined that Chevron was a spot purchaser of Earth Resources product and, under the spot purchaser presumption, should be presumed not to have been injured by the alleged overcharges. Chevron attempted to rebut that presumption by demonstrating that its purchase was at a price above the market average for the relevant product. However, the DOE found that Chevron had failed to prove injury, since the firm could not show that it subsequently sold the Earth Resources product at a loss. Chevron's application was therefore denied.

Eastern of New Jersey, Inc., Atlantic Highlands Real Estate et al., 7/7/86; RF232-107 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 50 applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds granted total $38,383, representing $23,972 in principal and $14,411 in interest.

Eastern of New Jersey, Inc., Bogen Division et al., 7/7/86; RF232-1 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 49 applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶85,364 (1986). The refunds granted total $32,331, representing $20,191 in principal and $12,140 in interest.

Eastern of New Jersey, Inc., Joseph Teshon & Co. et al., 7/7/86; RF232-160 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceedings. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 50 applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶85,364 (1986). The refunds granted total $39,377, representing $24,841 in principal and $14,936 in interest

Eastern of New Jersey, Inc., Liberty Provision et al.., 7/7/86; RF232-52 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 50 applications under the standards specified in *Easten of New Jersey, Inc.*, 13 DOE ¶85,364 (1986). The refunds granted total $51,872, representing $32,393 in principal and $19,479 in interest.

Gulf Oil Corp., Florida Public Utilities Co., 7/11/86; RF40-3197

In this Decision and Order, the Office of Hearings and Appeals (OHA) rescinded a $7,539 refund from the Gulf Oil Corporation escrow account which had been granted to Florida Public Utilities Company (FPUC) in an April 17, 1986 Decision. The prior determination had been based on the assumption that FPUC had been the ultimate consumer of the Gulf propane which it had purchased during the Gulf consent order period. When the OHA subsequently learned the FPUC had resold the propane, it requested that the firm make the showing of injury required of all reseller claimants in the Gulf special refund proceeding. After FPUC informed the OHA that it was unable to make the required injury showing, the OHA issued the present determination which requires the firm to return the $7,539 to the DOE.

Gulf Oil Corp., Glades Road Gulf Service, Foshee Service, 7/10/86; RF40-3150, RF40-3162

The DOE issued a Decision and Order concerning the Applications for Refund filed by Glades Road Gulf Service and Foshee Service, both retailers of Gulf petroleum products. The claimants applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examning the evidence and supporting documentation submitted by the applicants, the DOE concluded that the claimants should received a total of $2,579 ($2,140 principal plus $439 interest).

Gulf Oil Corp., Ledesma's Gulf Service, 7/7/86; RF 40-02830

The DOE issued a Decision and Order concerning an Application for Refund filed by Ledesma's Gulf Service, a retailer of Gulf Oil Corporation petroleum products. The firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, Ledesma's argued that a decline in its annual sales volumes between 1974 and 1975 constituted evidence that it absorbed Gulf's increased prices in an amount greater than its refund claim. In examining Ledesma's application, however, the DOE found that the firm's sales volume did not decrease substantially and, moreover, the small decline that did occur was almost entirely due to decreases in two months. Consequently, the DOE concluded that Ledesma's had not submitted data which convincingly demonstrated cost absorption or injury, and the firm's Application for Refund was denied.

Gulf Oil Corp., South Mississippi Electric Power Association Cooperative, 7/11/86; RF40-3161

The DOE issued a Decision and Order concerning an Application for Refund filed by South Mississippi Electric Power Association Cooperative, an end-user of Gulf petroleum products. The claimant applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation submitted by the applicant, the DOE concluded that the claimant should receive a total of $170 ($141, principal plus $29 interest) based upon a total volume of 115,538 gallons of Gulf product purchases.

Gulf Oil Corp., Thrasher Trucking Co. et al, 7/10/86 RF40-2948 ET A.

The DOE issued a Decision and Order concerning Applications for Refund filed by three end-users of refined petroleum products purchased from Gulf Oil Corporation. In accordance with the procedures established in the Gulf special refund proceeding, the DOE determined that each applicant should receive a refund based on its purchase volumes of Gulf refined petroleum products during the Gulf consent order period. The total amount of refunds approved in this Decision and Order is $3,321 ($2,756 principal plus $565 interest).

Marathon Petroleum Co., Grimm's Diversified Services Corp., 7/9/86; RF250-0001

The DOE issued an order concerning an Application for Refund filed by Grimm's Diversified Services Corp. for a portion of the consent order funds remitted to the DOE by Marathon Petroleum Company. Grimm's substantiated purchases of 1,046,883 gallons of Marathon product, and was therefore granted a refund consisting of $440 principal and $13 interest.

Northwest Pipeline Corp., Arex, Inc., 7/09/86, RF116-1

Arex, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Northwest Pipeline Corporation. The DOE found that Arex demonstrated that it purchased Northwest natural gasoline during the consent order period and that Arex was injured by those purchases. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Arex's competitive disadvantage. A refund of $12,775.06 was found to compensate Arex for any harm experienced as a result of Northwest's alleged overcharges. In addition, the firm

received accrued interest of $5,826.15 for a total refund of $18,601.21.

Northwest Pipeline Corp., Delgado Oil Co. Inc., 7/09/86, RF116-4

Delgado Oil Company, Inc. filed an Aplication for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered with Northwest Pipeline Corporation. The firm claimed a refund on the basis of its purchases of natural gasoline from Northwest during the period August 1, 1980 through December 31, 1980. Since that product was decontrolled effective January 1, 1980, the firm was not eligible for a refund, and the request for refund was denied.

Dismissals

The following submissions were dismissed:

Name and Case No.

Ashland Oil, Inc.—HEE-0150
BHP Petroleum Co., Inc.—KRS-0250
Buskrud Oil Company—KEE-0052
Chandler Trailer Convoy—RF153-26
Chandler Trailer Convoy—RF154-23
Chandler Trailer Convoy—RF154-26
Commonwealth Refining Co.—HEG-0011, HEE-0004
Empire Gas Corp.—HRO-0250
Etheridge Oil Company—KEE-0046
Five Points West Gulf—RF40-3160
Jack B. Kelly—RF40-2952
Pickens-Bond Construction—RF153-29
Rogers Gulf—RF40-3163
Scruggs Energy Co., W.W. Scruggs, Donald W. Guillory—KRO-0280
Shreve City Gulf—RF40-3148
Stott & Davis Motor Express—RF40-2955
University Gulf—RF40-3149
Wigwam Gulf Service—RF40-3164

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

August 22, 1986.

[FR Doc. 86-20051 Filed 9-4-86; 8:45 am]

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Issuance of Decisions and Orders; Week of July 14 Through July 18, 1986

During the week of July 14 through July 18, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Minahan, Shapiro & Eggemeyer, P.C., 7/15/86, KFA-0041

The law firm of Minahan, Shapiro & Eggemeyer, P.C., on behalf of Gary Tripp, filed an Appeal from a partial denial of access to records under the Freedom of Information Act (FOIA) by the Assistant Administrator for Management Services, Western Area Power Administration. The Assistant Administrator had partially denied access to records pertaining to the selection of an applicant for a position of Apprentice Electrician, including the SF-171's and Supplemental Qualifications Statements of all the applicants, except Mr. Tripp, and the ratings given to the applicants by the OPM. The DOE determined that the information concerning the unsuccessful applicants was properly withheld pursuant to Exemption 6 of the FOIA, since such applicants had a significant privacy interest in the materials. The DOE further determined that the public interest in ensuring that government hiring regulations were followed outweighed the minimal privacy interest which the successful applicant had in his application materials and OPM rating. Accordingly, the DOE ordered the release of the successful applicant's SF-171, with certain purely private material deleted.

Remedial Order

Getty Oil Company/Economic Regulatory Administration, 7/17/86, HCX-0091, HRR-0074

During the period January 1974 through January 1976 Getty Oil Company (Getty) and the Standard Oil Company (Sohio) engaged in crude oil transactions in which Getty transferred to Sohio price-controlled domestic crude oil and Sohio transferred equal volumes of higher-priced foreign crude oil to Getty. During the three months prior to January 1974 similar transactions occurred, except that BP Trading Ltd. rather than Sohio transferred foreign oil to Getty. In an October 7, 1977 Decision on an appeal from a Remedial Order issued to Getty, the Office of Hearings and Appeals (OHA) found that the Getty-Sohio transactions were constituted an exchange for the entire period, that the value of the foreign oil Getty received therefore was consideration for the domestic oil it transferred, and that the difference between the respective values of the expensive foreign and price-controlled domestic oil constituted overcharges by Getty. *Getty Oil Co.*, 1 DOE ¶ 80,102 (1977). After reviewing this Decision, the United States District Court for the District of Delaware held that the DOE's determination was correct with respect to the period beginning January 1974, but remanded two issues: (i) Whether Getty overcharged Sohio during the months October 1973 through December 1973, and (ii) whether certain per-barrel cash differentials specified in the 1973 contracts between the firms, which amounted to a discount on the price Getty paid for the foreign crude oil, constituted additional overcharges during the period January 1974 through January 1976.

In accordance with the remand order, the Economic Regulatory Administration (ERA) filed a motion to modify OHA's 1977 Remedial Order decision. In its motion, ERA alleged that the economic substance of the October-December 1973 transactions was the same as that of later transactions, and contended that the benefit of the cash differentials Getty received during the period January 1974 through January 1976 constituted additional overcharges. After considering the firm's responses to these contentions, OHA concluded that a new Remedial Order should be issued based upon the allegations advanced in ERA's motion. The decision found that Getty had made additional overcharges of more than $24 million, and directed the firm to remit that amount, plus more than $60 million in accrued interest, to the DOE for restitution in a special refund proceeding conducted under 10 CFR Part 205, Subpart V. OHA also determined that this Decision may not be reviewed by FERC, because it is based on a pre-1977 Notice of Proposed Violation, and any appeal must be taken in the United States District Court for the District of Delaware.

Motion for Discovery

Rodgers Hydrocarbon Corp., Ray V. Rodgers, 7/15/86, HRD-1098, HRH-0298

Rodgers Hydrocarbon Corporation and Ray V. Rodgers (RHC) filed Motions for Discovery and Evidentiary Hearing in connection with the firm's Statement of Objection to a Proposed Remedial Order (PRO) issued to it by the Economic Regulatory Administration on March 29, 1985. In the Discovery Motion, RHC sought administration record and contemporaneous construction discovery concerning the regulatory definition of crude oil. In considering the Motion, the DOE found that RHC had failed to show the unusual factual or legal circumstances necessary to warrant expanded administrative record discovery. Furthermore, the DOE found that RHC had not demonstrated that the crude oil regulation was ambiguous and that it had been interpreted inconsistently. Accordingly, contemporaneous construction discovery was also denied. FInally, the DOE denied RHC's Motion for Evidentiary Hearing, finding that RHC's request, which sought to demonstrate that the firm sold something other than crude oil, concerned a legal, not factual issue, and thus did not present any appropriate issues for an evidentiary hearing.

Implementation of Special Refund Procedures

H.C. Lewis Oil Company, 7/15/86, HEF-0115

The DOE issued a Decision and Order implementing a plan for the distribution of $40,000 recieved as a result of a consent order entered into between the DOE and H.C. Lewis Oil Company (H.C. Lewis) on March 19, 1981. The DOE determined that the H.C. Lewis settlement fund should be distributed to both the identified and as yet unidentified customers who purchased motor gasoline fuel from H.C. Lewis during the period April 1 through December 20, 1979. The specific information to be included in a refund application is set forth in the Decision.

Refund Applications

Aminoil U.S.A., Inc., John Bogle Propane Company, 7/18/86, RF139–154

On July 18, 1986, the Department of Energy issued a Supplemental Order to a Decision and Order issued on June 20, 1986, *Aminoil U.S.A., Inc./William L. Bonnell Company, Inc.*, in which the DOE granted refunds to 15 applicants in the Aminoil special refund proceeding. The Supplemental Order modified the Appendix to the June 20 determination to correct an error in the total refund amount ordered disbursed to John Bogle d/b/a John Bogle Propane Company. Although the principal ($5,000) and accrued interest ($3,212) amounts specified were correct, the total amount of refund payable to Bogle was incorrectly stated. The Supplemental Order authorized disbursement of the corrected total of $8,212 to the firm.

Amtel, Inc./Virgle's Freeway, 7/14/86, RF46–56

Virgle's Freeway, a retailer of motor gasoline, applied for a refund from the Amtel, Inc. consent order fund. In accordance with the procedures for small claims established in *Amtel, Inc.*, 12 DOE ¶ 85,073 (1984), the firm was granted a refund of $1,362 ($696 principal plus $666 interest) based upon its purchase of 686,780 gallons of Amtel motor gasoline during the consent order period.

Beacon Oil Company/Beacon Station 3–398, 7/14/86, RF238–5

The DOE issued a Decision and Order concerning an application for refund filed by Beacon Station 3–398, a retailer of Beacon Oil Company motor gasoline. The applicant filed its application under the procedures established in *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986), governing the disbursement of settlement funds received from Beacon pursuant to a 1979 consent order. The applicant sought a refund based upon a credit memorandum earmarked for the applicant under the provisions of the Beason consent order, but which was never paid to the applicant because of the deregulation of petroleum products in January 1981. The applicant presented material showing that it had never received the benefit of any other previous credit received from Beacon pursuant to the consent order, since it had been consistently reducing its own prices to pass through the credit to its own customer. Following the *Beacon Oil Company* special refund procedures, the DOE therefore approved a $8,637 refund for the firm ($5,000 principal plus $3,637 accrued interest).

Champlain Oil Company, Inc./Jerry's Citgo et al., 7/18/86, RF187–3 ET AL

The DOE granted two Applications for Refund filed in the Champlian special refund proceeding. *Champlian Oil Co.*, 13 DOE ¶ 85, 119 (1985). The applicants are resellers whose purchases of Champlain motor gasoline made them eligible for a refund below the $5,000 small claims threshold. The refunds granted total $4,186, representing $2,269 in principal and $1,917 in interest.

Conoco Inc./First Colony Oil Co., Inc., et al., 7/18/86, RF220–20 et al.

The DOE issued a Decision and Order concerning twenty-five Applications for Refund filed in the Conoco refund proceeding. Each of the applicants had purchased refined petroleum products from Conoco Inc., and each sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco. All of the twenty-five firms applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that each of the twenty-five firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $33,494.

Eastern of New Jersey, Inc./Mother's Food Products, Inc. et al., 7/17/86, RF232–281 et al.

The DOE issued a Decision and Order concerning 66 Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern made them eligible to receive refunds below the $5,000 small claims threshold. In its Decision, the DOE granted 66 refunds under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds totalled $53,714—$33,544 in principal and $20,170 in interest.

Eastern of New Jersey, Inc./Sears, Roebuck, & Co., et al., 7/17/86, RF232–227 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern made them eligible to receive refunds below the $5,000 small claims threshold. In its Decision, the DOE granted 50 refunds under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds totalled $73,305—representing $45,778 in principal and $27,527 in interest.

Gulf Oil Corporation/Belzoni Butane Co., 7/15/86, RF40–3200.

In a July 15, 1986 Decision, the DOE granted Belzoni's Application for Refund. The DOE noted that the Application for Refund filed by the firm that had supplied Belzoni Butane with Gulf propane had been denied, and that Belzoni Butane had maintained cost banks large enough to support the refund claimed. Accordingly, Belzoni Butane was granted a refund of $4,121.

Gulf Oil Corporation/Everready Company, et al., 7/18/86, RF40–76 et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed in the Gulf special refund proceeding. The applicants were end-users of petroleum products purchased directly from Gulf. In its Decision, the DOE granted the 24 applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refund granted total $125,715, representing $104,334 in principal and $21,381 in interest.

Gulf Oil Corporation/Florida Power Corporation, 7/18/86, RF40–3205

The DOE issued a supplemental Decision and Order concerning a June 27, 1986 Decision and Order. *Gulf Oil Corp./Florida Power Corp.*, 14 DOE ¶ 85,301 (1986). The DOE determined that the June 27 Decision had granted too small a refund to Florida Power because the Decision understated the total amount of the firm's purchases from Gulf Oil Corporation. Accordingly, the DOE granted Florida Power an additional refund of $39,690 in accordance with the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984).

Gulf Oil Corporation/Look Oil Co., Inc. et al., 7/16/86, RF40–00021, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed by resellers and retailers of Gulf petroleum products. The firms applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each firm demonstrated that it would not have been required to reduce its selling prices by the amount of the refund claimed during the consent order period, August 1973 through January 1976. The DOE therefore approved refunds to the ten firms totalling $16,184.

Mobil Oil Corporation/A.W. Peters et al., 7/16/86, RF225–7734 et al.

The DOE issued a Decision granting 81 Applications for Refund from the Mobil Oil Corporation escrow account filed by 48 retailers and resellers of Mobil refined petroleum products. Each retailer or reseller of motor gasoline elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Those applicants who purchased products other than motor gasoline received refunds based on the small claims presumption. The DOE granted refunds totalling $75,457.

Mobile Oil Corporation/Action Mobil et al., 7/15/86, RF 225–821 et al.

The DOE issued a Decision granting 81 Applications for Refund from the Mobile Oil Corporation escrow account filed by 60 retailers and resellers of Mobil refined petroleum products. Each retailer or reseller of motor gasoline elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Those applicants who purchased products other than motor gasoline received refunds based on the small claims presumption. The DOE granted refunds totalling $25,906.

Mobil Oil Corporation/Aggers Mobil et al., 7/18/86, RF 225–1190 et al.

The DOE issued a Decision granting 64 Applications for Refund from the Mobil Oil Corporation escrow account filed by 48 retailers of Mobil refined petroleum products. Each retailer of motor gasoline elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Those

applicants who purchased products other than motor gasoline received refunds based on the small claims presumption. The DOE granted refunds totaling $19,042.

Mobil Oil Corporation/Arthur Bidlingmeyer et al., 7/18/86, RF225-1782 et al.

The DOE issued a Decision granting 58 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $19,715 ($16,788 principal plus $2,927 interest).

Mobil Oil Corporation/Bobba's Service Center et al., 7/18/86, RF225-43 et al.

The DOE Issued a Decision granting five Applications for Refund from the Mobil Oil Corporation escrow account filed by resellers and retailers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions for motor gasoline claimants set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $2,390 ($2,037 principal plus $353 interest).

Mobil Oil Corp./Georgia Pacific Corp. et al., 7/16/86, RF225-215 et al.

The DOE granted 56 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $37,665: $32,076 in principal plus $5,589 in interest.

Mobil Oil Corp./Kern County Fire Dept. et al., 7/14/86, RF225-1047 et al.

The DOE granted 48 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $8,070: $6,870 in principal plus $1,200 in interest.

Quaker State Oil Refining Corp., Jack's Auto Supply, 7/18/86, RF213-57 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by ten resellers and one end-user of Quaker State Oil refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Quaker State during the consent order period. The resellers' claims were all at or below the $5,000 threshold amount. According to the methodology set forth in the *Quaker State* Decision, 13 DOE ¶ 85,211 (1985), each applicant was found to be eligible for a refund from the Quaker State consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved in the Decision totalled $43,613.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Christiansen LP Gas Service, 7/18/86, RF26-44

The DOE issued a Decision and Order granting a refund from the Sid Richardson Carbon and Gasoline Company and Richardson Products Company deposit fund escrow account to Christiansen LP Gas Service, a reseller-retailer of Sid Richardson propane. Because the applicant claimed purchases below the small claims thereshold level of 720,000 gallons of annual purchases, the DOE did not require the firm to submit a detailed showing of injury. The refund to the applicant totalled $28,182 ($14,723 principal plus $13,459 interest).

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/MFA Oil Company, 7/17/86, RF26-34

The DOE issued a Decision and Order granting in part an Application for Refund filed by MFA Oil Company (MFA), an agricultural cooperative located in Columbia, Missouri, that purchased Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Richardson) propane on the spot market. In accordance with the procedures set forth in *Sid Richardson Carbon and Gasoline Company*, 10 DOE ¶ 85,056 (1983), MFA was not required to demonstrate that it was injured by the alleged Richardson overcharges in order to receive a refund based on that portion of spot market propane purchased from Richardson and sold to the cooperative's members. However, MFA was not granted a refund based on that portion of spot market propane purchased from Richardson and sold to non-members because MFA elected not to demonstrate that it was unable to pass through the alleged oversharges associated with such purchases. Consequently, MFA was eligible to receive a refund based on purchases of 777,718 gallons. The total refund approved in this Decision is $9,342 ($4,893 principal plus $4,449 interest).

Standard Oil Company (Indiana)/Utah, 7/14/86, RQ21-288

The DOE issued a Decision approving in part the second-stage refund plan submitted by Utah for use of $181,376, a portion of the money available to the state from the Standard Oil Company (Indiana) escrow account. The DOE approved Utah's plan to use $75,000 for Utah LIFT, a computerized rideshare matching service. The DOE rejected the state's proposal to fund a training program for Salt Lake City employees who operate municipal fleet vehicles and also rejected proposed fuel-economy training for school bus drivers and mechanics.

Tipperary Corporation/Warren Petroleum Co./E.I du Pont de Nemours & Co., 7/18/86, RF56-1, RF56-2

Warren Petroleum Company filed an Application for Refund, seeking a portion of funds remitted by Tipperary Corporation pursuant to a consent order that Tipperary entered into with the DOE. Warren purchased 1,803,178 gallons of natural gas liquid products from Tipperary during the consent order period. The firm would be eligible for a refund of $1,548.93 on a volumetric allocation basis. Since this amount is below the threshold level of $5,000, the DOE granted Warren the volumetric allocation amount plus accrued interest of $837.07.

E.I du Pont de Nemours & Co. also filed an Application for Refund in the Tipperary refund proceeding on the basis that it purchased the Tipperary products from Warren. The DOE stated that in approving the refund to Warren, it used the presumption of injury method, and that it did not ascertain whether any portion of the alleged overcharges was passed through to Warren's customers. The DOE stated that it was equitable to approve claims filed by downstream purchasers on the full volumetric basis. Du Pont was therefore granted a refund of $63.65 in principal and $34.40 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Admiral Folding Box, Inc., RF225-3006
Brinks, Inc., RF21-12616
Bristol-Myers Products, RF225-3220
C.O. Thompson Petroleum Co., RF40-2584
Camp Georgetown, RF225-3379, RF225-3380
Car-Graph, Inc., RF225-3235
Detroit Free Press, RF225-3218
Eagle Electric Mfg. Co., Inc., RF225-3314
Equipment Service Company, RF225-3364
F. Ray Moore Oil Co., Inc., KEE-0040
Ft. Worth Star Telegram, RF225-3241
Gibbons Oil Co., RF250-165, RF250-166
Hood Goldsberry, Goldsberry Operating Co., Inc., KRS-0004
John Valone's Gulf Service, RF40-1101
J-C Products Corp., RF225-3239
Jersey City Welding & Machine Work, Inc., RF225-3228
Kinney Chevrolet-Olds, RF225-8892
Krauskopf Bros., Inc., RF225-3286
Lukens Steel Co., RF225-2969
Maple School District, RF225-3125
Marco-Gruen Printers, RF225-3230
Marwais Steel Co., RF225-3233
Midaco Corp., RF225-2973
Mite Corp., RF225-3259
Ormet Corp., RF225-3231
Peerless of America, Inc., RF225-3358
Sacramento Municipal Utility District, RF225-3224
San Diego Gas & Electric, RF40-1585
Schaible Oil Co., RF225-4446
SKF Industries, Inc., RF225-3217
Sno-Dak Oil Company, RF225-7874
Southwestern Precision Co., RF225-3362
Standard Locknut and Lockwasher, Inc., RF225-3234
Texakota Oil Co., HRO-0213
The Davey Company, RF225-3226
Toolcraft Products, Inc., RF225-3237
Valeron Corp., RF225-3232
Vernitron Corp., RF225-3227
W.S. Reichenbach, RF225-8263, RF225-8265
Welded Tubes, Inc., RF225-3221
Wescal Wire & Chain, RF225-3346

Whirltronics, Inc., RF225-3001

Copies of the full text of these decisions and others are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

August 21, 1986.

[FR Doc. 86-20052 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 28 Through August 1, 1986

During the week of July 28 through August 1, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Natural Resources Defence Council, Inc.; 07/03/86; HFA-0262

Natural Resources Defense Council, Inc. filed an Appeal from the Office of Classification's denial of its Freedom of Information Act (FOIA) request. The DOE upheld the Office of Classification's determination that the DOE cannot confirm or deny the existence of the information requested because such confirmation or denial would in itself reveal classified informtion. The DOE also upheld the Office of Classification's determination that if the information existed it would be properly classified and withheld pursuant to Exemptions 1 and 3 of the FOIA. Accordingly, the Appeal was denied.

Remedial Order

Consolidated Materials, Inc.: 08/01/96; HRO-0107

Consolidated Materials, Inc. objected to a Proposed Remedial Order issued to it and its predecessors and affiliates by the Economic Regulatory Administration. In the PRO, the ERA alleged that in one sale of No. 2 diesel fuel, Consolidated's predecessor, Stonewalk Corporation, violated the regulations pertaining to the resale of petroleum products at 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subparts F and H. In concluding that the PRO should be rescinded, the DOE found that since the ERA had failed to demonstrate that its selection of a nearest comparable outlet for purposes of the "new item rule" was a reasonable one, it did not carry its burden of showing that Stonewalk Corporation's price was improper.

Supplemental Order

Texaco Inc.; 08/01/86; KRX-0019

As an administrative convenience to the Economic Regulatory Administration, a Deputy Director of the Office of Hearings and Appeals issued a Special Report Order to Texaco Inc. The SRO concerns Texaco's sales of middle distillates, motor gasoline, and propane to certain customers that purchased those products on or before May 15, 1973. The SRO requires that Texaco identify those customers and, with respect to each customer, provide the following information: (i) The May 15, 1973 selling price that Texaco assigned to the customer for the product in question, (ii) the price that Texaco charged the customer for that product in an actual sale on or before May 15, 1973, and (iii) the volume of the product sold to the customer in sales in which Texaco used a May 15, 1973 selling price other than that set forth in item ii. The SRO also requires that Texaco identify customers to whom Texaco sold propane on or before May 15, 1973 pursuant to written contracts that provided that Texaco would be responsible for delivery of the product. The SRO requires that, with respect to each of those customers, Texaco identify certain information including the current costs that were incurred in delivering the propane to the customer, and the extent to which such costs were passed through to the customer.

Refund Applications

Earth Resources Co./Highway Oil, Inc.; 07/29/86; RF239-4

The DOE issued a Decision and Order concerning an Application for Refund filed by Highway Oil, Inc. (Highway) in the Earth Resources Company (ERC) special refund proceeding. Since Highway's purchases of ERC products were sporadic and occurred in only 13 of the 89 months of the consent order period, the DOE determined that the firm was a spot purchaser. According to the procedures outlined in *Earth Resoruces Company*, 13 DOE ¶ 85,384 (1986), spot purchasers are presumed not have been injured by ERC's alleged overcharges. In order to receive a refund, a spot purchaser must rebut this presumption of non-injury. Since Highway submitted no information to rebut the spot purchaser presumption, its Application for Refund was denied.

Gulf Oil Corp./Al Cook & Son Gulf et al; 08/01/86 RF40-437 et al

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation consent order escrow fund to nine purchasers of Gulf refined petroleum products. Each of the refund applicants demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. The total amount of refunds granted was $25,394, representing $21,076 in principal and $4,318 in interest.

Husky Oil Co./Westport Energy Corp.: 07/31/86; RF161-0089

The DOE granted an application for Refund submitted on behalf of Westport Energy Corporation and its predecessor, Huntsman Chemical & Oil (collectively known as Westport) in connection with the Husky Oil Company refund proceeding. Westport, which is the subject of an ongoing DOE enforcement action, sought a volumetric refund of $142. The DOE approved the claim for $142 in principal and $64 in interest, and noted that the sum was too small to warrant holding it in escrow until the conclusion of the DOE enforcement action against Westport.

Marathon Petroleum Co./Lakeside Oil Co., Inc.: 07/28/86; RF250-437

The DOE issued a Decision and Order concerning the Application for Refund filed by Lakeside Oil Company, Inc., a purchaser of middle distillates and motor gasoline covered by a consent order that the agency entered into with Marathon Petroleum Company. Lakeside demonstrated the volume of its Marathon purchases. Lakeside did not attempt to demonstrate that it suffered a disproportionate overcharge, nor did it attempt to demonstrate that it fully absorbed the alleged overcharges. Consequently, under the 35 percent presumption, Lakeside was granted a refund equal to 35 percent of its allocable share, or $6,599 (44,889,858 gallons x $.00042 x .35 = $6,599). Lakeside was also granted $224 in interest accrued on that principal.

Marathon Petroleum Co./Lane & Sons: 08/01/86; RF250-105 et al

The DOE issued a Decision and Order concerning 6 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $4,248 in principal and $138 in interest.

Mobil Oil Corp./International Salt Co. et al: 08/01/86; RF225-510 et al

The DOE granted 50 applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. The total amount of the refunds granted was $7,011, consisting of $5,957 in principal plus $1,054 in interest.

Northwest Pipeline Corp./Thriftway Co.: 07/30/86; RF116-2

Thriftway Company (Thriftway) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a Consent Order entered into with Northwest Pipeline Corporation (Northwest). The DOE found that Thriftway demonstrated that it purchased Northest butane and natural gasoline during the consent order period and that Thriftway was injured by those purchases. Using a three-

step competitive disadvantage methodology, the DOE calculated a range of Thriftway's competitive disadvantage. The Doe found that the firm's maximum allocable share of the volumetric refund level would equitably compensate Thriftway for any harm experienced as a result of Northwest's alleged overcharges. Accordingly, the DOE approved a refund of $142,622.27, representing $97,380.14 in principal and $45,242.13 in accrued interest.

Finally, the DOE found that it would not be appropriate to issue the refund directly to Thriftway at the present time since the firm is a respondent in an enforcement proceeding currently pending before the Office of Hearings and Appeals. Accordingly, the DOE determined that the refund of $142,622.27 should be held in a separate interest-bearing escrow account on behalf of Thriftway, pending the outcome of the enforcement proceeding.

Standard Oil Co. (Indiana)/Wisconsin Electric Power Co. Georgia Power Co.: 07/31/86; RF21-12584; RF21-12585

The DOE approved Applications for Refund submitted by two public utilities in the *Standard Oil Company (Indiana) (Amoco)* special refund proceeding. In accordance with the procedures established for public utility applicants in the *Amoco* Decision and Order, 10 DOE ¶ 85,048 (1982), each firm submitted purchase volume data and an explanation of the manner in which the refunds would be passed through to its customers. Each firm was granted a refund equal to 100 percent of the volumetric refund amount multiplied by the number of gallons of covered products purchased directly from Amoco during the Amoco Consent Order period. The total amount of refunds granted was $15,442, consisting of $9,738 in principal and $5,704 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Chevron U.S.A., Inc., RF204-7
George H. Numes, RF238-40

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guildelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 27, 1986.

[FR Doc. 86-20053 Filed 9-4-86; 8:45 am]

BILLING CODE 6450-01-M

Special Claim Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Special Claim Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing claims to receive a portion of a fund of $1,186,866.94 currently held in escrow by the registry of the United States District Court for the Northern District of Texas and other monies.

DATE AND ADDRESS: Claims must be postmarked by 30 days from issuance of the Decision and Order, should conspicuously display a reference to case number HCX-0100 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes, among other things, the procedures that the Department of Energy will use to conduct the fact-finding necessary to advise the United States District Court for the Northern District of Texas as to the manner in which to distribute $1,186,866.94 currently held in an escrow account in the registry of the district court. The Texas district court created the escrow account during the course of pending litigation between Oasis Petroleum Corporation (Oasis) and Research Fuels, Inc. (RFI). The litigation principally concerned the proper application of the DOE allocation regulations to a series of agreements executed in October 1978 by RFI and Oasis. On February 9, 1984, the district court ordered the Office of Hearings and Appeals to resolve all issues of fact and law presented in the Oasis/RFI litigation, including the proper remedy to be applied in the case. The Decision and Order set forth below resolves the underlying controversies pertaining to the dispute between RFI and Oasis and establishes a process pursuant to which a determination will be made with respect to the disposition of the escrow monies and any other monies that Oasis may be required to disgorge.

The Office of Hearings and Appeals has identified the following firms as potential recipients of the escrow monies and any other monies that may be disgorged by Oasis: Research Fuels, Inc.; Lucky Stores, Inc.; Encorp. Inc.; National Convenience Stores; Reeder Distributing Company; Texas Gas & Oil; Trans-Texas Petroleum; Gleason Oil Company (formerly Winn Oil Company); Consolidated Sales Corporation; Globe Oil Company (d/b/a U-Save); Delta Petroleum; Fuel Distributors, Inc.; Lamar Refining Company; Tiger Petroleum Company; Thorton Oil Company; H.S.&L.; Sigmor Corporation; Southeast Oil Company; Munford, Inc.; Martin Oil Company; Patriot Petroleum Company; Mitchell Oil Company; Baldridge Oil Company. Any of the above-listed firms may file a claim in this proceeding by sending its claim to the address set forth at the beginning of this notice. All claims must be filed within 30 days from issuance of the decision and order and must be filed in duplicate. The filing deadline for claims may be extended upon a showing of good cause. *See* 10 C.F.R. 205.6. All claims will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW, Washington, DC 20585.

Dated: August 22, 1986.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Petition for Special Redress

August 22, 1986.

Name of Petitioners: Lucky Stores, Inc., Research Fuels, Inc.;

Dates of Filing: January 6, 1983, March 27, 1984, July 23, 1986;

Case No.: HEG-0031, KEX-0017, KEX-0018.

This decision relates to three matters that are pending before the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE): a Petition for Special Redress, a Motion for Show Cause Order and a consolidated case remanded to OHA by the United States District Court for the Northern District of Texas. All of the above matters pertain to a protracted dispute between two resellers of motor gasoline, Research Fuels, Inc. (RFI) and Oasis Petroleum Corporation (Oasis), formerly Oasis Petro Energy Corporation, and a wholesale purchaser of motor gasoline, Lucky Store, Inc. (Lucky). The controversy among the parties stems primarily from a series of agreements entered into by RFI and Oasis in 1978 and generally relates to the proper

application of the DOE Allocation Regulations that were in effect until January 28, 1981 to those agreements.

The special redress petition filed by Lucky in this proceeding, Case No. HEG–0031, pertains to an action pending before the United States District Court for the Middle District of Florida, *Lucky Stores, Inc.* v. *Oasis Petroleum Corporation*, No. 81–383 Civ–T–H (M.D. Fla. filed April 27, 1981). Lucky submitted its Petition for Special Redress pursuant to the terms of an order issues by the Florida district court on December 6, 1983. In that order, the court stayed the action pending before it to permit either Oasis or Lucky or both to apply to the DOE for an administrative determination of certain issued raised by Lucky in its court pleaings. The Petition for Special Redress filed by Lucky in this proceeding requests OHA to determine (1) whether Oasis was required to supply Lucky with its base period allocation of motor gasoline and proportionate share of surplus product during the months of March 1979 through April 1980, excluding October 1979, and (2) whether Oasis violated the DOE regulations at 10 CFR Parts 210 and 211 during the same period.

The other matter that is the subject of this proceeding, Case No. KEX–0018, relates to two actions currently pending before the United States District Court for the Northern District of Texas, *Oasis Petro Energy Corp.* v. *DOE*, No. CA3–79–0778–F (N.D. Tex. filed June 19, 1979) and *Research Fuels, Inc.* v. *Oasis Petroleum Corporation*, No. CA3–80–1353–F (N.D. Tex. filed July 11, 1980). Most of the regulatory issues pertaining to the former action were considered by OHA six years ago when the Texas district court requested OHA to issue an administrative ruling concerning one of the issues in dispute in that case. In order to adequately respond to the court's request, OHA found it necessary to consider several issues which were not submitted to it for resolution but which were inextricably intertwined with the one issue referred to it. Accordingly, in response to the court's request, OHA issued a comprehensive analysis of the regulatory rights and obligations of the various parties involved in the Texas litigation. *Oasis Petroleum Corporation*, 5 DOE 82,559 (1980). On review, the district court declined to follow most of OHA's findings and conclusions, on the ground that OHA had not been directed to address any issues other than the single one referred to address any issues other than the single one referred to it. *Oasis Petroleum Corporation* v. DOE, No. CA3–79–0778–F, slip. op. (N.D. Tex. Nov. 22, 1982). The Temporary Emergency Court of Appeals (TECA) reversed the district court's determination, finding that the court should have entrusted the entire matter to the agency under the doctrine of primary jurisdiction, and remanded the case with instructions to refer the matter back to OHA. *Oasis Petroleum Corporation* v. *DOE*, 718 F.2d 1558 (Temp. Emer. Ct. App. 1983). On February 16, 1984, the district court remanded Case No. CA3–79–0778–F to OHA and consolidated with it certain issues in a related case, *Research Fuels, Inc.* v. *Oasis Petroleum Corporation*, No. CA3–80–1353–F. (N.D. Tex. filed July 11, 1980).

On April 30, 1984, OHA opened the record for the submission of additional evidence relevant to the issues remanded by the Texas court and consolidated, for briefing purposes only, Lucky's special redress petition with the Texas remand cases. *Research Fuels, Inc.*, 12 DOE 82,511 (1984). Just prior to the issuance of the above-described decision, RFI sought to interpose the issue of misrepresentation into this proceeding by filing a Motion for Show Cause Order, Case No. KEX–0017. As later supplemented, the show cause motion charges that Oasis made material misrepresentations of fact before the DOE and federal courts in connection with four issues relevant to the instant proceding. For six months following the issuance of OHA's April 30 decision, the parties filed their briefs, reply briefs and a myriad of requests and motions in connection with the special redress petition, the remand order and RFI's Motion for Show Cause Order.

After thoroughly reviewing the record in this case, OHA determined that several relevant and material factual issues remained in dispute, including one of the issues identified by RFI in its Motion for Show Cause Order. *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 (1985). To aid it in resolving these factual disputes, OHA decided to convene an evidentiary hearing. The hearing, convened on OHA's own motion and trifurcated to accommodate the parties and witnesses, lasted seven days and generated an 1158 page transcript.

In this decision, we will address only one issue relating to Lucky's Petition for Special Redress, *viz.*, whether Oasis, as base period supplier or by virtue of its control over the supply of motor gasoline from Marathon Oil Company (Marathon) and Cities Service Company (Cities), was required to supply Lucky with its base period entitlement and proportionate share of available product during each month of the relevant period except October. [1] In addition, we will consider *de novo* all of the issues remanded to OHA from the district court in connection with *Oasis Petro Energy Corp.* v. *DOE*, No. CA3–79–0778–F (N.D. Tex. filed June 19, 1979) and examine for the first time the issues raised in connection with *Research Fuels Inc.* v. *Oasis Petroleum Corporation*, No. CA3–80–1353–F. (N.D. Tex. filed July 11, 1980). Moreover, this decision will address one of the issues raised in RFI's Motion for Show Cause Order, namely, whether Oasis made misrepresentations before the DOE regarding the manner in which the firm disposed of the motor gasoline that it acquired as the result of its purchase of 84 retail gasoline outlets from RFI. Finally, since this office made a determination earlier in this proceeding to defer consideration of the remedial aspect of this case pending a determination on the merits of the case, the instant decision will only resolve the underlying controversies among the parties. *See Research Fuels, Inc.*, 12 DOE 82,511 at 85,040 (1984). This decision will, however, establish the procedure to be followed in connection with the remedy phase of this proceeding.

I. Factual Background

A. History of RFI's Motor Gasoline Operations Prior to its Sale of Service Station Rights and Assets to Oasis

RFI begfan selling motor gasoline in 1969, the year in which it was incorporated under the laws of the State of Texas. AR–0331.[2] By the end of 1972, RFI was operating 88 retail motor gasoline outlets, the majority of which were operated in conjunction with discount retail stores. AR–0955–56 (hereinafter these 88 retail outlets, or any portion thereof, will be referred to as the RFI stations). Effective May 1, 1972, RFI entered into a Marketing Development Agreement with Cities under which RFI subleased certain of its

[1] OHA has dismissed all of the other issues raised by Lucky in its Petition for Special Redress. *See* Letter from Thomas O. Mann, Deputy Director, OHA; to Jack Caolo, Counsel for Lucky. (October 26, 1984).

[2] Due to the volminous record in this proceeding, we will abbreviate citations to the District Court record in *Oasis Petro Energy Corp.* v. *DOE*, Civil Action No. CA3–79–0778–F (N.D. Tex. filed June 19, 1979) by the following perfixes: "AR" (administrative record), "PL" (pleadings), "TR" (transcripts) and "DP" (depositions). Those prefixes will be followed by the appropriate page number in each of the respective categories. All other filings in this proceeding will be identified by the title and date of the filing and the appropriate page number.

service station facilities to Cities. AR–0383. The Marketing Development Agreement provided that Cities would supply the gasoline sold at the service stations and RFI would operate the stations while selling the gasoline on Cities' behalf. *Id.* The Agreement also provided that Cities would pay RFI a fixed amount per gallon of gasoline sold and a management fee which was based upon the volume of gasoline sold. *Id.* With respect to retail outlets located outside the area covered by the Cities Marketing Development Agreement, RFI purchased gasoline as needed from various wholesale distributors or refiners in the areas in which the stations were located. AR–0960.

Effective January 1, 1973, RFI entered into a Joint Venture and Asset Purchase Agreement with the Zayre Corporation and Zayre's wholly-owned subsidiary, Strathmex, Inc. AR–0377. Under the Joint Venture Agreement, the three firms formed a general partnership, Remex, Inc., in which Strathmex and RFI each held a 50 percent interest. *Id.* Pursuant to the Joint Venture Agreement, Zayre agreed to sublease its operating service stations to Remex. AR–0963. RFI agreed to serve as the managing agent of Remex, operating existing and future Remex service stations and procuring a supply of gasoline for sale at the Remex stations through the Marketing Development Agreement with Cities.

AR–0964–65. The Marketing Development Agreement was amended on December 7, 1972 to reflect this arrangement. AR–0965.

Effective December 10, 1976, RFI purchased substantially all of the retail gasoline and convenience store assets of Span Oil Company, Inc. AR–0331. The assets included Span's general partnership interest in 16 limited partnerships which owned and operated 43 retail gasoline stations located in Louisiana and Texas, and Span's interest in 22 other gasoline stations which Span leased or operated. *Id.* (Hereinafter, these 66 retail gasoline outlets, or any portion thereof, will be referred to as the Span stations).

In October 1977, RFI purchased Strathmex's fifty percent interest in Remex effective as of July 2, 1977. AR–0332.[3] In addition, RFI assumed the lease obligations relating to the existing Remex stations. RFI continued to sell gasoline at the stations on a consignment and management fee basis for Cities until January 1978, at which time the Marketing Development Agreement between RFI and Cities was terminated and the parties entered into a three-year Branded Distributor Agreement. *Id.*[4] In addition, on December 16, 1977, Remex and Marathon entered into a Wholesale Division Product Sales Agreement (Product Sales Agreement) under which Marathon agreed to supply Remex with motor gasoline.

RFI began to engage in the wholesale marketing of motor gasoline upon the formation of Remex on January 1, 1973. AR–0856.[5] The traditional source of gasoline supply for the Zayre units was replaced by the RFI/Cities marketing arrangement, and RFI received permission from Zayre to purchase and resell at wholesale the available gallonage which had been replaced by the Marketing Development Agreement. *Id.* Between 1973 and 1977 RFI's wholesale marketing activities became a major part of the frim's business. AR–0858.[6]

As of July 1, 1978, RFI sold gasoline through approximately 220 retail outlets, including 84 RFI stations, 84 Remex stations, and 52 Span stations. AR–0866. RFI also sold gasoline to approximately 36 wholesale customers. *Id.* By September 1978, RFI was in dire financial straits, due in part to a number of unprofitable acquisitions.[7] In addition, the firm was heavily indebted to its three principal gasoline suppliers: Cities, Marathon and Champlin Petroleum Corporation (Champlin). Marathon and Cities has suspended all sales of gasoline to RFI and demanded immediate payment of all outstanding debts before resuming delivery. It was in an effort to raise funds to replenish its working capital and to avert bankruptcy that RFI decided to sell a portion of its assets.

B. The Sale by RFI of 84 Retail Outlets to Oasis

In September 1978, RFI entered into negotiations with Oasis for the sale of 84 of its retail outlets, consisting of 82 Remex stations and two RFI stations. By agreement dated September 27, 1978, Oasis agreed to purchase the 84 outlets form RFI for a total consideration of $1.8 million. Under the terms of the September 27 Agreement for Purchase of Service Station Rights and Assets (Original Asset Purchase Agreement), Oasis was to purchase each of the 84 stations ad seriatim, in a series of closings. The Original Asset Purchase Agreement also provided that, in addition to the retail outlets, RFI would transfer to Oasis all of RFI's rights to, and allocation of, gasoline supplies for the retail outlets. The agreement further stated that RFI would convey to Oasis all of RFI's right, title and interest in and under certain supply contracts with Cities and Marathon.

Following the execution of the Original Asset Purchase Agreement, Oasis withdrew from the agreement because of inadequate assurances from Cities and Marathon regarding the assignment of gasoline formerly delivered to RFI. Further negotiations ensued and on October 24, 1978, Oasis and RFI executed an Amendment to the Agreement for Purchase of Service Station Rights and Assets (Amended Asset Purchase Agreement). Pursuant to the Amended Asset Purchase Agreement, RFI agreed to sell to Oasis all of its right, title, and interest in (a) 82 Remex stations and all buildings, improvements and equipment at those locations on September 1, 1978; (b) two fee owned RFI stations located in Chicago, Illinois; (c) the Branded Distributor Agreement between Cities and RFI dated January 17, 1978 and the Product Sales Agreement between Marathon and RFI dated December 16, 1977 and (d) a leased office located in Atlanta, Georgia. The amendment, among other things, reduced the total consideration paid by Oasis by $250,000 and provided for the sale of the 84 stations as a group. The amendment

[3] As of July 2, 1977, Remex was operating 86 retail gasoline stations. AR–0403. (Hereinafter, these 86 retail outlets or any portion thereof, will be referrerd to as the Remex stations).

[4] The Branded Distributor Agreement differed from the Marketing Development Agreement in three material respects. First, the Branded Distributor Agreement obligated Cities to sell RFI 96 million gallons of gasoline annually. This arrangement contrasts with the arrangement under the Marketing Development Agreement where Cities agreed to consign to RFI up to 235 million gallons of gasoline per year. Second, the Branded Distributor Agreement required RFI to purchase gasoline from Cities for resale. In contrast, the Marketing Development Agreement involved a consignment arrangement. Third, under the Branded Distributor Agreement, RFI had to finance operations between the time it paid Cities for the gasoline and the time it received receipts form the resale of that gasoline. Under the Marketing Development Agreement, however, RFI was able to use the "float" on Cities' accounts receivable between the time RFI received the revenues from the sales of Cities' gasoline and the time it was required to transfer those receipts to Cities.

[5] From the inception, RFI's wholesale activities were handled through RFI's accounts rather than Remex's accounts. AR–0856–57.

[6] During the fiscal year ending July 2, 1977, 58% of RFI's gross revenues were derived from wholesale gasoline sales. AR–1272.

[7] RFI claims that the termination of the marketing Development Agreement with Cities radically altered RFI's cash flow position and contributed to its financial decline. As explained in footnote 4 *supra*, RFI no longer had the use of any "float" under the agreement which replaced the Marketing Development Agreement. See RFI's Response to Lucky and Oasis' Briefs dated August 13, 1984 at 17.

also partially reflected arrangements for the payment of RFI's indebtedness to its three principal suppliers: Cities, Marathon and Champlin.[8] Contemporaneously with, and as a part of the asset acquisition, the following documents were executed on October 24, 1978:

(1) A Substitute Supplier Agreement among RFI Oasis and Marathon which purported to terminate the supplier/purchaser relationship between Marathon and RFI and to establish that same relationship between Marathon and Oasis (Substitute Supplier Agreement);

(2) A Three Party Agreement among RFI, Oasis and Cities under which RFI and Cities agreed to terminate their supplier/purchaser relationship in accordance with the provisions of 10 C.F.R. 211.9(a)(2)(i) and Cities agreed to supply Oasis with the base period allocation of motor gasoline that RFI had from Cities (Three Party Agreement);

(3) A Distributor Agreement between Cities and Oasis whereby Oasis agreed to purchase from Cities a minimum of 86,400,000 gallons and a maximum of 96,000,000 gallons of motor gasoline annually (Distribution Agreement);

(4) An "Acknowledgement of Transfer of Title and Management Control" by RFI and Oasis (Acknowledgement of Transfer);

(5) A Mutual Cancellation and General Release between Cities and RFI providing for the termination of the parties' business relationship and the cancellation of the 1978 Branded Distributor Agreement (Mutual Cancellation and General Release);

(6) A Mutual Cancellation and Release between Marathon and RFI providing for the termination on the parties' business relationship and the cancellation of the 1977 Product Sales Agreement (Mutual Cancellation and Release);

(7) A Sales Agreement between RFI and Oasis whereby RFI agreed to purchase from Oasis up to 10,500,000 gallons of motor gasoline during the period October 1978, at a price to be determined by reference to "Cities price to supplier at terminal." (Sales Agreement)

The Amended Asset Purchase Agreement and the seven documents executed contemporaneously with that agreement will be referred to, from time to time, as the "October 1978 Agreements."

As correctly noted in the respective documents, the Three Party Agreement and the Substitute Supplier Agreement required the express written approval of the DOE before the base period supplier/purchaser wholesale-reseller relationship between Cities and Marathon, on the one hand, and RFI on the other hand, could be effectively terminated. See 10 CFR 211.9(a)(i) To this end, on November 8, 1978 Cities submitted the Three Party Agreement together with a cover letter to Mr. Alan Lockard, the Director of Fuels Allocation for the ERA for approval.[9] In its cover letter, Cities explained the manner in which the 97,679,000 gallons of motor gasoline referenced in the Three Party Agreement was allocated among DOE Regions I through VI.

On November 27, 1978, the ERA responded to Cities' letter of November 8, 1978, and enclosed a copy of instructions explaining the necessary actions required for the approval of the Three Party Agreement. Specifically, the ERA informed Cities that the firm must provide separate documentation for each of the 84 retail outlets covered by the Three Party Agreement before the agency could take any action concerning the agreement. Rather than immediately furnishing the agency with the requested information, Cities instead chose to submit to the ERA revised annual adjusted base period volume figures for the 84 retail outlets, once again by DOE region. This time, however, Cities allocated the 97,679,000 gallons of motor gasoline among seven DOE regions, DOE Regions I through VII. *See* Letter dated December 18, 1978 from R. L. Fluckiger, Allocation Coordinator, Cities; to Alan Lockard, ERA.

Meanwhile, on November 20, 1978 RFI had sent a letter to Cities with a copy to Mr. Lockard advising that Cities remained the base period supplier for 21 RFI retail outlets. *See* Letter dated November 20, 1978 from Larry Minx, Vice President, RFI; to R. L. Fluckiger, Allocation Coordinator, Cities at Appendix I, Volume I, Exhibit 20 of Lucky's May 7, 1984 Brief in Support of Petition for Special Redress (hereinafter cited as Lucky's May 7, 1984 Brief). RFI explained at that time that the 21 stations identified in the November 20, 1978 letter were not part of the 84 stations sold to Oasis, that those 21 stations had an annual base period allocation entitlement of 7,800,000 gallons and that that 7,800,000 gallon figure was not included in the 97,679,000 gallon figure reflected in the Three Party Agreement. *Id.*

On January 17, 1979, Cities transmitted to RFI for the latter's execution seven documents, each entitled "Termination of Supplier/Purchaser Relationship" (Termination Agreements) and each reflecting the purported adjusted annual base period allocation for the 84 stations by DOE region. The total base period volume encompassed by the Termination Agreements was 97,679,000 gallons.

On February 16, 1979, RFI informed Cities that it would execute the Termination Agreements provided that those documents were amended to effectuate two substantive changes. *See* Letter dated February 16, 1979 from Larry Minx, Vice-President, RFI; to R.L. Fluckiger, Allocation Coordinator, Cities at Appendix B, Volume II, Exhibit 50 of Lucky's May 7, 1984 Brief. First, RFI indicated that the Termination Agreements should be changed to include a statement that Cities remained the base period supplier for certain RFI retail outlets which were not sold to Oasis. Second, RFI asserted that the documents must be modified to reflect a 9,805,000 gallon reduction in the base period volume of gasoline transferred from RFI to Oasis. To justify the 9,805,000 gallon reduction, RFI asserted that the 97,679,000 figure set forth in the Three Party Agreement inadvertently included 9,805,000 gallons of gasoline attributable to 20 RFI retail stations which were not sold to Oasis.[10]

On February 28, 1979, Cities advised RFI that it was in receipt of RFI's February 16 letter. *See* Lucky's May 7, 1984 Brief at Appendix I, Volume II, Exhibit 39. Without acknowledging the existence of any dispute with regard to the accuracy of the base period volume total set forth in the Three Party Agreement, Cities informed RFI that it was forwarding the Three Party

[8] On October 24, 1978, RFI executed a promissory note in the principal amount of $3,059,453.00 payable to the order of Cities, Marathon and Champlin, jointly. The note is not referenced in the Amended Asset Purchase Agreement or any of the documents ancillary thereto.

[9] Based on the record before us, it appears that the Substitute Supplier Agreement was never submitted to the DOE for approval.

[10] RFI does not explain why it departed from the position that it announced in its November 20, 1978 letter to Cities with respect to this very matter. We note that the 20 retail outlets listed by RFI in its February 16, 1979 letter to Cities are identical to 20 of the 21 outlets listed by RFI in its November 20, 1978 letter to Cities. (RFI Unit #172, a retail outlet in Pascagoula, Mississippi is the one outlet included in RFI's November 20 letter which does not appear in RFI's February 16 letter). Curiously, RFI stated in its November 20 letter that the 21 outlets for which Cities allegedly remained the base period supplier had an annual adjusted base period volume of 7,800,000. At that time, RFI contended that the 7,800,000 gallons were not included in the 97,679,000 gallons reflected in the Three Party Agreement. In its February 20, letter, however, RFI claimed that those same 21 outlets less one had an annual base period volume of 9,805,000 gallons and that the 9,805,000 gallon figure was included in the 97,679,000 figure reflected in the Three Party Agreement.

Agreement and properly executed FEO–17 forms to the DOE for processing.[11] *Id.* On March 1, 1979, Cities, on behalf of Oasis, submitted seven separate FEO–17 forms to seven different DOE regional offices. Each FEO–17 form set forth the adjusted base period supply volume relating only to the DOE region to which it was submitted. All of the FEO–17 forms reflected that Cities' base period supply obligation to the listed retail stations was zero. *See* Lucky's May 7, 1984 Brief at Appendix I, Volume II, Exhibit 57. In addition, each FEO–17 form had attached to it the following information: 1) station-by-station breakdown of the retail outlets located in the region to which the form was submitted, 2) the addresses of those outlets, and 3) a monthly and annual adjusted base period allocation for each outlet.

Just as the dispute regarding the precise volumes of gasoline transferred from RFI to Oasis by means of the Amended Asset Purchase Agreement began to fully emerge, a new concern arose as of March 1, 1979. Effective March 1, 1979, the DOE amended its motor gasoline allocation regulations by updating the base period from calendar year 1972 to the period July 1977 through June 1978. 44 Fed. Reg. 11202 (February 28, 1979). At that time, as will be discussed more fully below, the wholesale customers of RFI for the first time acquired a regulatory right to obtain gasoline from RFI based on their purchase volumes during the new base period. This regulatory change triggered a dispute between Oasis and RFI concerning their respective rights to receive gasoline from Cities and Marathon and their obligation to supply the wholesale customers which had received gasoline from RFI. RFI asserted that it was obligated to supply the wholesale customers under the amended DOE allocation regulations and that Oasis was entitled to receive from Cities and Marathon the volumes of motor gasoline that the 84 retail outlets which were sold to Oasis had received during each corresponding month of the updated base period. Oasis contested RFI's claim to any allocation of gasoline from either Cities or Marathon, arguing that RFI had assigned to Oasis its entire interest in the Cities and Marathon supplies when it entered into the Amended Asset Purchase Agreement and documents ancillary thereto.

[11] A form FEO–17 was a form issued by DOE's predecessor, the Federal Energy Office, which served as the mechanism by which a firm could request, *inter alia*, an assignment of supplier or an assignment or adjustment of base period supply volumes.

During the month of March 1979, the national supply of motor gasoline became increasingly tight. Because of the dispute between Oasis and RFI and uncertainties as to whether Oasis or RFI was the appropriate party to supply, Marathon and Cities became reluctant to permit either purchaser to obtain product from their terminals. These uncertainties seriously disrupted deliveries to RFI's wholesale customers [12] and to both RFI's and Oasis' retail outlets.

II. Procedural History

On March 21, 1979, Oasis filed suit in the 17th Judicial District of Tarrant County, Texas seeking to enjoin RFI from interfering with its contractual rights under the October 1978 agreements. *See Oasis Petro Energy Corp.* v. *Research Fuels, Inc., et al.*, Case No. 17–54365–79 (Dist. Ct. Tarrant County, Tex., filed March 21, 1979). Although the court refused to enter a preliminary injunction against RFI, it did grant Oasis a temporary restraining order against the firm. On March 27, 1979, Oasis filed an Application for Temporary Stay (Case No. DST–0042) with OHA requesting that (i) the application of the updated allocation regulations be stayed pending a resolution of its dispute with RFI; (ii) the regional offices of the DOE be enjoined from issuing any temporary assignment orders regarding the volumes of gasoline involved in the Oasis/RFI controversy; and (iii) if necessary, Oasis be ordered to supply RFI's wholesale customers pending resolution of the dispute. At or about the same time, BLT and Trans-Texas filed with OHA Applications for Exception, Stay and Temporary Stay requesting that Cities be ordered to supply the firms directly rather than through RFI. *BLT, Inc.*, Case Nos. DST–, DES–, DEE–3430 (filed April 5, 1979); *Trans Texas Petroleum Corp.*, Case Nos. DST–, DES–, DE–2942 (filed March 26, 1979).

On April 12, 1979, Oasis and RFI signed a Settlement Agreement which provided that Oasis would receive all motor gasoline that either Oasis or RFI was entitled to obtain from Cities and Marathon pursuant to supply contracts or the DOE allocation regulations, regardless of changes in supply or market conditions or the base period regulations. PL–0120–0133. In addition, the agreement obligated Oasis to sell to RFI, 36 million gallons of gasoline annually in three million gallon increments per month at a price to be determined by reference to the actual cost paid by Oasis to either Marathon or Cities for the gasoline. Oasis expressly conditioned the supply of the three million gallons per month upon RFI's assumption of all supply obligations and responsibilities to its wholesale customers. Oasis and RFI presented the Settlement Agreement to the state court which had issued the temporary restraining order against RFI and based on that agreement, the court dismissed with prejudice all the claims made by both parties in the Case No. 17–54365–79. *See Oasis Petro Energy Corp.* v. *Research Fuels, Inc., et al., supra*, slip. op. (Dist. Ct. Tarrant County, Tex., May 17, 1979) at PL–0134. On June 5, 1979, Oasis amended the Application for Temporary Stay which it had filed with OHA on March 27, 1979, to request that an order be issued formally validating the allocation rights and obligations which Oasis and RFI had established in the April 12, 1979 Settlement Agreement.

Since the disputes between Oasis and RFI during the period March through May 1979 seriously disrupted the orderly delivery of gasoline to RFI and Oasis and to RFI's wholesale customers, several of RFI's wholesale customers sought various forms of relief through the regional offices of the ERA. For example, on March 22, 1979 and again on May 24, 1979, ERA Region VI issued temporary assignment orders requiring Marathon to supply product to Lucky. *See* Lucky's May 7, 1984 Brief at Appendix E, Volume II, Exhibit 25 and Volume III, Exhibit 50. In light of the April 12 Settlement Agreement, Oasis, Cities and Marathon next requested the ERA to cease issuing these orders and to rescind the orders that had been issued.

In an effort to resolve the dispute between Oasis and RFI and problems caused by conflicting temporary assignment orders issued by the ERA regional offices Alan Lockard, National Director of Fuels Allocation for the ERA, convened a hearing on June 12, 1979. At that hearing, Mr. Lockard heard oral argument from Oasis, RFI, Cities, Marathon, and Champlin. RFI's wholesale customers were specifically excluded from attending or otherwise participating in the hearing. Mr. Lockard subsequently issued a memorandum dated July 5, 1979 to the Director of Fuels Regulations of ERA Region VI in which he concluded, in part, that the October 1978 Purchase Agreement and ancillary documents did not relieve Cities and Marathon of their base period supply obligation to RFI. According to the memorandum, RFI should be considered the base period supplier to

[12] Lucky, BLT, Inc. (BLT) and Trans-Texas Petroleum Corporation, (Trans-Texas) were among those wholesale customers affected by the disruption in deliveries described above.

the wholesale customers and Oasis only has the right to a base period allocation for Cities and Marathon for the 84 retail outlets it purchased.[13] The memorandom stated that where necessary the ERA regional offices should issue assignment orders directing Cities, Marathon, and other base period suppliers of RFI to supply the wholesale customers directly until RFI re-established itself as a financially viable supplier. On June 19, 1979.

Oasis commenced an action in the United States District Court for the Northern District of Texas seeking affirmative relief against RFI and seeking to enjoin the DOE, Marathon, Cities, Lucky and others from taking any action which would prevent Oasis from obtaining the entire allocation of motor gasoline from Cities and Marathon set forth in the Amended Asset Purchase Agreement and the April 12, 1979 Settlement Agreement. *See Oasis Petro Energy Corp.* v. *DOE, supra.* In addition, as a result of the continuing financial difficulties that had been severely exacerbated by the protracted dispute with Oasis, RFI filed a voluntary petition under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of Texas on June 27, 1979. *See Research Fuels, Inc.*, No. HS–79–443 (Bankr. S.D. Tex., filed June 27, 1979).[14] On August 3, 1979, the District Court for the Northern District of Texas granted Oasis' request for a preliminary injunction prohibiting the DOE from issuing any orders which would have the effect of diverting any Cities or Marathon gasoline from Oasis or requiring Cities or Marathon to supply RFI or RFI's customers directly. As an interim measure, the court ordered Marathon and Cities to supply Oasis with gasoline and Oasis to escrow all profits from sales of disputed gasoline to wholesale purchasers. Those profits are still held in an escrow account in the registry of the district court in Dallas, Texas.

After the issuance of the August 3 preliminary injunction two of RFI's wholesale customers, BLT, and Trans-Texas complained that the price and credit terms offered to them by Oasis were more stringent than those historically imposed by RFI. These customers alleged that the prices and terms of sales established by Oasis constituted violations of the DOE's allocation and price regulations. In response to these complaints, several ERA regional offices issued temporary assignment orders directing Champlin and Foremost Petroleum Corporation, (Foremost) two base period suppliers of RFI, to supply motor gasoline directly to BLT and Trans-Texas. RFI and Champlin appealed these orders to OHA. *See Research Fuels, Inc., Corp.*, Case No. DEA–0661 (filed September 27, 1979); Champlin Petroleum Case Nos. DEA–0644 through 0646 (filed September 14, 1979). In addition, RFI filed a Petition for Special Redress requesting OHA to enjoin the ERA regional offices from issuing any further assignment orders which would direct its prime suppliers to supply its wholesale customers directly. *Research Fuels, Inc.*, Case No. DSG–0071 (filed September 27, 1979). OHA stayed the orders issued to Champlin and Foremost pending a final determination on RFI's and Champlin's appeals. *See Champlin Petroleum Co.*, 4 DOE 82,029 (1979); *Research Fuels, Inc.*, 4 DOE 82,035 (1979).

On November 14, 1979 the District Court for the Northern District of Texas entered a memorandum opinion which, in part, stated that the August 3 preliminary injunction had not resolved the issue of the effect, if any, under the DOE regulations of the April 12, 1979 Settlement Agreement between Oasis and RFI. On January 9, 1980, the district court issued an order with reference to the November 14 memorandum opinion which specified that "the Office of Hearings and Appeals should determine the validity and effect if any, under Department of Energy regulations of the April 12 Settlement Agreement." In response to the January 9, 1980 order, OHA convened a hearing on February 21, 1980 at which all interested parties were permitted to present evidence and oral argument on issues relevant to their allocation rights and obligations. *See* Transcript of Proceedings, *Oasis Petroleum Corporation,* Case No. DST–0042 (February 21, 1980).

On April 11, 1980, OHA issued a decision which set forth a comprehensive analysis of the regulatory rights and obligations of the parties arising out of the 1978 agreements and the effect of the April 12, 1979 Settlement Agreement on those rights and obligations. *Oasis Petroleum Corp.*, 5 DOE 82,559 (1980). In addition, the decision discussed the issues of whether BLT or Trans-Texas had presented evidence of pricing or credit violations by RFI or Oasis and whether BLT, Trans-Texas or Lucky should be permitted to purchase product directly from Cities and other suppliers of RFI rather than from RFI or Oasis. Briefly, OHA concluded in its April 11, 1980 decision that while the October 1978 agreements did in fact transfer the allocation entitlements of the 84 outlets to Oasis, those agreements did not alter any other supplier/purchaser relationship between RFI and its suppliers under the DOE allocation regulations. With respect to April 12 Settlement Agreement, OHA found that the agreement was merely a private contract which, in the absence of DOE approval, could not permanently alter any regulatory rights and obligations with respect to RFI's wholesale customers. As for the issues presented by BLT and Trans-Texas, OHA determined that the resolution of those issues was outside the scope of the OHA proceeding.[15]

On review, the Texas district court declined to follow most of OHA's findings and conclusions, on the ground that OHA had not been directed to address any issue other than the April 12 Settlement Agreement. *Oasis Petroleum Corp.* v. *DOE,* No. CA3–79–0778–F, slip op. (N.D. Tex. Nov. 22, 1982).[16] On appeal, TECA reversed the district court's determination, finding that the court should have entrusted the entire matter to the agency under the doctrine of primary jurisdiction, and remanded the case with instructions to refer the matter to OHA. *Oasis Petroleum Corp.* v. *DOE, 718 F.2d 1558 (Temp. Emer. Ct. App. 1983).*

On February 9, 1984, the district court remanded Case No. CA3–79–0778–F to

[13] The record in this proceeding indicates that none of the 84 retail outlets purchased by Oasis were located in DOE Region VI. On June 19,

[14] Cities, Marathon and Champlin had filed suit against RFI on June 1, 1979 in the 153rd Judicial District, Tarrant County, Texas, seeking to forceclose on RFI's business assets, all of which had been pledged as security for the note referenced in footnote 8 *supra.* See. Lucky's May 7, 1984 Brief at Appendix H, Volume IV, Exhibit 23.

[15] In express recognition of the district court's preliminary injunction and January 9 order, OHA's April 11, 1980 decision was not issued as a final administrative order.

[16] In its November 22, 1982 Memorandum Order, the district court made the following determinations:

(1) OHA's determination that the settlement agreement was void was supported by substantial evidence, and was neither arbitrary nor capricious.

(2) Since OHA was not directed by the district court to address any issues other than the validity of the settlement agreement, all of OHA's other findings and conclusions were purely advisory.

(3) DOE lacked authority to disapprove the amended asset purchase agreement; DOE had a presumption favoring approval of such agreements. The agreement [Amended Asset Purchase Agreement] was therefore entitled to de facto approval, and was valid.

(4) DOE lacked authority to retroactively apply the order changing the base year so as to invalidate the rights and obligations of the parties under the amended asset purchase agreement.

(5) Alternatively, DOE approval of the amended asset purchase agreement was not required for it to be valid.

(6) Under the Amended Asset Purchase Agreement, Oasis was entitled to the escrowed funds.

OHA, and consolidated with it certain issues in a related case, *Research Fuels Inc.*, v. *Oasis Petroleum Corp.*, No. CA3–80–1353–F.[17] In remanding the two cases, the court stated that the cases were being remanded for a "full and complete determination of all issues of fact and law, including the appropriate remedy that is consistent with those findings of fact and conclusions of law." The court additionally stated that the determination to be issued by OHA must be in the form of a final agency action, reviewable by the Texas district court.

On January 6, 1984, Luckly filed a Petition for Special Redress with OHA pursuant to an order which the U.S. District Court for the Middle District of Florida had issued on December 6, 1983 in connection with the pending case, *Lucky Stores, Inc.* v. *Oasis Petroleum Corp.*, No. 81–383 Civ.–T–H. (M.D. Fla. filed April 27, 1981). In that order, the district court granted a request filed by Oasis to stay the entire action that had been commenced by Lucky in that court in order to permit either party or both to apply to the DOE for a determination of certain issues raised by Lucky in its complaint. In its January 6 Petition for Special Redress, Lucky requested OHA to find that Oasis was required, either as base period supplier or by virtue of its actual control over supplies of gasoline from Marathon and Cities, to supply Lucky with its base period entitlement to motor gasoline. In that same petition, Lucky also asked OHA to adjudicate a number of other issues which we ultimately determined to be enforcement related and hence initially subject to the ERA's prosecutorial discretion. Accordingly, by determination letter dated October 26, 1984, OHA dismissed all of the issues presented by Lucky in its January 6 Petition except the issue relating to the base period supply obligations, if any, running from Oasis to Lucky.[18]

On February 16, 1984, RFI filed a motion requesting OHA to resume the proceeding that had been the subject of our decision in *Oasis Petroleum Corp.* v. *DOE, 5 DOE* 82,559 (1980). At that time RFI also asked OHA to consolidate Lucky's January 6 Special Redress Petition with the proceeding it sought to resume. By Decision and Order dated April 30, 1984, OHA granted RFI's Motion to Resume the Special Redress Proceeding and consolidated with it, for briefing purposes only, Lucky's January 6 Special Redress. *See Research Fuels, Inc.*, 12 DOE 82,511 (1984). That decision also provided for the bifurcation of this proceeding.[19]

Meanwhile, on March 27, 1984, RFI filed a Motion for Show Cause Order alleging that Oasis had made material misrepresentations of fact in prior proceedings before the DOE and federal courts in connection with the controversy that is the subject of this proceeding. The motion, as supplemented on May 14, 1984, focused on four issues that allegedly had been tainted by Oasis' purported misrepresentations. To remedy Oasis' alleged misdeeds, RFI requested that OHA order Oasis 1) to controvert the allegations advanced by RFI in its Show Cause Motions, 2) to require a knowledgeable corporate official of Oasis to certify to the veracity of all future factual representations in this proceedings, and 3) to provide a full accounting of all its financial activities as well as the financial activities of its affiliated companies since 1979.

On September 27, 1984, Lucky filed a second Petition for Special Redress with OHA in which it alleged that Oasis had violated the Mandatory Petroleum Pricing Regulations at 10 CFR Part 212. OHA dismissed Lucky's September 27 Special Redress Petition in a letter determination dated October 26, 1984. As stated in that letter, OHA decided not to exercise jurisdiction over Lucky's Petition because the office determined that another more appropriate avenue might be available for the disposition of Lucky's enforcement related claims, *viz.*, a proceeding under Subpart O of 10 CFR Part 205.[20]

On February 12, 1985, OHA issued a decision which considered all of the pending motions and requests filed by the three parties in connection with this proceeding, including RFI's Motion for Show Cause Order. *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 (1985). In that decision, OHA found, *inter alia*, that RFI had not met its burden of establishing an action predicated on misrepresentation for three of the four issues which RFI alleged were affected by Oasis' representations. With respect to the fourth issue, *viz.*, the manner in which Oasis disposed of the volumes of gasoline which it acquired pursuant to the Amended Asset Purchase Agreement and collateral documents, OHA decided that the matter required additional scrutiny. At the same time, OHA identified four relevant and material issues which remained in factual dispute. To aid it in effectively making findings of fact with respect to the four disputed issues and to further investigate one of the issues raised in RFI's Show Cause Motion, OHA decided *sua sponte* to convene an evidentiary hearing. The five issues which OHA designated for consideration at the hearing were the following:

(1) Whether Oasis sold, transferred, exchanged, traded or otherwise made available to Apex Oil Company, (Apex) its subsidiaries, or assigns motor gasoline at any time from March 1, 1979 to January 28, 1981?

(2) Whether RFI intended to transfer its wholesale business to Oasis at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto?

(3) Whether RFI went out of business entirely at the wholesale level of distribution and/or abandoned that wholesale business at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto or at any time thereafter?

(4) Whether the 1972 base period volume figure of 97,679,000 gallons of gasoline that s reflected in the Three Party Agreement executed by RFI, Oasis and Cities is associated with only the 84 retail gasoling stations that RFI sold to Oasis pursuant to the Amended Asset Purchase Agreement and documents ancillary thereto?

(5) Whether RFI intended to transfer allocation entitlements associated with

[17] The subject of Case No. CA3–1353–F is a counterclaim in which RFI alleges that Oasis violated the Economic Stabilization Act of 1970, 12 U.S.C. 1904 note, as incorporated into the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 754(a)(1) (1976). Specifically, RFI claims that Oasis diverted large quantities of gasoline for sale in the spot market at unconscionable profits. RFI contends that Oasis sold the gasoline in the spot market not only to reap huge profits but to avoid obligations imposed upon it by law. As a result of these violations, RFI claims damages in the amount of $10,983,896.74.

[18] In dismissing certain issues raised in Lucky's Petition for Special Redress OHA first characterized those issues as enforcement related and then stated that a Subpart O proceeding was the more appropriate vehicle for the deposition of those claims. Subsequently, on November 20, 1984 OHA transmitted Lucky's Petition for Special Redress to the ERA pursuant to 10 CFR 205.236(b)(1). The ERA is that part of the DOE which is responsible for investigating alleged violations of the DOE regulations and initiating, if necessary, enforcement actions against the alleged violators. See Letter dated November 20, 1984 from Thomas O. Mann, Deputy Director, OHA; to Milton Lorenz, Office of Special Counsel, ERA.

[19] In that decision, OHA decided that the underlying controversies in this proceeding must be resolved before OHA would entertain any arguments pertaining to the appropriate remedy, if any, to be applied in this case. See Research Fuels, Inc., 12 DOE 82,511 at 85,040 (1984).

[20] Even though OHA dismissed Lucky's September 27, 1984 Special Redress Petition *in toto*, the office did transmit that Petition to the ERA pursuant to 10 CFR 205.236(b)(1).

more than 84 retail gasoline stations at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto?

OHA then invited RFI, Oasis and Lucky to submit the names of proposed witnesses whose testimony they desired to present at the evidentiary hearing. In a series of orders following our February 12 decision, OHA approved two witness nominations submitted by RFI, four by Oasis and three by Lucky. *Oasis Petroleum Corporation, et al.*, 13 DOE 82,506 (1985); *Oasis Petroleum Corporation, et al.*, 13 DOE 82,510 (1985). OHA also considered requests from each party that the evidentiary hearing be convened in its entirety in three different locations. OHA finally determined that the most equitable manner to resolve the problem regarding the location for the evidentiary hearing would be to bifurcate the hearing. We decided to hold the first stage of the hearing in Dallas, Texas to accommodate RFI, the debtor in bankruptcy and to resume the second stage of the hearing in Washington, D.C.

OHA conducted the first stage of the evidentiary hearing on June 27, 1985, at which time, we heard the testimony of RFI's two witnesses, John Sterling and Larry Minx. Subsequently, Oasis and Lucky filed requests that OHA issue subpoenas to compel the attendance of three witnesses at the second stage of the evidentiary hearing. OHA granted both parties' requests and on July 9, 1985, OHA issued subpoenas to Richard Heinzelmann, Robert Mills and Richard Lindgren.[21] Prior to the commencement of the second stage of the evidentiary hearing, Mr. Heinzelmann filed a "Motion to Quash Administrative Subpoena" in the United States District Court for the Northern District of Oklahoma. Before the district court acted on Mr. Heinzelmann's motion, Mr. Heinzelmann agreed to comply with OHA's subpoena. However, because Mr. Heinzelmann was scheduled to be out of the country on the date on which he was required to testify before OHA, he requested that OHA provide an alternative date for his testimony. To accommodate Mr. Heinzelmann, OHA decided to trifurcate the evidentiary hearing and convene a third stage of the hearing in September 1985. *See* Letter dated August 15, 1985 from Thomas O. Mann, Deputy Director; OHA to Richard Heinzelmann. Shortly thereafter, Richard Lindgren requested that his testimony be postponed so that he could fulfill a previously scheduled commitment. OHA granted Mr. Lindgren's request and modified the subpoena issued to him to reflect his obligation to appear before OHA in September 1985.

On August 19, 20, 21, and 22, 1985, OHA convened the second stage of the evidentiary hearing. At that time, we heard the testimony of three of Oasis' witnesses, Tariq Kadri, Parker Anderson and Herbert Stevens and one of Lucky's witnesses, Robert Mills. On September 5, 1985, Lucky requested that OHA rescind the subpoena that we had issued to Mr. Lindgren. OHA granted Lucky's request and on September 10, 1985 rescinded the subpoena issued to Mr. Lindgren. *See* Letter dated September 10, 1985 from Thomas O. Mann, Deputy Director, OHA; to Jack P. Caolo, Counsel for Lucky. Finally, on September 12, 1985, OHA convened the third stage of the evidentiary hearing to hear the testimony of Richard Heinzelmann. A hearing for oral argument culminated this proceeding on September 13, 1985.

III. Regulatory Framework

The DOE allocation regulations which are relevant to the resolution of the controversy *sub judice* were set forth at 10 CFR Part 211. The general provisions relating to all allocated products were located in Subpart A of Part 211 (10 CFR 211.1–211.29) while provisions specifically applicable to motor gasoline were found in Subpart F of the same part (10 CFR 211.101–211.110). Section 211.101 of Subpart F stated that "unless otherwise specified in, or inconsistent with, this subpart, the provisions of sections 211.9–211.13 . . . apply to this subpart. Where inconsistent with the provisions of Subpart A of this part, the provisions of this subpart shall prevail." In addition, Subpart B of Part 211 (10 CFR 211.51) contained general definitions applicable to the entire part.

Section 211.9(a)(1) of the general allocation provisions required each supplier[22] of an allocated product to supply all wholesale purchaser-resellers[23] and all wholesale purchaser-consumers[24] which had purchased or obtained that allocated product from that supplier during the base period. The base period for motor gasoline was set forth at 10 CFR 211.102. From 1974 through February 28, 1979 the motor gasoline base period was defined as the month of 1972 corresponding to the current month. On February 22, 1979 the DOE issued Activation Order No. 1 which updated the base period, effective March 1, 1979, to the corresponding month of the period July 1, 1977 through June 30, 1978. 44 FR 11202 (February 28, 1979). The DOE subsequently changed the base period, effective May 1, 1979 to the corresponding month of the period November 1977 through October 1978. 44 FR 26712 (May 4, 1979)[25]

Section 211.9(a)(2)(i) of the DOE regulations provided that:

> Unless otherwise provided in this part or directed by [DOE], the supplier/wholesale purchaser/reseller relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Petroleum Allocation Program and may not be waived or otherwise terminated without the express approval of [DOE].

Thus, under § 211.9(a) of the allocation regulations, a base period supplier was obligated to continue to offer product to each of its base period purchasers. As § 211.9(a)(2)(i) indicated, a supplier/purchaser relationship established by the regulations generaly could not be terminated without DOE approval. Section 211.9(a) was primarily intended to guarantee to customers at each level of distribution access to product from their base period suppliers.

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[21] OHA issued two subpoenas to Richard Heinzelmann, one upon the request of Lucky, and the other upon the request of Oasis. Both Lucky and Oasis had sought and been granted permission to call Mr. Heinzelmann as a witness at the evidentiary hearing. *See Oasis Petroleum Corporation, et al.*, 13 DOE 82,506 (1985); *Oasis Petroleum Corporation, et al.*, 13 DOE 82,510 (1985).

[22] The term "supplier" was defined at 10 CFR 211.51 as "any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including, but not limited to, refiners, natural gas processing plants or fractionating plants, importers, resellers, jobbers and retailers.

[23] The term "wholesale purchaser-consumer" meant any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (a) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (b) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; or (c) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971. 10 C.F.R. 211.51.

[24] Section 211.51 of Subpart B also defined the term "wholesale purchaser-reseller." The term denoted "any firm which purchases receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchases without substantially changing its form."

[25] Wholesale purchaser-resellers which did not have a base period supplier were required to apply to the DOE for assignment of a supplier and a base period volume. 10 CFR 211.9(d)(1), 211.12(e)(2)(ii).

The allocation regulations did, however, recognize that a supplier/purchaser relationship might need to be modified or terminated under certain circumstances. Thus, a base period purchaser's right to receive its allocation entitlement was dependent upon its "conduct of an ongoing business or maintenance of an established end use." 10 CFR 211.11(a). Section 211.11(c) further provided that "wholesale purchasers and end-users which have gone out of business shall not be eligible for allocations based on volumes received or purchases made prior to going out of business." Additionally, § 211.11(d) provided that:

> The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business or established end use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm is transferred to a successor firm.

The allocation regulations generally defined the term "firm" to include "the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls." 10 CFR 211.10(a)(2), 211.11(b)(2), 2111.51. As noted above, Subpart F contained additional provisions which specifically applied to motor gasoline. In particular, § 211.106 of the allocation regulations provided an exception to this definition in the case of retail outlets which sold gasoline. That section stated:

> Each firm or part of a firm which operates an ongoing business at a retail sales outlet shall be considered a separate firm with respect to each such outlet for purposes of this subpart and, therefore, shall be a separate wholesale purchaser-reseller. The entity which merely holds a real property interest in a retail sales outlet on which another entity operates the ongoing business shall not be considered the wholesale purchaser-reseller with respect to that outlet.

10 CFR 211.106(b)

Since each gasoline retail outlet was considered a separate firm and a separate wholesale purchaser-reseller for allocation purposes, the regulations provided that a supplier's obligation to provide motor gasoline be determined separately for each retail sales outlet without distinguishing between retail sales outlets operated by the supplier and retail sales outlets not operated by the supplier. 10 CFR 211.106(b)(3)(i).

Section 211.106 also contained provisions for the loss of an allocation entitlement where a retail outlet ceased its operations. Specifically, § 211.106(c)(1) provided that a wholesale purchaser-reseller which operated a retail sales outlet "shall be deemed to have gone out of business with respect to that outlet for purposes of § 211.11 if it vacates the site on which it conducts such business." Section 211.106(e) further provided that, whenever a wholesale purchaser-reseller was deemed to have gone out of business in accordance with § 211.106(c)(1),

> The right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same ongoing business on the site within a reasonable period of time, as determined by [DOE], after its predecessor vacates the premises.

When the operator of a retail outlet went out of business under § 211.106(c)(1), the supplier was required to remove the amount of the allocation entitlement of the outlet from its supply obligation unless the right to the allocation had transferred to a successor wholesale purchaser-reseller under § 211.106(e). Thus, the transfer of a retail outlet to a new owner automatically transferred the right to an allocation of motor gasoline for that outlet to the new owner. The transfer of ownership did not change the base period supplier to the outlet, the new owner became entitled to receive the existing allocation entitlement of the outlet from the existing base period supplier. 10 CFR 211.106(d)(2).

The volumes of motor gasoline that a base period supplier was obligated to offer to retail outlets and other base period purchasers was determined according to 10 CFR 211.10, 211.107(b). In general, each purchaser was entitled to receive an amount of an allocated product which corresponded to the amount received during the base period. If a supplier did not have access to sufficient product to meet its total monthly supply obligations, he was required first to supply all purchasers which fell into certain defined priority categories. In order to supply its other purchasers, the supplier than determined "allocation fraction," which, in general, was equal to its remaining allocable product divided by its total supply obligation. The use of an allocation fraction insured that all base period purchasers in the same priority category were offered the same percentage of their base period volumes from the supplier.

IV. Analysis

The factual and legal findings pertaining to this case will be divided its two relevant time periods, those relating to the period October 1978 to March 1, 1979 and those relating to the period subsequent to March 1, 1979. While the rights and obligations of the parties under the October 1978 Agreements were superseded on March 1, 1979 by the updating of the base period, it is important to examine the parties' pre-March 1979 status in order to determine their post-March 1979 rights and obligations under the operative agreements.

A. Rights and Obligations of the Parties under the October 1978 Agreements prior to March 1, 1979

1. The Allocation Entitlements Transferred as a Consequence of the October 1978 Agreements.

As recounted in Section I above, shortly after the parties executed the October 1978 Agreements, a dispute arose between RFI and Oasis as to the precise allocation entitlements that RFI had transferred to Oasis in conjunction with the sale of the 84 retail gasoline stations. In order to unravel the complex dispute which has developed with regard to this matter, we will first discuss the divergent factual and legal positions advanced by the two parties on this issue. We will then make the appropriate factual findings with respect to the matter. Finally, we will apply the pertinent DOE allocation regulations to resolve the dispute between the parties.

a. Factual Dispute. Throughout this proceeding, Oasis has consistently maintained that the language contained in the Amended Asset Purchase Agreement and ancillary documents clearly established that RFI intended to transfer its right to all gasoline supplied to it by Cities, *viz.*, the 97,679,000 gallons set forth in the Three Party Agreement. Oasis' July 16, 1984 Brief at 12. RFI, on the other hand, while admitting that a certain amount of confusion existed among the parties to the October 1978 agreements as to the exact base period volumes to be transferred pursuant to the Amended Asset Purchase Agreement and collateral documents, has contended that it never evidenced an intent to transfer allocation entitlements associated with more than the 84 stations which it sold to Oasis. RFI's August 13, 1984 Brief at 33–38.

After reviewing the October 1978 Agreements, OHA determined earlier in this proceeding that the language contained in the operative documents was ambiguous and subject to several possible interpretations. *Oasis Petroleum Corporation et al.*, 13 DOE 82,559 (1985). In reaching this conclusion, OHA made the following observations. First, since RFI owned more than 84 retail gasoline outlets at the time it entered into the relevant agreements with Oasis, the 97,679,000 gallons of motor gasoline reflected in the

Three Party Agreement might represent the annual adjusted base period volume for more outlets than the 84 outlets conveyed to Oasis. This possibility, noted OHA, is supported by the language in the Three Party Agreement which suggests that RFI intended to convey its entire base period allocation of motor gasoline from Cities even though that allocation may have exceeded the allocation that was attributable to the 84 retail gasoline outlets sold to Oasis. On the other hand, OHA observed that when the Amended Asset Purchase Agreement is read in conjunction with the Three Party Agreement, it appears that the 97,679,000 gallons of gasoline at issue might be associated only with the 84 retail stations transferred to Oasis. OHA found that Exhibits "C" and "D" to the Amended Asset Purchase Agreement supported this interpretation. Another possible interpretation of the October 1978 Agreements offered by OHA is that RFI attempted to convey, through the subject documents, only a portion of the 97,679,000 gallons of gasoline. Specifically, RFI might have intended to transfer only volumes sufficient to supply the 84 retail gasoline stations that it sold to Oasis. Support for this interpretation can be gleaned from the Three Party Agreement where there is no indication as to the number of outlets to which the 97,679,000 gallons in question pertain.

Because of the confusion concerning the precise allocation entitlements transferred by RFI to Oasis and the divergent positions taken by the parties in connection with the issue, OHA decided that further investigation was warranted to resolve this matter.[26] Therefore, OHA set forth the following two issues to be addressed at the evidentiary hearing:

(4) Whether the 1972 base period volume figure of 97,679,000 gallons of gasoline that is reflected in the Three Party Agreement executed by RFI, Oasis and Cities is associated with only the 84 retail gasoline stations that RFI sold to Oasis pursuant to the Amended Asset Purchase Agreement and documents ancillary thereto?

(5) Whether RFI intended to transfer allocation entitlements associated with more than 84 retail gasoline stations at the time it executed the Amended Asset Purchase Agreement and documents ancillary thereto?

At the evidentiary hearing, several witnesses testified concerning the two issues set forth above. Those witnesses included Larry Minx, former Vice-President, Secretary and Director of RFI; John Sterling, RFI's former outside corporate counsel; Tariq Kadri, former Secretary and General Counsel of Oasis and Richard Heinzelmann, former Manager of the Plans and Evaluation Department of Cities.

From the evidence adduced at the hearing, it is clear that at the time the parties executed the October 1978 Agreements, neither RFI nor Oasis knew the precise volume that represented the allocation entitlement associated with the 84 stations. In this regard, John Sterling testified that RFI lacked the requisite documentation to identify the base period volumes attributable to the 84 stations. Transcript of June 27, 1985 Hearing at 206–209, *Oasis Petroleum Corporation*, Nos. HEG–0031, HCX–0100 (hereinafter cited as June 27 Tr.).[27] As a consequence, stated Mr. Sterling, RFI had to rely on Cities to provide that information. *Id.* Mr. Sterling further testified that RFI had reservations concerning the accuracy of the 97,679,000 gallon figure claimed by Cities as its' base period supply obligation to RFI. June 27 Tr. at 208. Mr. Sterling stated that, notwithstanding the firm's reservation, RFI agreed to consummate the transaction because Cities had agreed to certify the base period volumes to be transferred to Oasis in the Three Party Agreement. *Id.*

Mr. Kadri who testified on behalf of Oasis stated that Oasis also did not independently verify the accuracy of the 97,679,000 gallon figure contained in the Three Party Agreement but instead chose to rely on Cities and RFI with respect to this matter. Transcript of August 20, 1985 Proceedings at 347, *Oasis Petroleum Corporation*, Nos. HEG–0031, HCX–0100 (hereinafter cited as August 20 Tr.) When questioned whether Oasis knew at the time of the execution of the October 1978 Agreements that RFI had some reservation concerning the accuracy of the base period volume figure, Mr. Kadri responded negatively. August 20 Tr. at 252. He then added that had Oasis known that RFI questioned the accuracy of the 97,679,000 gallon figure, Oasis would not have proceeded with the transaction. *Id.*

After the testimony of Messrs. Sterling and Kadri, it appeared that only Cities was in a position to explain how it computed the adjusted base period volume figure attributable to the 84 stations. On this matter, the testimony of Richard Heinzelmann proved insightful.[28] Mr. Heinzelmann explained that under the Branded Distributor Agreement that was in effect at the time the October 1978 Agreements were executed, Cities supplied terminals and not individual retail outlets. Transcript of September 12, 1985 Proceedings at 966, *Oasis Petroleum Corporation*, Nos. HEG–0031, HCX–0100 (hereinafter cited as September 12 Tr.). Mr. Heinzelmann stated that he understood Cities' obligation to RFI to be an undifferentiated one (i.e. none of the Cities' gasoline was earmarked for any particular retail outlet). Furthermore, Mr. Heinzelmann asserted that everyone associated with Cities who was involved in the October 1978 transaction understood that 100% of Cities' undifferentiated obligation to RFI was being transferred to Oasis. September 12 Tr. at 916.

We surmise that there may have been some misunderstanding between RFI and Cities prior to the execution of the October 1978 Agreements as to what allocation entitlements were to be transferred pursuant to those agreements. The following colloquy between Thomas O. Mann, Deputy Director, OHA; and Mr. Heinzelmann illustrates that point.

Mr. MANN: Do you think it's possible that Mr. Minx might have asked you the wrong question. He might have asked you question A, which is, what is Cities' allocation obligation to RFI, instead of question B, what are the allocation obligations to the 84 stations? Do you think he could have confused the difference between those two questions?

THE WITNESS: Yes, it's possible.

MR. MANN: And if he had you wouldn't have recognized it at the time, would you?

THE WITNESS: No, I wouldn't have.

September 12 Tr. at 991.

Despite the above exchange, Mr. Heinzelmann maintained that there was no misunderstanding on RFI's part as to what allocation entitlements were to be transferred by means of the October 1978 Agreements. He insisted that RFI

[26] In its February 12, 1985 Decision, OHA advised that the resolution of the factual issues concerning the precise volumes of gasoline that RFI transferred to Oasis pursuant to the October 1978 Agreements might be irrelevant to a determination of the rights and obligations of the parties to this proceeding. Such a result would obtain, explained OHA, if the office determines that the Three Party Agreement is ineffective for want of DOE approval. OHA concluded, however, that it must examine the above-described issues in order to evaluate whether DOE properly exercised its discretion in refusing to approve the relevant agreements. Oasis Petroleum Corporation/Research Fuels, Inc., 12 DOE 82,549 85,272 (1985).

[27] Larry Minx also testified on behalf of RFI and explained that Cities certified the base period allocation volumes associated with the 84 retail outlets because RFI did not have "access to . . . each particular stations' allocation." June 27 Tr. at 46.

[28] Mr. Heinzelmann testified at the evidentiary hearing in his individual capacity and not as the representative of Cities.

intended to transfer all its supply entitlements from Cities, regardless of whether those entitlements were tied to the 84 stations. September 12 Tr. at 993. To support this contention, Mr. Heinzelmann recounted a conversation that he had with Mr. Minx subsequent to the execution of the Three Party Agreement and the Mutual Cancellation and General Release. Mr. Heinzelmann testified that he asked Mr. Minx how Minx intended to obtain a future supply of gasoline for RFI's remaining business now that Cities and Marathon would no longer be supplying RFI with gasoline. September 12 Tr. at 903. Mr. Minx purportedly responded to this inquiry by stating that with his experience, knowledge and relationships in the industry, he considered it a matter of personal confidence to be able to secure all necessary gasoline supplies from sources other than Cities and Marathon. *Id.*

At the evidentiary hearing, Mr. Minx declared that the dicourse related above was generally true. June 27 Tr. at 74.[29] However, he added that at the time he responded to Mr. Heinzelmann's question, he still believed that only allocation entitlements attributable to the 84 stations had just been transferred pursuant to the October 1978 Agreements. June 27 Tr. at 75. In an effort to reconcile Mr. Minx's seemingly inconsistent positions, counsel for RFI asked Mr. Minx the following question at the evidentiary hearing:

> Q. Was it your understanding at the time [you engaged in the conversation with Mr. Heinzelman] that you could have an entitlement—allocation from the company [Cities] but still not be able to lift that entitlement due to credit problems?

June 27 Tr. at 76.

Mr. Minx responded affirmatively to the above question.

Based on our review of the voluminous record in this proceeding, particularly the transcripts containing the testimony of Messrs. Minx, Sterling, Kadri and Heinzelmann, we make the following findings. First, RFI's precarious financial situation in October 1978 mandated that the firm divest itself of some of its assets as expeditiously as possible. RFI realized, however, that the three principal suppliers to which the firm was heavily indebted would play a crucial role in that divestment process. Cities had already foiled an earlier attempt by RFI to sell the 84 retail outlets to Oasis when it refused to provide adequate assurances regarding its base period obligations to the 84 stations. The testimony of Mr. Sterling revealed that RFI questioned the accuracy of the 97,679,000 gallon figure claimed by Cities as its base period supply obligation to RFI's outlets. Mr. Sterling testified that RFI believed at the time the October 1978 Agreements were executed that even if the 97,679,000 gallon figure correctly reflected Cities' allocation obligation to the 84 stations, then Cities had additional allocation obligations to RFI.[30] June 27 Tr. at 209. Based on Mr. Sterling's testimony, it appears that RFI intended to transfer only the allocations attributable to the 84 retail outlets which it sold to Oasis. Unfortunately, because RFI did not know precisely what allocation entitlements were associated with the stations, and because Cities in good faith believed that its only supply obligation to RFI was an undifferentiated one, it is easy to understand how the present controversy developed. Further complicating the situation was Mr. Minx's statement concerning his ability to procure supply for the remaining RFI stations once Marathon and Cities were no longer supplying RFI. Presumably had Mr. Minx responded in a different fashion to Mr. Heinzelmann's inquiry, Cities might have ascertained that the two firms had differing expectations with respect to one of the crucial aspects of the October 1978 Agreements. On the other hand, RFI may have decided not to challenge Cities' volume figures anticipating that any subsequent dispute regarding this matter could be dealt with after RFI had received its desperately needed cash infusion.

Second, with respect to Oasis, we find that the firm probably believed at the time it executed the October 1978 Agreements that it had bargained to purchase 84 retail gasoline outlets and 97,679,000 gallons of gasoline. Mr. Kadri testified that prior to the firm's execution of the subject agreements, Oasis was never advised by RFI or Cities that there was a possible disagreement between those two parties as to the volume of gasoline to be transferred in conjunction with the 84 stations. August 20 Tr. at 252.

Third, as far as Cities was concerned, it desired principally to secure repayment of the trade debt owed to it by RFI. As a secondary matter, Cities was eager to sever its business relationship with RFI. Cities thought it had accomplished these dual objectives through the Three Party Agreement, the Substitute Supplier Agreement and the Mutual Cancellation and General Release. Although there is some confusion in Mr. Heinzelmann's testimony concerning whether Cities knew in October 1978 that its base period supply obligations to the 84 retail outlets differed from its base period supply obligations to the terminals from which RFI drew its supply, it appears that Cities earnestly believed that RFI intended to transfer 100% of the supply obligations to Oasis. Since Mr. Minx appeared to confirm Cities' belief in this regard by his response to Mr. Heinzelmann's inquiry described above, Cities had no reason to suspect that an amount less than RFI's entire allocation was being transferred to Oasis. In fact, even after Cities received RFI's November 8, 1978 letter apprising it that Cities still had base period obligations to RFI's remaining stations, Cities was unconvinced that any problem existed. Rather, as Mr. Heinzelmann testified, when Cities received RFI's November 1978 letter, the firm thought RFI was experiencing difficulty in locating a supplier. September 12 Tr. at 913. According to Mr. Heinzelmann, Cities believed that RFI was attempting to recapture a supply entitlement which it had sold to Oasis in October 1978. *Id.*

In sum, it appears that RFI, Oasis and Cities each thought that it was bargaining for something different when

[29] Mr. Heinzelmann had previously recounted his conversation with Mr. Minx during a deposition taken in connection with the Florida litigation involving Lucky and Oasis. It was possible, therefore, to inquire of Mr. Minx about this matter at the first stage of the evidentiary hearing and to re-question Mr. Heinzelmann about the conversation during the third stage of the hearing.

[30] While RFI has taken the position in this proceeding that Cities' additional 1972 base period obligation ran to those RFI stations not sold to Oasis, it appears that Cities' additional allocation obligation actually ran to RFI. RFI, in turn, appears to have used the Cities' gasoline to supply wholesale purchasers. This conjecture is supported by portions of an Opinion Letter dated September 11, 1978 from Wynne and Jaffe to RFI's Board of Directors at AR–1271–77. In that Opinion Letter, Wynne and Jaffe state:

> We understand that the portion of the gasoline under the Cities Service and Marathon contracts that would no longer be available to the Company after the sale of the retail stations to Oasis is not used by the Company; *the remaining retail stations are supplied from other sources.* In addition, we understand that because of credit limitations placed upon the Company by Cities Service Company, the Company as a practical matter is unable to purchase more than 36,000,000 gallons a year under that contract and, absent the proposed sale to Oasis, the Company would probably have to utilize such 36,000,000 gallons to service the retail gasoline proposed to be sold. Accordingly, the net effect of the proposed transaction relating to assignment of these two major supplier contracts is to assure to the Company a source of gallonage for resale by the Company in the *wholesale market which might not otherwise be available to the Company.* As noted above, two fiscal years of the Company, wholesale marketing has been the only profitable operation of the Company. (emphasis added).

Id at 1273.

The fact that RFI may have used volumes allocated to its remaining outlets to sell to its wholesale customers would not affect the obligation of RFI's suppliers to furnish product to the firm.

it executed the Amended Asset Purchase Agreement and Collateral documents.[31] RFI thought it was conveying 84 retail outlets and whatever allocation entitlements were associated with those stations. In addition, RFI thought that Cities would remain the base period supplier for RFI's remaining retail outlets.[32] Oasis thought it was purchasing 84 retail outlets and supply contracts for no less than 97,679,000 gallons of gasoline. Oasis further appears to have believed that Cities' supply obligation of 97,679,000 gallons of gasoline ran directly to the 84 stations. In addition, Oasis apparently believed that Cities had terminated its supplier/purchaser relationship with RFI. Cities also thought it had effectuated a termination of its supplier/relationship with RFI. However, Cities believed that it had an undifferentiated supply obligation to RFI and that the 97,679,000 gallons of gasoline set forth in the Three Party Agreement was not tied to any of the 84 gasoline outlets individually.[33]

b. Regulatory Resolution of Factual Dispute. At the time RFI and Oasis entered into the October 1978 Agreements, each of the 84 outlets which RFI transferred to Oasis constituted a separate wholesale purchaser-reseller for purposes of the DOE allocation regulations. *See* 10 CFR 211.102, 211.106. Moreover, each of those outlets possessed an allocation entitlement based on its 1972 purchase volumes. (*Id.*)

Pursuant to the October 1978 Agreements, RFI terminated its operations at the 84 retail outlets and vacated those sites. Accordingly, for purposes of 10 CFR 211.11(c) and 211.106(d), RFI "went out of business with respect to" those 84 outlets. Since Oasis immediately established the "same ongoing business" at the sites of the 84 outlets, under §§ 211.106 (c) and (e) of the DOE allocation regulations, Oasis automatically succeeded to the allocation of gasoline attributable to each of the 84 outlets. Inasmuch as the transfer of allocation entitlements associated with each of the 84 retail stations occurred by operation of law, there was no need for the DOE to approve that allocation transfer. In this regard, 10 CFR 211.11(d) specifically provided that:

> The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business or established end-use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm is transferred to a successor firm.

As stated above, section 211.11(d) tied the "right to an allocation" to a "firm." Under the allocation regulations specifically applicable to motor gasoline, a "firm" was defined as a single retail outlet. 10 CFR 211.106(b). the October 1978 Agreements transferred 84 retail outlets to Oasis. For regulatory purposes, the "entire business or activity" of 84 separate "firms" was transferred to Oasis under 10 CFR 211.11(d). That same section automatically transferred the allocation entitlements of each of the 84 "firms" ot Oasis.

To the extent that Cities, Marathon, RFI or any other firm had supply obligations to the 84 outlets in 1972, those firms remained the supplier(s) for those outlets after Oasis acquired them.[34] This result follows from 10 CFR 211.106(d). That section provided that the identity of the base period supplier is not altered when the right to an allocation with respect to a retail sales outlet is transferred to a successor which establishes the same activity or business on the site of the outlet. As stated above, this is precisely the situation which occurred with respect to the 84 retail outlets.

With respect to the factual dispute regarding the precise allocation entitlements that were transferred to Oasis by means of the October 1978 Agreements, the regulations explicitly stated that the "right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business." 10 CFR 211.11(d). That section continued by stating that the right to an allocation "shall be deemed to have been transferred only when the entire businessor activity of the firm is transferred." The record clearly reflects that RFI owned a large number of retail stations in addition to the 84 stations that it sold to Oasis. It further appears from the record that Cities had been supplying several of RFI's remaining retail outlets prior to October 1978.[35] As stated above, the October 1978 Agreements effectuated a transfer of only 84 retail outlets. Since § 211.11(d) of the DOE allocations regulations prohibited the asignment of allocation rights separate from the ongoing business with which they were associated, (i.e. the individual retail stations), it was impossible for the October 1978 Agreements ot transfer entitlements automatically for any RFI retail outlets other than the 84 stations. Accordingly, to the extent that Cities and Marathon had base period supply obligations to stations in addition to the 84 sold to Oasis, those two firms remained the suppliers to those stations after the execution of the October 1978 Agreements.

While the regulations expressly prohibited the transfer of allocation entitlements without the sale of underlying retail stations, the allocation regulations did recognize that situations might arise where a supplier/purchaser relationship might need to be modified or terminated under certain circumstances. 10 CFR 211.9(a). Under § 211.9(a)(2)(i) of the DOE regulations, the supplier/purchaser-reseller relationship established by the

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[31] During the evidentiary hearing, Mr. Sterling testified that continuous negotiations spanning three days and nights preceded the execution of the October 1978 Agreements. June 27 Tr. at 209. He further testified that various factions representing different parties convened in different rooms while the principal negotiations occurred in a large conference room in the law offices of Wynne & Jaffe. June 27 Tr. at 212. The picture painted by Mr. Sterling of that marathon meeting was one punctuated by confusion with small clusters of interested parties caucusing in separate rooms and intermittently communicating with others who were memorializing the agreement in the large conference room. Given the environment in which the October 1978 Agreements were negotiated and executed, it is not surprising that a complete "meeting of the minds" never occurred.

[32] It is unclear from the record whether RFI actually articulated this belief of Cities, Marathon or Oasis prior to the execution of the October 1978 Agreements. However, because we found Mr. Sterling to be a very candid and knowledgeable witness, we will accept his uncontroverted testimony that RFI believed that Cities would remain the base period supplier for the outlets which were not sold to Oasis.

[33] Despite our factual findings with regard to the intent of the parties to the October 1978 Agreements, it is important to remember that firms involved in the petroleum industry such as Oasis, RFI and Cities had an affirmative obligation to remain aware of those provisions of the federal regulatory programs which affected their business operations. See J.D. Streett & Company, Inc., 13 DOE 84,016 (1985); see e.g. Cool Fuel Inc., 9 DOE 84,033 (1982); Woodyard Drilling Co., 3 DOE 83,007 (1979); Carlos R. Leffler, 2 FEA 80,640 (1975), aff'd sub nom. *Carlos R. Leffler, Inc.* v. *FEA*, 455 F. Supp. 623 (D.D C. 1976).

[34] The record does not clearly establish the identity of the 1972 base period supplier or suppliers to the 84 retail outlets. This matter is irrelevant, however, since the parties' rights and obligations during the 1972 base period were superseded by the rights and obligations established during the 1977–78 base period.

[35] The FEO–17 forms submitted to DOE by Cities on behalf of Oasis indicate that Cities had a supply obligation to 117 retail outlets owned by RFI. See Lucky's May 7, 1984 Brief at Appendix I, Volume II, Exhibit 40. It is uncontested that of the 117 stations, those stations located in Region VI (Texas and Louisiana), were not included among the 84 stations sold to Oasis. September 12 Tr. at 971. RFI has asserted that of the 117 stations listed on the FEO–17 forms, 81 were Remex stations sold t Oasis, 23 were stations owned or operated by RFI following the October 24 sales, two were Remex stations closed prior to the October 1978 sale and 11 were RFI stations closed or sold by RFI prior to October 1978. AR–2041–42.

Mandatory Petroleum Allocation Program could be waived or terminated through the express written approval of DOE. The requirement of written DOE approval was intended to protect customers who were downstream in the distribution system and who were entitled ot a base period allocation of a product. If the DOE were to permit a supplier and a wholesale purchaser-reseller to alter their regulatory base period relationship at will, supplies of product to subsequent customers in the chain of distribution, including ultimate consumers, would be disrupted. The requirement set forth in § 211.9(a)(2)(i) that DOE approval be obtained prior to termination of a base period relationship between a supplier and a wholesale purchaser-reseller is contrasted with the provisions of contained in 10 CFR 211.9(a)(2)(ii). The latter provisions permitted the termination of base period relationships between suppliers and wholesale purchaser-consumers by the mutual consent of both parties. Since a wholesale purchaser-consumer is an ultimate consumer of a petroleum product (10 CFR 211.51), there was no downstream purchasers who would be adversely affected by termination of the base period relationship. Consequently, a wholesale purchaser-consumer was permitted to bargain away its regulatory right to purchase an allocated product from a base period supplier.

In the instant case, RFI was a wholesale purchaser-reseller for purposes of the DOE allocation regulations. Accordingly, any permanent alteration in the existing base period relationship between RFI and its suppliers required DOE's approval. Both Cities and Marathon sought to permanently terminate their supplier/purchaser relationship with RFI. For the reasons set forth below, we find that neither party successively accomplished its objective.

While it is questionable whether a supplier/purchaser relationship existed between Cities and RFI during the 1972 base period, Cities nonetheless sought to sever whatever regulatory relationship it had with RFI by means of the Three Party Agreement. In so doing, Cities did recognize, however, that the Three Party Agreement required the approval of the DOE to be effective. During the course of this seven year controversy, no one has ever disputed that the DOE did not approve the Three Party Agreement as required by the provisions of 10 CFR 211.9(a)(2)(i).[36] We must find, therefore, that the Three Party Agreement merely constituted a private contractual arrangement among RFI, Cities and Oasis which was ineffective for purposes of terminating any base period supplier/purchaser relationship that may have existed between Cities and RFI or establishing a new base period relationship between Cities and Oasis.

Marathon, on the other hand, has admitted that it had a supplier/purchaser relationship with RFI during the 1972 base period. In correspondence with the OHA in 1980, Marathon indicated that its 1972 base period obligation ran directly to RFI and not to any of RFI's retail outlets. *See* Letter dated March 5, 1980 from Warren E. Connolly, Counsel for Marathon; to Melvin Goldstein, Director, OHA at AR-1925. Marathon explained in its submission to OHA that it sold motor gasoline to RFI F.O.B. Marathon's terminals and RFI then arranged for delivery of the product. *Id.* Based on the information provided by Marathon, it is clear that for regulatory purposes Marathon was RFI's "supplier" and RFI was in turn a "supplier" to the 84 outlets. Against this factual backdrop, we can now examine the document utilized by Marathon in an attempt to sever its supplier/purchaser relationship with RFI, viz., the Substitute Supplier/Agreement.

At the outset, we note that a Substitute Supplier Agreement, by its very terms, could not permanently alter existing base period relationships. Rather, it was a vehicle by which one supplier permitted another supplier to assume its supply obligations to its customers. Section 211.25(a) of the DOE Allocation Regulations is the provision that permitted supplier substitution.[37] That provision was intended to reflect the DOE's recognition that the continuing supply obligations mandated by 10 CFR Part 211 could in some situations create difficulties for suppliers that had altered their marketing and distribution systems since the base period. Section 211.25 provided a means by which a firm could arrange to meet its supply obligations through a substitute supplier in order to alleviate such difficulties, and thus provided a measure of flexibility in the allocation program. While the regulations permitted a substitute supplier to assume the primary duty of providing supplies to the original supplier's customers, they also provided that the original supplier would retain its base period supply obligation to its customers during the pendency of the substitute supplier arrangement.

After reviewing the Substitute Supplier Agreement, it appears that the agreement was designed to achieve a result different from that envisioned by the regulatory section sanctioning supplier substitution, i.e. the permanent removal of Remex (RFI) as the intermediate supplier of the 84 stations. As discussed above, the only way to permanently terminate a supplier/purchaser relationship under the DOE regulations was to obtain the express written approval of the DOE. As a practical matter, this objective was accomplished by the submission to the DOE of an agreement similar to the Three Party Agreement. The DOE, after reviewing such an agreement would then decide whether to approve the permanent change in the base period supplier/purchaser relationship. In this case, even if we were to recharacterize Marathon's ill-fated Substitute Supplier Agreement as a three party agreement, we would be compelled to find the agreement ineffective for want of DOE approval.

In conclusion, we hold that the Substitute Supplier Agreement, under any construction, was ineffective for purposes of terminating the base period supplier/purchaser relationship between Marathon and RFI or establishing a new base period relationship between Marathon and Oasis.

2. RFI's Wholesale Business

Throughout this proceeding, Oasis has consistently alleged that RFI effectively transferred its wholesale business to Oasis when it assigned its Cities and Marathon supplies to Oasis in October 1978 and simultaneously ceased its wholesale sales. Oasis' July 16, 1984 Brief at 25. In response to this allegation, RFI has maintained that it neither intended to sell, nor sold any wholesale business to Oasis in October 1978. To support this assertion, RFI has cited two opinion letters from its counsel which assert that RFI's wholesale business was not among the assets sold to Oasis in October 1978. RFI's August 13, 1984 Brief at 29. In order to fully explore the intent of the parties with respect to RFI's wholesale business, OHA decided to examine this issue at an evidentiary hearing.

Before discussing the evidence adduced at this hearing, we first observe

[36] Later in this decision, we will discuss the issue of whether the DOE abused its discretion in not approving the Three Party Agreement.

[37] Section 211.25(a) provided as follows: Any supplier may arrange to supply any purchaser which is entitled to receive an allocation from it through another supplier or suppliers in accordance with normal business practices. The purchaser shall, however, be entitled to receive the same amount of an allocated product from the substituted supplier that it would receive if it were directly supplied by the original supplier using that supplier's allocation fraction.

that as of October 1978 RFI had no base period supply obligation to any of its wholesale purchasers, including BLT, Trans-Texas and Lucky. Since RFI did not begin its wholesale business until after the 1972 base period, no base period supplier/purchaser relationship between RFI and its wholesale customers had been created under § 211.9(a)(1) of the DOE allocation regulations. Nor had the DOE or its predecessor agencies ever issued an order under 10 CFR 211.12(e)(3) assigning RFI as the base period supplier to any of the wholesale purchasers. Consequently, at the time of the October 1978 Agreements, there existed no base period supply obligation with regard to the wholesale purchasers which could be transferred to Oasis.

While the application of the allocation regulations definitely resolves the factual dispute regarding the issue of whether RFI transferred its wholesale business to Oasis in October 1978, we note that there is no contractual basis to find otherwise.[38] Our examination of the Amended Asset Purchase Agreement and ancillary documents reveals that RFI's wholesale business was not even alluded to in any of those documents. Moreover, Oasis has admitted in its pleadings that the operative agreements do not expressly mention RFI's wholesale customers. Oasis' July 16, 1984 Brief at 36. Therefore, even assuming *arguendo* that the parties' contractual arrangements were not subject to regulatory restrictions, there is no evidence on the face of the conveyance agreements that would compel the conclusion that RFI sold its wholesale business to Oasis.

Furthermore, testimony adduced at the evidentiary hearing convened by OHA in this proceeding convinces us that RFI did not intend to transfer its wholesale business to Oasis at the time it executed the October 1978 Agreements. At the hearing, John Sterling testified that during the negotiations preceding the execution of the Original Asset Purchase Agreement and the Amended Asset Purchase Agreement, no discussion occurred concerning the sale of RFI's wholesale business. June 27 Tr. at 233. According to Mr. Sterling, the October 1978 Agreements were not intended to reflect the sale of the wholesale business. *Id.* Mr. Sterling's testimony is consistent with the position taken by his law firm several weeks prior to the execution of the Amended Asset Purchase Agreement. On September 11, 1978, the law firm of Wynne and Jaffe issued an opinion letter to RFI's Board of Directors regarding the issue of whether the sale of assets from RFI to Oasis required the authorization or approval of RFI's shareholders. AR–1271–77. In that opinion letter, the law firm stated the following:

> We have been advised that after the proposed Oasis transactions, the Company intends to continue to operate its approximately 140 remaining retail gasoline stations and to *continue in the business of selling gasoline at wholesale*, and in furtherance of this intention that the proceeds of the sale will be used, among other things, to solve severe cash flow problems that, if left uncorrected, may place the Company in the position of being unable to meet its debts and other obligations as they mature. (emphasis added). (AR–1273.)

Mr. Sterling also noted for the record that in the Form 8–K filed with the SEC for the month of October 1978, there is no mention of the sale of RFI's wholesale business under the caption, "Acquisition and Disposition of Assets." (*Id.* at 234) [39]

Mr. Kadri also testified at the evidentiary hearing concerning the issue of whether RFI intended to sell its wholesale business to Oasis. In his testimony, Mr. Kadri intimated at first that, indeed, RFI did intend to sell its wholesale business to Oasis. When questioned as to whether he personally had any discussions with RFI prior to the signing of the October 1978 Agreements regarding the sale of RFI's wholesale business, he responded as follows:

> Yes, RFI wanted to sell us the whole company, they talked about the various parts of it. Insofar as those discussions took place, the wholesale business, I'm sure, was mentioned. I don't specifically recall any isolated discussion of it (August 20 Tr. at 351.)

However, when RFI's counsel inquired of Mr. Kadri whether he had given any indication to RFI that Oasis was interested in purchasing anything other than the 84 retail outlets and the supply contracts (i.e. the wholesale business), Mr. Kadri testified as follows:

> We were interested in purchasing the supply contracts and the 84 stations. We told them we might be interested in buying other assets, but not at the time. (*Id.*)

Later, Mr. Kadri testified that at the time Oasis purchased the 84 stations and the supply contracts, "we thought that all the gasoline was attributable to the stations and it was our intention to use the gasoline in the gas stations, not to go permanently into the wholesale business with that volume." (*Id.* at 352–53.)

We believe that the last statement accurately reflects Oasis' views at the time the October 1978 Agreements were executed. Oasis did not believe that it was purchasing RFI's wholesale business in October 1978. Rather, Oasis was concerned principally with obtaining adequate supplies of gasoline to channel through the 84 retail outlets.[40] As will be discussed below, it was only when the base period changed and RFI's wholesale customers obtained a regulatory right to receive motor gasoline that Oasis first asserted its rights to supply RFI's wholesale customers.

> Based on the testimony recounted above, we find no justification for concluding that the parties intended to transfer any additional assets other than those that were expressly referenced in the operative documents. In sum, we have determined that the record now adequately supports the factual finding that RFI did not intend to transfer its wholesale business to Oasis at the time it executed the Amended Asset Purchase Agreement and ancillary documents.

B. The Effect of Standby Activation Order No. 1 on the Rights and Obligations of the Parties under the October 1978 Agreements

As noted above, on February 22, 1979, the ERA issued Activation Order No. 1 which changed the motor gasoline base period from the corresponding month of 1972 to the corresponding month of the period July 1977 through June 1978. 44 FR 11,202 (February 28, 1979). The Order was effective for the three-month period beginning on March 1, 1979 and was based on a determination that there was a significant possibility of gasoline shortages and resulting dislocations in the industry during the period March through May 1979. The updating of the allocation base period was considered necessary to prevent disruptions in the gasoline distribution system which would occur during a shortage situation if an allocation system based upon distribution patterns in effect seven years ago were used. Effective May 1, 1979, the ERA issued an Interim Final Rule which designated the period November 1977 through October 1978 as the base period. 44 FR 26,712 (May 4,

[38] A discussion of the contractual aspect of this issue will illuminate an issue to be discussed later in this decision, viz., whether RFI abandoned its wholesale business entirely at the time it executed the October 1978 Agreements or at any time thereafter.

[39] The above-referenced 8–K Form is located in the record at DP–0581.

[40] Later in this decision, we will discuss RFI's contention that Oasis never intended to channel gasoline through the 84 retail outlets but instead sought to and did divert that gasoline on the spot market.

1979). On July 15, 1979 the ERA issued a final rule which permanently established November 1977 through October 1978 as the base period for motor gasoline. 44 FR 42,549 (July 19, 1979). In addition, beginning in May 1979 a retail sales outlet, wholesale purchaser-consumer, or bulk purchaser of motor gasoline was permitted to substitute as its volume for any base period month its average monthly purchases during the period October 1978 through February 1979 if that average was ten percent greater than its purchases during the particular base period month. (10 CFR 211.104.)

Before considering the regulatory impact of the updated base period on the contractual agreements between RFI and Oasis, we must first consider the DOE's authority to issue and apply Standby Activation Order No. 1 to this or any other controversy. Then, we will briefly discuss the prospective application of Order No. 1 to pre-existing contractual arrangements in general. We are examining these two matters pursuant to TECA's request. TECA, in reviewing the decision issued by the Texas district court in connection with the controversy presently before OHA, discussed the court's finding that the DOE lacked authority to "retroactively" apply Standby Agreement. *Oasis Petroleum Corp. v. DOE*, 718 F.2d 1558, 1565 (1983). While TECA expressed its views concerning the court's findings in this matter, it explicitly stated that, upon remand, no significance should be accorded to any issue addressed by that reviewing body except the issue of primary jurisdiction. TEC did opine, however, that the question of the effect, if any, of Standby Activation Order No. 1, on the Amended Asset Purchase Agreement is one of policy and authority. TECA further stated with regard to this matter that "the DOE [OHA] should be given the opportunity to explain and apply its policy and regulations . . ." (*Id.*)

1. Authority of the DOE to Establish an Updated Base Period to Determine Base Period Volumes and Supplier/Purchaser Relationships

On October 17, 1973, Congress passed Pub. L. 93–159, the Emergency Petroleum Allocation Act of 1973 (EPAA) which granted the President broad authority to issue allocation regulations designed to accomplish nine general objectives.[41]

[41] Section 4(b)(1) of the EPAA, 15 U.S.C. 753(b), set forth those nine objectives as follows:

(1) protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense.

(2) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or

(3) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(4) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded indpendent marketers;

(5) the allocation of suitable types, grades, and quality of crude oil to refiners in the United States to permit such refineries to operate at full capacity.

(6) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(7) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of—

(i) fuels, and

(ii) minerals essential to the requirement of the United States and for required transportation related thereto;

(8) economic efficiency; and

(9) minimization of economic distortion, inflexibility, and unncessary interference with market mechanism. the EPAA, the

Section 4(c)(2) and (3) of the EPAA specifically provided that the President could require an adjustment in allocations with respect to the 1972 base period if such adjustment was necessary to accomplish the objectives of the Act. In the Conference Report that accompanied local government or authority, and including transportation facilities and services which serve the public at large);
Congress explained its intent with respect to the above-stated provisions as follows:

In meeting the objectives of Section 4(b) the President may find it most convenient to rely on historical use and supply patterns. The conferees wish to emphasize, however, that the President need not base allocations on a historical period. The President is intended to have full flexibility in devising the most effective and efficient means of meeting the priority needs of the American people identified in Section 4(b).

House Conference Report No. 93–628 (November 10, 1973), *reprinted in* U.S. CODE CONG. & AD. NEWS 2582, 2689 (1973). Congress further stated that:

It should be noted that allocations are to be based on a corresponding period in calendar year 1972. The President is intended to have discretion to select within the calendar year the appropriate period or periods. Thus, the corresponding period of 1972 could be the entire calendar year or the President could divide the year into quarters, months or weeks. Moreover, it should be emphasized that the President is intended to have flexibility to depart from the calendar year 1972 altogether if it would be inconsistent with the Congressionally stated objectives to continue to rely on the base period. In such event the President would be expected to select some other mechanism or procedure for allocation which would be more suited to the accomplishment of the objectives of the Act. (*Id.* at 1690.)

On December 4, 1973, the President issued Executive Order No. 11748 pursuant to which he established the Federal Energy Office (FEO) and delegated to the Administrator of that agency all of the authority vested in him by the EPAA, including the authority of promulgate regulations providing for the mandatory allocation of petroleum products. 38 FR 33,575 (December 6, 1973). The FEO promulgated the Mandatory Petroleum Allocation and Price Regulations, 10 CFR Parts 210, 211 and 212 in accordance with the directive set forth in Section 4(a) of the EPAA, 15 U.S.C. 753(a).

As stated above, the EPAA clearly afforded the President or his delegate the flexibility of departing from the calendar year 1972 in determining the appropriate base period to be utilized in conjunction with the various provisions of the Mandatory Petroleum Allocation and Price Regulations. Therefore, when the DOE issued Activation Order No. 1 which updated the base period, effective March 1, 1979, to the corresponding month of the period July 1, 1977 through June 30, 1978, there existed ample statutory authority for such action. Moreover, this action was undertaken in an attempt to attain one of the broad objectives set forth in Section 4(b)(1) of the EPAA, viz, the preservation of an economically sound and competitive petroleum industry and the need to restore and preserve the competitive viability of all segments of the industry.

2. Prospective Application of Activation Order No. 1 to Pre-existing Contractual Arrangements In General

There is no question that Standby Activation Order No. 1 changed the applicable base period on a prospective basis. When Activation Order No. 1 became effective on March 1, 1979, *from that date forward* the change in base periods altered allocation rights and obligations. The regulation itself explicitly stated that "the principal effect of these changes [updating base periods] is that, *beginning in March 1979*, the motor gasoline allocation base period for each month will be the corresponding month of the period beginning July 1, 1977 and ending June

30, 1978. (44 FR 11,204 (February 28, 1979).)

3. Specific Application of Activation Order No. 1 to the Controversy under Consideration

With respect the impact of Standby Activation Order No. 1 on the Amended Asset Purchase Agreement, we observe that the parties to that agreement were on notice as of Julay 10, 1978—three and one-half month before they executed the subject documents—that the ERA had proposed the establishment of an updated base period.[42] Irrespective of that fact, we find that the parties have no cause to complain that Standby Activation Order No. 1 interfered with their expectations of the October 1978 Agreements. First, we note that TECA has previously upheld constitutional challenges to DOE's crude oil allocation regulations when those regulations pre-empted contractual relationships. In *Condor Operating Co.* v. *Sawhill*, 514 F.2d 351, 361 (Temp. Emer. Ct. App. 1975), *cert denied*, 421 U.S. 976 (1975), TECA held that "the regulation of future action based on rights previously acquired by the person regulated is not *per se* prohibited by the constitution" *citing Fleming* v. *Rhodes*, 331 U.S. 100, 67 S.Ct. 1140, 91 L.Ed. 1368 (1947). The court further explained that reasonable and practical regulation which are generally fair and equitable, although not necessarily so as applied to a particular person, are not unconstitutional when general regulations are necessary to accomplish an appropriate congressional purpose. *Id.* In addition, TECA has also upheld the legality of DOE regulations incorporating base period concepts. For example, in *Basin Inc.* v. *FEA*, 534 F.2d 324, (Temp. Emer. Ct. App. 1976), *cert. denied*, 434 U.S. 821 (1977), TECA held that "sales made after the effective date of the EPAA were not beyond the reach of the Act because they occurred in performance of agreements entered into before the Act's effective date." *Id* at 326. The above-referenced cases stand for the proposition that lawfully issued regulations must prevail in instances where they conflict with the terms of a private contract. Therefore, to the extent that the October 1978 Agreements are inconsistent with the DOE allocation regulations, those agreements must yield to the regulations.

a. *Allocation Entitlements Associated with the 84 Stations Sold to Oasis.* With respect to the 84 outlets purchased by Oasis pursuant to the October 1978 Agreements, we find that the updating of the base period pursuant to Activation Order No. 1 did not affect the fact that the allocation entitlements associated with those outlets were transferred to Oasis in October 1978. However, Activation Order No. 1 did alter the amount of allocated volumes attributable to each outlet as of March 1, 1979. As of that date, each of the 84 outlets was entitled to purchase an amount of motor gasoline based on the amount it purchased during the new base period rather than the amount it purchased during the 1972 base period. In addition, those suppliers which had actually supplied the outlets during the updated base period became obligated to supply those outlets effective March 1, 1979. (See 10 CFR 211.9(a)(1)).) In this regard, we find that the updating of the base period resulted in the establishment of a supplier/purchaser relationship between Cities and RFI.[43] This result occurs because the Branded Distributor Agreement apparently provided for the distribution of motor gasoline to RFI at terminal points and not to the individual retail outlets. September 12 Tr. at 975. Therefore, for purposes of the DOE regulations, RFI was considered the "supplier" to the 84 outlets as of March 1, 1979. In that capacity, RFI had the right to receive from Cities that volume of motor gasoline which Cities had previously been supplying to the outlets.[44]

b. *Allocation Entitlement Acquired by RFI's Wholesale Purchasers.* Effective March 1, 1979, those wholesale purchasers which had purchased motor gasoline from RFI during the updated base period acquired a regulatory right to obtain gasoline based on their purchase volumes during the new base period. Almost immediately after the implementation of Activation Order No. 1, a dispute arose between RFI and Oasis as to which firm had the regulatory obligation to supply RFI's wholesale customers. Each party advanced several arguments to support its respective claim that it was the proper supplier of the wholesale customers. Earlier in this decision, we found that there was neither a regulatory nor constructual basis to support Oasis' contention that RFI's wholesale business was transferred to Oasis by virtue of the October 1978 Agreements.[45] We will now examine the issue of whether RFI abandoned that wholesale business and the effect, if any, of Activation Order No. 1 on Oasis' claim that it was the supplier of RFI's wholesale customers.

i. Factual Dispute. Oasis has argued that it acquired the obligation to supply certain wholesale distributor customers of RFI during the new base period because RFI abandoned its wholesale business. Oasis' July 16, 1984 Brief at 25. To support its contention, Oasis refers to the 10Q Form which FRI filed with the Securities and Exchange Commission. (SEC). According to Oasis, the 10Q Form which covers the three month period ending March 31, 1979 purportedly indicates the RFI ceased its wholesale operations in October 1978 because of its inability to purchase a sufficient quantity of gasoline for wholesale distribution. *Id.* at 13. Further, Oasis states that the 10Q Form indicates that as of March 31, 1979, RFI had not reestablished its wholesale business and evidenced no intent to do so. *Id.* at 36–37. In addition, Oasis contends that RFI's contractual transfer or allocated volumes of motor gasoline from Marathon and Cities to Oasis left RFI without and assured surplus of product which it could resell to its wholesale customers. *Id.* at 36–37. Oasis also notes that with the sole exception of several sales made pursuant to the April 12 Settlement, FRI never made another wholesale sale even though it has

[42] On July 10, 1978, notice was published in the Federal Register that the ERA had proposed special rules pertaining to, among other things, the allocation and pricing of refined petroleum products. 43 FR 29,565 (1978). According to the notice, the proposed special rules would remain in standby status until a significant interruption in the supply of crude oil or refined products occurred, at which time they could be activated. The notice identified the establishment of an updated base period as the most significant possible change to the existing allocation program. In this regard, the notice explained: The base period year, necessary to determine the purchasers to which a supplier is obligated to provide product, and the amount of supply obligation, could be changed by the Administrator under the special rule to be the 12-month period ending with the second full month prior to the month in which the Administrator issues an order effectuating the special rule, or such other 12-month period as the Administrator should consider appropriate. (*Id.* at 29,570.)

[43] As stated in footnote 34 *supra*, the record is unclear as to whether Cities was a 1972 base period supplied to the 84 retail outlets. In the event that Cities did have a supplier/purchaser relationship with RFI under the 1972 base period, Cities' obligation would have run directly to the 84 outlets under the Marketing Development Agreement.

[44] There is no evidence in the record to suggest that Marathon's base period obligation to RFI changed during the updated base period. Therefore, as stated in Section IV. A. 1. above, Marathon remained RFI's "supplier" and RFI, in turn, furnished motor gasoline to the retail outlets.

[45] In Section IV. A.2. above, we found that as a regulatory matter RFI could not have transferred the base period supply obligations associated with its wholesale customers because no such base period obligation existed in October 1978. As a contractual matter, we observed that the October 1978 Agreements could not have conveyed RFI's wholesale business to Oasis because the agreements failed to mention the wholesale business. In addition, we concluded that based upon the testimony of certain witnesses at the hearing that RFI did not intend to transfer its wholesale business to Oasis.

product available to it from numerous other suppliers. (*Id.* at 37–38.)

In rebuttal, RFI contends that in no filing with the SEC or otherwise is there any indication that RFI intended to permanently abandon its wholesale business. RFI's August 13, 1984 Brief at 96. RFI states that the clearest indication of its intention to continue its wholesale business is the April 12 Settlement Agreement whereby Oasis agreed to supply RFI with three million gallons of motor gasoline per month for its wholsesale business. *Id.* Moreover, FRI attributes its temporary cessation of its wholesale business to its inability to obtain sufficient supplies to meet its wholesale obligations. In this regard RFI states that since its wholesale business was its most profitable activity, it should be abundantly clear that RFI always intended to resume this business when market conditions changed. *Id.* RFI also offers as evidence of its intent to continue in the wholesale business a letter dated September 20, 1978 from B. Mills of RFI to RFI's wholesale customers. *Id.* at 30–31. That letter stated that RFI would notify its wholesale customers in the future as to the resumption of its wholesale transactions.

OHA determined earlier in this proceeding that a genuine factual dispute existed regarding the issue of whether FRI abandoned its wholesale business and/or "went out of business" entirely at the wholesale level of distribution at the time it executed the October 1978 Agreements or at any time thereafter.[46] *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 85,271 (1985). Accordingly OHA framed that issue for consideration at the evidentiary hearing.

At the evidentiary hearing, John Sterling testified that the 10Q Forms upon which Oasis relies for the proposition that RFI abandoned its wholesale business do not in fact support that proposition. June 27 Tr. at 236–38. Mr. Sterling stated that the statement contained in the 10Q Form under the caption "Three Months and Nine Months Ended March 31, 1979, *vs.* Three Months and Nine Months Ended April 1, 1978" [47] is an explanation of why RFI's financial data varied so substantially from one period to another. *Id.* at 237. Mr. Sterling noted that the relevant statement indicates only that RFI was unable to wholesale gasoline during one portion of the then current reporting period. *Id* at 238. Further, Mr. Sterling emphasized that the phrase "discontinuance of wholesale functions" does not denote the cessation of wholesale operations. *Id.* Rather, he argued that the term "functions" is descriptive of the attempt to reduce overhead and personnel associated with the wholesale operations. (*Id.*)

Larry Minx also testified at the evidentiary hearing about this issue. With respect to the letter dated September 20, 1978 from Bob Mills, Manager Whilesale-Operations, RFI, addressed to "All Wholesale Customers" Mr. Minx stated that at the time RFI sent the letter, it was the firm's intent to resume wholesale operations when it was financially able to do so. June 27 Tr. at 88.[48] The letter which has been utilized by both Oasis and RFI, either in part or in whole, to support their opposing positions reads as follows: [49]

> Effective September 25, 1978 Research Fuels Inc. will discontinue all wholesale sales activities. We at Research Fuels, Inc. have enjoyed and appreciated your business in the past and in the future when we are able to continue wholesale sales you will be notified.

In further explaining why RFI had sent the September 20 letter to its wholesale customers, Mr. Minx stated that RFI had decided at the time to temporarily suspend its sales of gasoline to its wholesale customers in order to purchase product for its retail units. *Id.* at 88. Mr. Minx explained that RFI had difficulty meeting the needs of its retail operations due to developing gasoline shortages and liquidity problems. It appears from Mr. Minx's testimony that the combination of these factors caused the margins on wholesale operations to be too low during most of the period prior to March 1, 1979 to justify sale to wholesale customers. [50]

Mr. Minx further testified that RFI entered into negotiations with several firms during October 1978 to April 1979 in an attempt to sell all of RFI's remaining business activities including its wholesale activities. *Id.* at 92. According to Mr. Minx, shortly after the negotiations with these firms terminated unsuccessfully, RFI entered into a Temporary Supplier Substitution Agreement with Encorp, Incorporated for the purpose of reactivating RFI's wholesale business sales. (*Id* at 94.)

The testimony recounted above combined with the fact that the April 12, 1979 Settlement Agreement provided that Oasis would supply RFI with three million gallons of gasoline per month for the express purpose of permitting RFI to supply its former wholesale customes convinces us that RFI did not attend to abandon its wholesale business at the time thereafter. We will now examine the DOE allocation regulations to determine if RFI "abandoned" its wholesale business for regulatory purposes.

Section 211.106(d) of the allocation regulations which specifically governs motor gasoline activity states that:

> A wholesale purchaser-reseller which operates a retail sales outlet shall be deemed to have gone out of business with respect to that outlet for purposes of 211.11 [51] if it vacates the site on which it conducts such business. Notwithstanding the foregoing, an independent marketer shall not be deemed to have gone out of business if (1) the independent marketer vacates the site on which it formerly operated a retail sales outlet, (2) the independent markter that occupied the former site, within a reasonable period of time, as determined by ERA, reestablished another retail sales outlet at another location serving substantially the same customers or market that was served by the former site and (3) at the time the former operator satsifies subparagraph (d)(2) of this section the former site is closed as a retail sales outlet or is operated as such by a firm that is not an independent markter.

The regulations also require that:

> Whenever a wholesale purchaser-reseller is deemed to have gone out of business in accordance with paragraph (c) of this section, the right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same ongoing business on the site within a

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[46] TECA explicitly requested OHA, on remand, to address the issue of whether RFI abandoned its wholesale business within the context of relevant DOE regulations and rulings. See *Oasis Petroleum Corp.* v. *DOE*, 718 F.2d 1558, 1566 (Temp. Emer. Ct. App. 1983).

[47] The statement under the above-stated caption reads as follows: the fluctuations between the years, in all areas, it [sic] attributable to the sale and/or closing of retail operations and the discontinuance of all wholesale functions.

[48] Mr.Minx testified that he supervised Mr. Mills in the wholesale area during their tenure at RFI and that he was aware of the September 20, 1978 letter at the time it was drafted. June 27 Tr. at 87–8.

[49] The letter is located in the record at Appendix D, Volume I, Exhibit 3 to Lucky's May 7, 1984 Brief.

[50] Mr. Minx's specific response to the question, "What was your intent in having Mr. Mills issue this notice?" was as follows:

> A. Well, at this particular point in time, we were trying to conserve as much cash as we possibly could to take care of purchasing product for our own units and felt like that the margin of profit on wholesale customers versus the risk of having a bad debt was not a very good business decision. So, we decided at that particular point in time to temporarily, at least, discontinue the sales to other jobbers. (*Id* at 88.)

[51] Section 211.11(d) of the general allocation regulations provides that: The right to receive an allocation shall not be assignable separately but shall be considered an integral part of the on-going business or established end use. The right to an allocation shall be deemed to have been transferred only when the entire business or activity of the firm has been transferred to a successor firm.

reasonable period of time as determined by DOE, after its predecessor vacates the premises unless the allocation has been reassigned by the former operator to one or more of its locations under suparagraph (c)(1) of the section. (10 CFR 211.106(e))

Section 211.11(c) of the general allocation regulations mandates that wholesale purchasers and end-users which have gone out of business shall not be eligible for allocations based on volumes or purchases made prior to going out of business. Against this regulatory background we will examine three arguments advanced by Oasis to support its claim that it succeeded to the allocation entitlements associated with RFI's wholesale business under 10 CFR 211.11(d).

Oasis first argues that RFI transferred its "entire activity" to Oasis upon the occurrence of two events: 1) the sale from RFI to Oasis of the 84 retail outlets and the Marathon and Cities contracts and 2) the simultaneous termination by RFI of its wholesale business. Oasis' July 16, 1984 Brief at 25. Oasis next maintains that the October 1978 Agreements transferred RFI's Remex subsidiary to Oasis. According to Oasis, the Remex subsidiary constituted a "significant severable portion of the transferor's total business operations" and under the case of *Fisher's Fuel Inc.*, 3 FEA 80,601 (1976), Oasis automatically acquired the right to receive all allocations of gasoline from Cities and Marathon when it purchased RFI's entire Remix gasoline business, it became the Substitute Supplier to RFI's wholesale customers. Oasis' July 16, 1984 Brief at 45. For the reasons set forth below, we find all three of the arguments advanced by Oasis are flawed and lack any regulatory basis.

Earlier in this decision, we observed that in October 1978, RFI operated a number of retail outlets in addition to the 84 sold to Oasis. as a consequence, we found that RFI did not forefeit its eligibility to any allocations other than for the 84 retail outlets sold to Oasis. We also determined in this decision that RFI never intended to permanently cease its wholesale operations in October 1978. From the record before us, we find that the principal reasons why RFI was unable to resume sales to its wholesale customers after October 1978 was that it was unable to obtain supply. In this connection, we note that Marathon and Cities had incorrectly believed that the October 1978 Agreements had vested in Oasis all of RFI's former allocation entitlements from those two firms and accordingly had refused to supply motor gasoline to RFI. In addition, RFI's precarious financial situation impeded RFI's efforts to locate other suppliers. Notwithstanding these two impediments, RFI attempted to ensure that its wholesale customers obtained supplies by first entering into the Temporary supplier Substitution Agreement with Encorp, Incorporated and later by entering into a Marketing Agreement with Delta Oil Company. We turn now to Oasis' first argument which will be evaluated with reference to precedent established by TECA on the matter.

TECA has previously addressed the issue of what constitutes "going out of business" for purpose of 10 CFR 211.11(c) and 211.106(c). In *Zahir v. Shell Oil Company, et al.*, 718 F.2d 1567 (1983), TECA reached the following conclusion:

> Shell argues that even if Zahir had a right to be supplied by Shell, he lost that right when he went out of business sometime in July 1979. *See* 10 CFR 211.11(c) and 211.106(c). But if Zahir stopped operating the station in July only because he was unable to obtain gasoline from Shell, he did not lose his right to that gasoline by "going out of business" within the meaning of those regulations. To hold otherwise would enable Shell to turn its branch of its duty into a lawful act by reason of its almost inevitable effect. A gasoline station cannot operate sucessfully without gasoline. And in time of shortage, a station operator who is cut off by his supplier has little chance, if any, to obtain gasoline elsewhere.

We also observe that an interpretation of the predecessor section to 211.11(c) compels the same conclusion. FEO Ruling 1974–3 [CCH] Energy Mgt., 16,013 (February 1, 1974) explicitly stated that:

> A purchaser does not lose his right to an allocation from his base period supplier unless, since the base period, the purchaser has abandoned his ongoing business entirely or transferred his entire ongoing business to a third party.
>
> [u]nless the historical purchaser has *completely abandoned* his original business or conveyed it to a third party, he continues to have the right to an allocation from his historical supplier even though (1) the supplier ceased supplying the purchaser since the base period, (2) the supplier terminated a franshise or lease agreement with the purchaser since the base period, or (3) the purchaser has moved the location of his ongoing business to other premises since the base period. Ruling 1974–3 at 16,515,516 [52]

Consistent with TECA's holding in *Zahir*, we find that RFI's temporary cessation of its wholesale business as the result of supply shotages can not justify the conclusion that RFI had entirely abandoned all its business operations for purposes of 10 CFR 211.11(c). Accordingly, Oasis' first argument in support of its claim of succession to RFI's wholesale allocations must fail.

Oasis' second argument, viz., that it purchased the entire business of Remex, a firm totally separate from RFI, and, as a consequence, succeeded to the allocation entitlements attributable to Remex, is devoid of both a factual and legal basis. First, the record reflects that the Remex Gasoline Company joint venture was dissolved in 1977 when RFI acquired 100% ownership of the venture. From that time forward, Remex became a devision of RFI. AR–1090. For regulatory purposes, then, Remex was considered part of the single RFI firm. See 10 CFR 211.10(a)(2) and 211.11(b)(2) As such, Remex was never vested with any allocation entitlements to gasoline separate from RFI's entitlements. In addition, before the joint venture dissolved in 1977, RFI's wholesale operations were never conducted through Remex, but instead, were consistently treated as part of RFI's operations. AR–0856. Therefore, even if Remex were not part of the RFI firm, it possessed no allocation entitlements attributable to RFI's wholesale customers which could have been transfereed to Oasis.

Since we have already determined that Remex was not a separate entity distinct from RFI, we need not address Oasis' contention that its purchase of the Remex gasoline business caused it to become the substitute supplier to RFI's wholesale customers.

In conclusion, based on the foregoing considerations, we find that there is no factual or regulatory basis to support Oasis' claim that it succeeded to the allocation entitlements attributable to RFI's wholesale business.

C. The Effect of the April 12 Settlement Agreement on the Rights and Obligations of the Parties under the October 1978 Agreements

On April 12, 1979, Oasis and RFI entered into an agreement which was intended to resolve the dispute between them regarding the right to receive supplies of gasoline from Cities and Marathon. Under the terms of the agreement, the parties agreed that Oasis would receive all gasoline which either Oasis or RFI was entitled to receive from Marathon or Cities "under contract

[52] In *Texaco, Inc.*, 2 FEA 80,791 at 81,197 (1975), the FEA determined that Arrow Petrolum Company (Arrow) had "not gone out of business" for purposes of the Mandatory Petroleum Allocation Regulations. Arrow has previously operated a distribution business pursuant to a Consignment Agreement with Texaco during the 1972 base period year. It subsequently terminated the arrangement with Texaco and ceased its distribution business. The FEA found that Arrow had continued to operate as a reseller to outlets from gasoline supplied by suppliers other than Texaco and as a result could not be charged with "going out of business."

or under relevant DOE regulations in effect now or effective prior to or after the date hereof, regardless of changes in supply or market conditions or in the base period or other government regulations." The parties also agreed that Oasis would sell to RFI, at Oasis' net cost, three million gallons of gasoline per month from a combination of Marathon and Cities sources. Oasis' obligation to supply this volume to RFI was conditioned upon RFI's assumption of all supply obligations to all RFI wholesale customers arising out of the allocation regulations.

As previously discussed in this decision, effective March 1, 1979, RFI became the base period supplier to the wholesale purchasers which had purchased or obtained product from RFI during the updated base period. As a supplier, RFI was required to calculate the volumes to be offered to its wholesale customers in accordance with § 211.10 of the allocation regulations. Sections 211.9(2)(i) of the DOE regulations provided that the supplier/wholesale purchaser-reseller relationships defined by specific dates or base periods or otherwise may not be terminated without the express written approval of the DOE. The Settlement Agreement, by its very terms provided for the alteration of the supplier/wholesale purchaser-reseller relationships that had been established by the DOE regulations. Since the DOR did not approve the Settlement Agreement, the agreement could not have altered either the existence of RFI's supply obligation to its wholesale customers or the volumes which RFI was required to offer its customers. For the same reasons, the agreement could not have terminated any base period supply obligations which Marathon and Cities had to RFI or transfer those obligations to Oasis. At most, the Settlement Agreement might be considered a substitute supplier arrangement. However, as previously discussed in this decision, such an arrangement could not permanently alter the rights and obligations of the parties as dictated by the DOE allocation regulations. Therefore, it is clear that the Settlement Agreement neither affected RFI's regulatory right to receive gasoline from Marathon and Cities after March 1, 1979 nor the firm's regulatory obligation to supply the wholesale customers after the same date.

D. DOE's Refusal to Approve the Three Party Agreement

TECA, in reviewing the decision issued by the Texas district court in connection with the controversy presently before OHA, expressed the desire OHA evaluate the DOE's exercise of discretion in not approving the Three Party Agreement. *See Oasis Petroleum Corporation v. DOE*, 718 F.2d 1558, 1565, (1983). After reviewing the factual circumstances surrounding this matter, we find that the DOE was completely justified in not approving an agreement which 1) was submitted in the incorrect format; 2) contained incorrect data; 3) projected the false impression that more outlets had been sold to Oasis than actually had been and 4) was contested by one of the parties to the agreement.

Cities first submitted the Three Party Agreement to DOE for approval on November 8, 1978. In the cover letter that accompanied the Three Party Agreement, Cities set forth data for the 84 retail outlets in an aggregated format, rather than a station-by-station format as required by DOE. It was not until March 1, 1979 that Cities provided any FEO-17 forms or any station-by-station data to DOE. By that time, however, the change in base periods had occurred and the 1972 base period volumes used in the Three Party Agreement were no longer relevant to the changed regulatory circumstances. Moreover, the station-by-station data which Cities finally submitted to each DOE region on March 1, 1979 indicated that the 1972 base period volumes which it had been obligated to supply to RFI and which it wished to transfer to Oasis were associated not only with 84 stations but rather with 117 stations.[53] Moreover, Cities submitted FEO-17 forms together with station-by-station data to DOE Region VI requesting that Cities be assigned as Oasis' supplier for certain RFI stations located in Region VI. The record is clear, however, that none of the retail outlets sold to Oasis were located in Region VI.

Throughout this proceeding, Oasis has asserted that the DOE had no reason to disapprove the Three Party Agreement. Oasis' July 16, 1984 Brief at 31. Oasis has contended further that the DOE had adopted a presumption in favor of approving three party agreements at the time Cities submitted its Three Party Agreement to the DOE. Oasis therefore argues tha the agency abused its discretion in not approving the Three Party Agreement. We find that Oasis' arguments are devoid of merit.

As a threshold matter, we find that the problems inherit in the documentation submitted to the DOE provided the agency with sufficient cause of withhold its approval of the Three Party Agreement. First, Cities failed to provide essential information to the DOE when it first submitted the Three Party Agreement to the agency for approval, viz., station-by-station allocation entitlements data for each of the 84 stations. Second, when Cities finally complied with the DOE procedures on March 1, 1979, it submitted incorrect information on its FEO–17 forms. In particular, the forms contained base period allocation information for the 1972 base period instead of the updated base period and incorrectly implied that 117 retail gasoline outlets had been sold to Oasis instead of 84 outlets. Second, we find that the concerns voiced by RFI regarding the propriety of Cities' attempt to terminate all its supply obligations to RFI further justified the DOE's refusal to approve a procedurally and substantively defective agreement.

Oasis bases its argument that the DOE abused its discretion in not approving the Three Party Agreement on the contention that DOE routinely approved such agreements. Specifically, Oasis argues that the DOE had adopted a presumption in favor of approving such agreements.

On this matter, we will defer to TECA. In *Oasis Petroleum Corp.*, v. *DOE*, 718 F.2d 1588, 1565 (1983) TECA ruled that:

> A presumption is not a rule. Congress has entrusted the DOE with the task of approving or disapproving these agreements. Surely, this matter lies within the special area of the agency's expertise and discretion.

While the DOE may have routinely approved agreements such as the Three Party Agreement, it did so only after reviewing the information submitted in conjunction with such agreements. Under the DOE regulations, [54] the DOE was charged with the task of examining three party agreements to ascertain if approval of those documents would be consistent with the objective of the EPAA. Therefore, it is incorrect to imply, as Oasis does, that the DOE blindly approved three party agreements. Quite to the contrary, had the DOE chosen to approve the Three Party Agreement in the instant case in spite of the procedural and substantive deficiencies inherent in the agreement, the agency

[53] Because each DOE regional office only received station-by-station data for the retail outlets located in its region, it was not readily apparent to any of those regional offices that the total number of stations to which the 97,679,000 gallons figure pertained was 117 instead of 84. While the regional DOE office may not have been able to detect this problem the national office had been alerted to the situtation because RFI had sent the DOE copies of the letters that it had forwarded to Cities advising that the gallonage figure reflected in the Three Party Agreement might be incorrect.

[54] The criteria for evaluating assignment applications is set 205.35(b). That criteria is co-extensive with the objectives of the EPAA.

might have abused its discretion in so doing.

In conclusion, we have determined that the evidence compels the finding that the DOE did niot abuse its discretion in refusing to approve the Three Party Agreement.[55]

E. Misrepresentation

Earlier in this proceeding, OHA decided that one of the issues raised by RFI in its Motion for Show Cause Order and supplement thereto required further consideration at an evidentiary hearing. The issue designated by OHA for further scrutiny at the hearing concerned whether Oasis made misrepresentations before the DOE regarding the manner in which the firm disposed of the motor gasoline that it acquired pursuant to the Three Party Agreement.

The allegations of misrepresentation raised by RFI in its Motion for Show Cause Order are premised entirely on its contention that Oasis diverted gasoline destined for its 84 retail outlets and RFI's wholesale customers to Apex. According to RFI, Oasis repeatedly misled the DOE by representing that it would be unable to adequately supply gasoline to its 84 retail outlets if it were required to furnish gasoline to RFI's wholesale customers. RFI's Motion for Show Cause Order dated March 27, 1979 at 20. To support this allegation, RFI refers to several assertions made by Oasis in connection with the Application for Temporary Stay which it filed with OHA on March 26, 1979. [56] In this connection, RFI contends that Oasis never informed the DOE that it was selling gasoline to Apex on the spot market when it requested relief from the updated base period regulations. In this context, Oasis purportedly represented to OHA that denial of its Application for Temporary Stay would result in serious supply disruptions rendering it impossible for Oasis to fulfill its commitments to the 84 stations. In fact, according to RFI, Oasis was intentionally shutting down these stations in order to free more gasoline for spot market sales to Apex.

Prior to the evidentiary hearing, the record in this proceeding contained sufficient circumstantial evidence to establish a pattern of motor gasoline diversion by Oasis to Apex. For example, the record reflected that Apex loaned Oasis $1.7 million to purchase the 84 retail outlets from RFI. *See* Deposition of Finn Moller taken in connection with *Lucky Stores, Inc., d/b/a "Kash n' Karry"* and *"Kwik Pep"* v. *Oasis Petroleum Corporation* on May 18, 1983 at 74, 75, 80. According to the deposition testimony of Tariq Kadri, the $1.7 million was a prepayment by Apex to Oasis on account for gasoline to be delivered later. *See* Deposition of Tariq Kadri taken in connection with *Lucky Stores, Inc., d/b/a "Kash n' Karry"* and *"Kwik Pep"* v. *Oasis Petroleum Corporation* on May 18, 1983 at 181. The record further indicated that Oasis did indeed sell a considerable volume of motor gasoline to Apex even though Apex did not have an allocation entitlement to that gasoline. *See* TR–1986–89; 1944–45; 1997–2000; 2011; 2013; 2015–17.[57] According to the record, Oasis began selling gasoline to Apex in November 1978 via pipeline from the Lake Charles, Louisiana terminal. *See* Lucky's May 7, 1984 Brief at Appendix C, Volume I, Exhibit 6. Then, on December 18, 1978, Apex executed Purchase Order No. 2937 in which it agreed to purchase from Oasis 100,000 barrels of motor gasoline per month for a one year time period commencing on February 1, 1979. *Id.* at Exhibit 8. The price stated in the purchase order was ".005 per gallon less than the Platt's Oilgram Gulf Coast Waterborne Posting on the day of lifting, but never to be less than the Cities Service Co.'s rack posted price less one percent discount." Moreover, the record demonstrated that at least some of the gasoline Oasis sold to Apex was supplied by Cities. *See* Id. at Exhibit 6.[58] In addition, deposition testimony in the record suggested that Oasis may have kept a second set of books to conceal profits obtained from the firm's spot sales of gasoline to Apex. *See* Deposition of John C. Smith taken in connection with *Lucky Stores, Inc., d/b/a "Kash N' Karry"* and *"Kwik Pep"* v. *Oasis Petroleum Corporation*, No. 81–383–Civ.–T–H. (M.D. Fla.) at 89; Deposition of Brian O'Rourke taken in connection with *Champlin Petroleum Company* v. *Frank Kell Cahoon*, No. E–29,219 (Dist. Ct. Midland County, TX) at DP–2770. Other evidence in the record suggested that Oasis recorded its "actual margins" in sales to Apex on a paper that looked like a ledger sheet. According to RFI and Lucky, those "actual margins" allegedly differed from the margins calculated on the basis of the prices set forth in the Apex invoices. *See* Lucky's May 7, 1984 Brief at Appendix C, Volume II, Exhibit 15.[59] While much of the information described above was introduced into the record by Lucky in May 1984 and augmented in October 1984, Oasis chose not to rebut any of this information or the charges lodged by RFI in its March 1984 motion for Show Cause Order until OHA issued an interlocutory order in February 1985. *See Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE 82,549 (1985). In that February 1985 decision, OHA stated that from the record before it, the office was inclined to believe RFI's allegations of misrepresentation absent any countervailing evidence from Oasis. *Id* at 85,267. OHA then opined that because the accusation of misrepresentation is a serious allegation, it would extend Oasis the opportunity to explain its position at an evidentiary hearing, if it so desired.[60] Oasis chose to seize that opportunity.

At the evidentiary hearing, Oasis presented the testimony of Parker Anderson to rebut RFI's allegation that Oasis intentionally shut down most of the 84 stations that it purchased from RFI in order to sell the gasoline allocated to those stations to Apex on the spot market. At all times relevant to this proceeding, Mr. Anderson was Oasis' vice president of construction and development. According to Mr. Anderson, approximately 70 of the 84 retail outlets were remodeled in some

[55] We view the question of whether the DOE abused its discretion in not approving the Substitute Supplier Agreement as a nonissue because the agreement was never submitted to the DOE for approval.

[56] In its Application for Temporary Stay, Oasis requested that (i) the application of the updated allocation regulations be stayed pending a resolution of its dispute with RFI; (ii) the regional offices be enjoined from issuing any temporary assignment orders regarding the volumes of gasoline involved in the Oasis/RFI controversy; and (iii) if necessary, Oasis be ordered to supply RFI's wholesale customers pending resolution of the dispute. OHA dismissed Oasis' Application without prejudice on July 2, 1980. *See Oasis Petroleum Corporation et al*., 6 DOE 82, 523 (1980).

[57] The referenced transcript pages contain invoices evidencing pipeline sales of motor gasoline from Oasis to Apex for the period November 1978 to October 1979. These transcripts are subject to a Protective Order issued by the U.S. District Court for the Northern District of Texas on November 20, 1979.

[58] Not all of the invoices contained in Exhibit 6 to Lucky's May 7, 1984 Brief indicate that Apex purchased Cities gasoline from Oasis. We believe that only those invoices which reflect an AXK Batch designation were ultimately destined for Apex. Mr. Robert Mills testified at the evidentiary hearing that the designation "AX" was the nomenclature used by the Colonial Pipeline to indicate Apex as the recipient of certain pipeline shipments. August 21 Tr. at 578–79.

[59] While any one of the actions or information described above by itself may not have been sufficient to establish diversion on Oasis' part, the combination of all those actions and other relevant information clearly establishes a pattern of diversion by Oasis to Apex.

[60] OHA was under no procedural compulsion to afford Oasis the opportunity to rebut the misrepresentation allegations at an evidentiary hearing. In fact, OHA generally does not permit firms to present testimony at an evidentiary hearing without first demonstrating that the presentation of documentary evidence would be insufficient to establish disputed facts. *See, e.g.*, Rodgers Hydrocarbon Corp., 14 DOE 84,011 (1986); Mapco International, Inc. 13 DOE 84,003 (1985).

manner after Oasis acquired them. August 19 Tr. at 14. In addition, Mr. Anderson testified that of the 84 stations, 10 were closed permanently after Oasis acquired them. *Id.* at 24. 12. Of the remaining 74 stations, Mr. Anderson testified that 60% of them were closed for remodeling immediately after their acquisition. *Id* at 27. Mr. Anderson claimed that those stations which were completely remodeled were closed for a period between 100 and 150 days. Under cross-examination, however, Mr. Anderson was unable to refute documentary evidence which indicated that 24 retail outlets were in fact closed for 11 months or more during the period March 1979 through February 1980 or that 11 outlets were closed for six month increments during the same period. *Id.* at 56.[61] Throughout Mr. Anderson's testimony, we noted that Mr. Anderson was able to outline in considerable detail information concerning some of the problems that Oasis encountered in the renovation of certain stations yet when questions directly impacting the diversion issue were posed to him, he appeared to have convenient memory lapses. In this connection, Mr. Anderson offered explanations as to why 10 of the 84 retail outlets never reopened after Oasis closed them. However, he had no knowledge of where the gasoline allocations attributable to the closed stations went. In addition, some of Mr. Anderson's testimony appeared to be self-serving. For example, while he testified that he did not know what happened to the gasoline allocated to the retail outlets when those outlets were closed, he readily opined that some of the gasoline was undoubtedly exchanged. *Id* at 28. On the whole, Parker Anderson's testimony was more enlightening for what it *didn't* say rather than for what it did say. Furthermore, we did not find Mr. Anderson's testimony to be probative on the issue of whether Oasis intentionally closed down its retail outlets in order to sell the gasoline attributable to those outlets to Apex on the spot market. Accordingly, we will not accord much weight to his testimony.

Oasis presented two witnesses to testify with regard to the allegations that Oasis maintained a double set of books and figures reflecting "actual margins" versus "invoice margins". The first of the two witnesses who testified concerning this matter was Tariq Kadri, Oasis' former General Counsel. Mr. Kadri explained on direct examination that Oasis and Apex orally amended the price term of their December 18, 1978 contract in order to avoid violating DOE allocation regulations. *See* August 20 Tr. at 273. Mr. Kadri's best recollection of the contract amendment was that Oasis had agreed to limit its margin on sales of gasoline to Apex to 8 to 8 per gallon above Cities' invoice to Oasis. Mr. Kadri explained that Oasis decided to "track" the difference in price between that which it was required to charge pursuant to the DOE regulations and that which it would have been able to charge under the original December 1978 contract absent DOE regulations. *Id.* at 361. According to Mr. Kadri, the information which Oasis obtained through its "tracking system" regarding price differentials were used by Oasis as a negotiation tool with Apex. *Id.* At the hearing, Mr. Kadri revealed that:

> We had a lot of different ongoing business with Apex and we needed favors from them from time to time in connection with our fuel oil sales and things like that and in connection with transportation of fuel oil and other purchases of other products. It [the spot prices] was [sic] tracked from time to time so that when Finn Moller went to negotiate with Tony Novelly he could point out to him that Oasis was, because of the regulations, not taking a bath but losing an opportunity that they could have had if the regulations weren't enforced. (*Id.*)

Counsel for RFI questioned Mr. Kadri about notations set forth on a letter dated February 13, 1979 from R.G. Gramlich of Cities to Jeff Morgan of Oasis.[62] The letter indicated that 2,100,126 net gallons of regular gasoline had been shipped to Apex on February 8, 1979 at a price of .442 less a discount of $9,282.56. The handwritten notations on the bottom of the letter state the following:

Oasis Cost	Apex (8)	Apex (actual)
.....	2,100,126	2,100,126
.....	.5175	.595
.....	1,086,815.20	1,249,057

As an aside, we note that the figure .595 listed under Apex (Actual) is .005 below Platt's Oilgram Gulf Coast Waterborne's lowest Posting for February 5, 1979 and February 15, 1979. The figure listed under Apex (8) is .0755 above Cities' invoice price of .442.

Mr. Kadri testified that the term "actual" noted on the bottom of the February 8 letter did not indicate that Oasis actually received that amount of money in the given transaction. *Id.* at 365. He reiterated that "Apex (Actual)" probably reflected the amount of money payable by Apex to Oasis under the terms of the original contract, as unamended. *Id.* Mr. Kadri stated that Oasis routinely compiled such calculations on a schedule that resembled a ledger. *Id.* at 366.[63] Mr. Kadri speculated that a low level employee at Oasis may have seen Oasis' tracking schedules and misinterpreted them as a "second set of books" *Id.* at 367.

There are several reasons why we are unable to accord much weight to Mr. Kadri's testimony on this matter. First, with regard to Mr. Kadri's contention that Oasis orally amended the price term of its December 18, 1978 contract with Apex, we observe that this contention conflicts with a stipulation which Oasis entered into in connection with the Florida litigation commenced by Lucky. In the Pre-Trial Stipulation submitted on November 2, 1983 to the United States District Court for the Middle District of Florida in connection with the pending case, *Lucky Stores, Inc.* v. *Oasis Petroleum Corporation*, No. 81-383-Civ-T-H (M.D. Fla. filed April 27, 1981), Oasis stipulated that "Apex Purchase Order No. 2937 was in effect for a one year period from February 1, 1979 through January 3, 1980. All sales by Oasis to Apex during that period were made pursuant to Apex Purchase Order No. 2937." *See* Lucky's May 7, 1984 Brief at Appendix J, Volume I. There is no stipulation that Apex Purchase Order No. 2937 was orally amended to prevent Oasis from violating the DOE regulations. We further observe that Mr. Kadri offered no testimony at the evidentiary hearing to the effect that the Pre-Trial Stipulation did not accurately reflect Oasis' arrangement with Apex. Furthermore, we observe that Mr. Kadri, unlike Mr. Mills, did not personally "track" the so-called price differentials for Mr. Moller. Therefore, his opinion concerning the notations on the letter from Mr. Gramlich at Cities to Jeff Morgan at Oasis appears to be purely conjectural. Finally, Mr. Kadri's

[61] The documentary evidence consisted of a multi-page summary showing the base period allocations for each of the 84 retail outlets and the volumes of motor gasoline actually supplied to each outlet during the relevant period. The summary was identified as RFI Exhibit No. 3 at the August 19, 1985 hearing and was previously introduced into the record by Lucky in its October 15, 1984 Brief in Support of Petition for Special Redress at Appendix M, Volume I, Exhibit 2. the gasoline

[62] The letter was identified at the hearing as RFI Exhibit No. 20. The letter was previously introduced into the record by Lucky in conjunction with its Brief in Support of its Special Redress Petition and is located in Appendix C, Volume II, Exhibit 15 to that brief.

[63] An example of Oasis' tracking schedule is located in the record at Appendix C, Volume II, Exhibit 14 of Lucky's May 7, 1984 Brief.

speculation that a low level employee at Oasis may have seen Oasis' tracking schedules and misinterpreted them as a "second set of books" does not explain why Brian O'Rourke, former manager of sales accounting and inventory control at Oasis, could have mistaken the tracking system for a second set of books. Mr. O'Rourke had previously testified that Oasis maintained two sets of books to disguise unusually high margins on wholesale gasoline transactions. DP–2771. Mr. O'Rourke also stated under oath that the second set of books were deliberately concealed from Oasis' independent auditors. *Id.*

The second witness who testified at the hearing concerning Oasis' alleged maintenance of a second set of books was Robert Mills. Mr. Mills was involved in the wholesale gasoline marketing division of Oasis during the time periods relevant to this proceeding. At the evidentiary hearing, Mr. Mills testified that he tracked various cost information for Oasis' President, Finn Moller upon the latter's request. According to Mr. Mills, the information which he charted for Mr. Moller included Oasis' cost of a given batch of Cities' gasoline, the firm's charge to Apex for the same product and the Gulf Coast spot pipeline posting on the date of movement of the gasoline. August 22, Tr. at 714.[64] Under cross-examination, Mr. Mills admitted that he was the scrivener of the notations contained on the February 8, 1979 letter referred to above. While Mr. Mills presumably was the best person to provide us with an explanation of the meaning of the word "actual" in the context in which it was used, he testified that "he was unsure what the word meant in its context." *Id* at 723.

We are deeply troubled by Mr. Mills' inability to recollect the circumstances surrounding his writing of a notation which tends to support the theory that Oasis maintained a second set of books to disguise alleged ill-gained profits. Since Mr. Mills' recollection of his participation in Oasis' "tracking" activity is so vague, we cannot accord much weight to his testimony. Based on the record before us, including the testimonial evidence of Messrs. Kadri and Mills, we find that Oasis has failed to present sufficient evidence to rebut the allegations that the firm maintained a second set of books for purposes of disguising ill-gained profits.

[64] Appendix C, Volume II, Exhibit 17 of Lucky's Petition for Special Redress contains an example of the tracking information that Mr. Mills provided to Mr. Moller.

Based on the foregoing considerations, we have determined that Oasis has not adequately rebutted RFI's allegations that Oasis improperly diverted motor gasoline to Apex. We find, therefore, that the record contains a preponderance of evidence to support RFI's allegation that Oasis diverted motor gasoline to Apex in contravention of the spirit of the DOE allocation regulations. Oasis' regulatory violation stems from the fact that its sales to the non-allocated purchaser, Apex, created a disruption in the supply of motor gasoline. By its actions, Oasis took advantage of its upstream supplier situation to deprive the 84 stations and other downstream customers of their regulatory entitlement to motor gasoline. Since RFI's allegations of misrepresentation against Oasis were contingent upon a finding that Oasis diverted gasoline to Apex in circumvention of the DOE regulations, we will now address the issue of misrepresentation.

As discussed in one of the numerous supplemental orders issued in connection with this proceeding, the tort of misrepresentation consists of a representation that 1) is false; 2) is material; 3) is intentionally or negligently made; 4) is justifiably relied on; and 5) results in damages. *Oasis Petroleum Corporation Fuels, Inc.*, 12 DOE 82,549 (1985), *citing*, W. Prosser, The Law of Torts 106–108, 110 (5th ed. 1984); 37 C.J.S. *Fraud* 1 *et seq.* (1977); 37 Am. Jur. *Fraud & Deceit*, 1–20 (1968). With regard to Oasis' representations to the DOE that the firm would not be able adequately to supply gasoline to its 84 retail outlets if it were required to furnish gasoline to RFI's wholesale customers, we find that the firm's representations were false, material and intentionally or negligently made. However, we cannot find that the DOE justifiably relied on those representations since the relief sought by Oasis each time it made those representations to the DOE was denied. Accordingly, we will dismiss the one remaining issue presented by RFI in its Motion for Show Cause Order and Supplement thereto.

F. The Disposition of Certain Portions of Case No. CA3–80–1353–F

As previously stated, the Texas district court consolidated Case No. CA3–80–1353–F with Case No. CA3–79–0778–F when it remanded the latter action to OHA. Case No. CA3–80–1353–F concerns a counterclaim, cross-claim and third party action filed by RFI in the district court. Before we discuss the claims advanced by RFI in Case No. CA3–80–1353–F we will briefly examine the origin of that proceeding.

On July 11, 1980, RFI filed with the Texas district court a Motion for Leave to File three pleadings in connection with the pending case, *Oasis Petroleum Corporation* v. *DOE et al.* Case No. CA3–79–0778–F. Those three pleadings consisted of an Original Counterclaim against Oasis, a Cross Claim against Marathon and Cities, and a Motion to Join Apex Oil Company, J.L. Goodhue and Richard Heinzelmann to Case No. CA3–79–0778–F. In each of its three pleadings, RFI alleged that the above-named firms and individuals had violated the DOE allocation regulations and the federal antitrust laws. On September 17, 1980, the court granted RFI's Motion for Leave to File the three pleadings but decided that the matter should be stayed and deferred pending trial on Oasis' complaint in Case No. CA3–79–0778–F and upon further order of the court.

On February 3, 1982 and June 2, 1982, the court entered Agreed Orders of Dismissal of all claims against the Defendants, Marathon, Cities, Goodhue and Heinzelmann. Subsequently, RFI filed a Motion to Amend Original Counterclaim, Cross Claim and Joinder of Parties and Motion for Dissolution of Stay and Re-Consolidation of Actions. RFI's amendments sought to dismiss the allegations of violations of the federal antitrust laws and to dismiss Champlin as a defendant. Later, RFI filed a Motion to Limit the Dissolution of Stay and Re-Consolidation of Actions to allegations of non-willful violations of DOE regulations. On February 8, 1984, the Court granted RFI's Motion to Amend Original Counterclaim, Cross Claim and Joinder of Additional Parties and dissolved its September 17, 1980 stay only with respect to RFI's allegations of non-willful violations of DOE regulations by Oasis. On February 9, 1984 the court remanded to OHA Case No. CA3–79–0778–F and consolidated with it those portions of Case No. CA3–80–1353–F which pertain to allegations of non-willful violations of the DOE allocation regulations by Oasis.

The gravamen of the allegations contained in RFI's counterclaim is that Oasis violated the DOE allocation regualations by (1) depriving RFI of gasoline supplies and (2) by diverting large supplies of gasoline from the 84 retail outlets and RFI's wholesale customers for sale in the spot market during time periods of gasoline shortage. After reviewing RFI's counterclaim against Oasis, we have determined that only portions of paragraphs 7, 13, 16 and

20 of that pleading [65] potentially involve allegations of non-willful violations of the DOE allocation regulations by Oasis.[66]

RFI charges in paragraphs 7, and 20 of its counterclaim that Oasis and others diverted gasoline from the 84 retail outlets for sale in the spot market. In paragraph 7, RFI explains that Oasis and Apex entered into an agreement whereby Apex agreed to advance funds to Oasis for the purchase of the 84 retail outlets. RFI alleges in that same paragraph that Oasis, in exchange for a loan from Apex, agreed to divert motor gasoline to Apex at a reduced cost per gallon.

We have already enumerated in Section IV. E. above, the evidence which establishes a pattern of motor gasoline diversion by Oasis to Apex. In that same section, we found that Oasis failed to produce sufficient evidence to rebut the diversion allegations. Accordingly, we determined that there is a preponderance of evidence to support a finding that Oasis improperly diverted motor gasoline to Apex in contravention of the intent of the DOE allocation regulations. Based on our findings set forth in Section IV. E. we recommend that the allegations set forth in paragraph 7 of RFI's counterclaim be sustained.

We regard to the allegations contained in paragraphs 16 and 20, we have determined that there is insufficient evidence in the record to support RFI's claim that Oasis approached RFI's customers in an attempt to persuade them to request supplies directly from Oasis or that Cities, Marathon and Champlin acted in concert with Oasis to divert motor gasoline during time periods of gasoline shortage. Accordingly, we cannot sustain RFI's claims as set forth in paragraphs 16 and 20 of its counterclaim.

Lastly, RFI alleges in paragraph 13 of its counterclaim that Oasis deprived RFI of gasoline supplies. According to RFI, Oasis caused this deprivation by asserting the unfounded position that it was entitled to RFI's gasoline allocations under the updated base periods. While RFI's contention regarding this matter is somewhat unclear, we assume that RFI is alleging that Oasis instituted litigation in state and federal courts to prevent RFI from obtaining control of the disputed gasoline allocations. While this decision clearly holds that RFI (1) had the regulatory right to receive gasoline from Cities and Marathon after March 1, 1979 as the "supplier" to the 84 retail outlets and (2) had the regulatory obligation to supply its wholesale customers after that date, these holdings, in and of themselves, do not warrant a finding in favor of RFI with regard to its counterclaim. There is just not sufficient evidence in the record to substantiate RFI's claim that Oasis commenced its lawsuits in the 17th Judicial District in Tarrant County, Texas and in the United States District Court for the Northern District of Texas in order to deprive RFI of gasoline supplies. Therefore, we are unable to sustain the claims set forth in paragraph 13 of RFI's counterclaim.

Based on the foregoing considerations, it is our recommendation that the district court dismiss paragraphs 13, 16 and 20 of RFI's Counterclaim, Cross-Claim and Third Party Action and sustain paragraph 7 of that same pleading.

G. Disposition of Lucky's Special Redress Petition

During the updated base period, November 1977 through October 1978, Lucky's predecessor, Tampa Wholesale owned and/or operated 34 retail outlets in west central Florida. *See* Lucky's May 7, 1984 Brief at 11. Lucky maintains that during this period RFI furnished approximately 10,045,988 gallons, or 27.44% of its motor gasoline supplies. *Id* at 12.

As stated in the procedural history section of this decision, OHA retained for disposition, only one of the issues advanced by Lucky in its January 6, 1984 Petition for Special Redress. That issue is the following:

> Whether, as base period supplier or by virtue of its actual control over the supplies of gasoline from Marathon and Cities Service, Oasis was required to supply Lucky Stores its base period entitlement (based on Lucky's purchases of gasoline from RFI during the base period) and proportionate share of available product ("surplus product") each month of the relevant period, excluding October.

We have already determined earlier in this decision that RFI and not Oasis was Lucky's base period supplier after March 1, 1979. We will now examine whether Oasis had the regulatory obligation to supply Lucky with product by virtue of its control over the supplies of motor gasoline from Marathon and Cities after March 1, 1979.

As an initial matter, we find that there was no provision in the DOE allocation regulations that would have automatically created a supplier/purchaser relationship between Oasis and Lucky during the time when Oasis purportedly controlled the supplies of gasoline from Marathon and Cities. The regulations do, however, provide a mechanism whereby a wholesale purchaser such as Lucky could obtain product when its base period supplier, was unable to supply it with that product. *See* 10 CFR 205.31, 205.39. In this case, Lucky's base period supplier, RFI, was unable to obtain product because RFI's suppliers had refused to recognize RFI as having retained the regulatory right to received motor gasoline from them after October 1978. Oasis' control of product stemmed from Marathon and Oasis' erroneous recognition of Oasis as the successor-in-interest to RFI's regulatory entitlements.

Part 205, Subpart C of the DOE regulations established the vehicle by which a firm could request an assignment of supplier on a temporary or permanent basis. Clearly, in the situation where RFI was unable to supply sufficient amounts of allocated product to Lucky, Lucky's recourse was to petition the DOE for assignment of a different supplier. Lucky did avail itself of this regulatory safeguard and obtained three separate temporary assignment orders from the DOE. The

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[65] The relevant portions of paragraphs 7, 13, 16 and 20 of RFI's counterclaim are the following:

Paragraph 7: Prior to the purchase of the stations, RFI alleges upon information and belief that Oasis and Apex had entered into an agreement whereby Apex would advance the money to Oasis to make the purchase of the 84 stations in return for and agreement by Oasis to divert gasoline from the 84 stations to Apex at a reduced cost per gallon.

Paragraph 13: Oasis began to assert the unfounded position that it was entitled to both RFI's gasoline allocations under the superseded base period and the new 1978 base period. Thus, by this concert of action, the Defendant[s] succeeded in depriving RFI of the gasoline supplies upon which it relies for its survival.

Paragraph 16. Following the execution of the April 12, 1979 Settlement Agreement, Oasis began to approach RFI customers in an attempt to persuade them to request Oasis to supply them directly with gasoline in an attempt to undermine RFI's relationship with its wholesale customers.

Paragraph 20. Upon information and belief, RFI alleges that Oasis, Cities, Marathon and Champlin participated in further meetings during this time period wherein either express or tacit agreement was reached to permit Oasis to divert gasoline from both these original 84 retail gasoline stations and RFI's wholesale gasoline allocations for sale in the spot market during time periods of gasoline shortage. Through such diversions of gasoline and sales in the spot market, Oasis, Apex and others have reaped unconscionable profits to the detriment of RFI, RFI's wholesale customers, the retail gasoline station operators and the gasoline consuming public.

[66] We note that the Amended Counterclaim on its face does not distinguish between Oasis' alleged willful and non-willful violations. In addition, none of the parties have identified for OHA those portions of RFI's pleading which pertain to the non-willful violations. In fact, during the two years of briefing and hearings that preceded this decision, none of the parties have alluded to Case No. CA3-80-1353-F. Moreover, to, the extent that the parties have filed any briefs in the district court concerning RFI's Amended Counterclaim, none were submitted to OHA for its review.

first assignment order was issued on March 23, 1979 and directed Marathon to supply Lucky with its March 1979 and April 1979 entitlements. *See* Lucky's May 7, 1984 Brief at Appendix E, Volume II, Exhibit 26. The second assignment order was issued on May 23, 1979 and provided that Marathon supply Lucky with motor gasoline for the months of May and June 1979.[67] The third and final assignment order was issued on July 17, 1979 and directed Marathon to supply Lucky with product for the months of July, August and September 1979. *See* Lucky's May 7, 1984 Brief at Appendix E, Volume III, Exhibit 72. On August 3, 1979, the Texas district court enjoined the DOE, Lucky and others from interfering with Oasis' receipt of motor gasoline supplies. At the same time, the court ordered Oasis to supply Lucky and other designated wholesale purchaser-resellers with motor gasoline and to escrow the profits derived from those sales.

From the date of the injunction issued by the Texas court until its dissolution, Oasis had an affirmative duty to supply Lucky with its base period entitlement of motor gasoline and proportionate share of available product. That duty does not arise from the DOE allocation regulations but rather from the court order. For the period March 1979 through August 3, 1979, we find that Oasis was under no regulatory obligation to supply Lucky with motor gasoline as a consequence of its control over the product. As explained above, Subpart C of the regulations provided Lucky with the vehicle by which it could obtain those supplies that RFI was unable to furnish the firm. In assessing Lucky's request for assignment of supplier, the DOE could have ordered Oasis to supply Lucky with product during the period March 1979 through July 1979. It chose instead to order one of RFI's suppliers to assume that obligation.

Despite the above findings, we recognize that Oasis' conduct may have injured Lucky and other similarly situated wholesale customers. It is also possible that 10 CFR Subpart C may not have mitigated the injury caused by Oasis' conduct. Therefore, using equitable principles as a guide, we will permit Lucky and other wholesale purchasers of RFI to demonstrate injury resulting from Oasis' diversion activities and entitlement to a portion of the escrowed funds and any other monies that may be disgorged by Oasis.

[67] In addition, from late April to early May 1979, Lucky purchased approximately 866,867 gallons of gasoline from RFI. That gasoline was lifted at the Marathon Tampa terminal and was provided to RFI by Oasis pursuant to the April 12 Settlement Agreement. See Lucky's May 7, 1984 Brief at 18.

V. Summation

In summation, OHA has made the following determinations with respect to the controversies presented in these proceedings. The first group of the factual findings that we made pertained to the dispute between RFI and Oasis as to the precise allocation entitlements that RFI had transferred to Oasis in conjunction with the sale of the 84 retail gasoline stations. On this matter, OHA concluded that RFI, Oasis and Cities each thought it was bargaining for something different when it executed the October 1978 Agreements. RFI thought it was conveying 84 retail outlets and whatever allocation entitlements were associated with those stations. In addition, RFI thought that Cities would remain the base period supplier for RFI's remaining retail outlets. Oasis, on its part, thought that it was purchasing 84 retail outlets and supply contracts for no less than 97,679,000 gallons of gasoline. Oasis further appears to have believed that Cities' supply obligation of 97,679,000 gallons of gasoline ran directly to the 84 stations. In addition, Oasis apparently believed that Cities had terminated its supplier/purchaser relationship with RFI. Cities also thought it had effectuated a termination of its supplier/purchaser relationship with RFI. However, Cities believed that it had an undifferentiated supply obligation to RFI and that the 97,679,000 gallons of gasoline set forth in the Three Party Agreement was not tied to any of the 84 gasoline outlets individually.

As a regulatory matter, OHA found that for the period prior to March 1, 1979, Oasis automatically succeeded to the allocation of gasoline attributable to each of the 84 outlets which it purchased from RFI. We further found that to the extent Cities, Marathon, RFI or any other firm had supply obligations to the 84 outlets in 1972 that those firms remained the supplier(s) for those outlets after Oasis acquired them. Next, we found that it was impossible for the October 1978 Agreements to have transferred entitlements automatically for any RFI retail outlets other than the 84 stations. Accordingly, we found that to the extent that Cities and Marathon had base period supply obligations to stations in addition to the 84 sold to Oasis, those two firms remained the suppliers to those stations after the execution of the October 1978 Agreements.

We next examined the Three Party Agreement executed by RFI, Oasis and Cities and the Substitute Supplier Agreement executed by RFI and Marathon. We determined that neither of those agreements effectively terminated any base period supplier/purchaser relationship between Cities and RFI, on the one hand, and Marathon and RFI on the other hand, or established a new base period relationship between Oasis and Cities and Oasis and Marathon. We also determined that the DOE did not abuse its discretion in refusing to approve the Three Party Agreement.

Another factual finding that we made related to RFI's wholesale business. As a contractual matter, we observed that the October 1978 Agreements could not have conveyed RFI's wholesale business to Oasis because the agreements did not even allude to that business. In addition, we concluded that RFI did not intend to transfer its wholesale business to Oasis. Furthermore, we found that as a regulatory matter RFI could not have transferred the base period supply obligations associated with its wholesale customers to Oasis because no such obligations existed in October 1978.

Before considering the regulatory impact of the updated base period on the contractual agreements between RFI and Oasis, OHA next discussed DOE's authority to establish an updated base period to determine base period volumes and supplier/purchaser relationships. We then held that the updating of the base period pursuant to Activation Order No. 1 did not affect the fact that the allocation entitlements associated with the 84 retail outlets were transferred to Oasis in October 1978. However, we found that Activation Order No. 1 did alter the amount of allocated volumes attributable to each outlet as of March 1, 1979. As of that date, each of the 84 outlets was entitled to purchase an amount of motor gasoline based on the amount it purchased during the new base period rather than the amount it purchased during the 1972 base period. In addition, we found that those suppliers which had actually supplied the outlets during the updated base period became obligated to supply those outlets effective March 1, 1979. Specifically, we determined that as of March 1, 1979, Marathon and Cities were RFI's "suppliers" and that RFI was the "supplier" to the 84 retail outlets.

We also held that effective March 1, 1979, those wholesale purchasers, including Lucky, which had purchased motor gasoline from RFI during the updated base period acquired a regulatory right to obtain gasoline based

on their purchase volumes during the new base period. We further determined that during the updated base period RFI and not Oasis had the regulatory right to supply motor gasoline to all of RFI's historical wholesale customers, including Lucky. In making this determination, we found that RFI had not abandoned its wholesale business at the time it executed the October 1978 Agreements or at any time thereafter.

OHA further concluded that the April 12, 1979 Settlement Agreement entered into by RFI and Oasis did not affect RFI's regulatory right to receive motor gasoline from Marathon and Cities after March 1, 1979, or RFI's regulatory obligation to supply wholesale customers after that date.

With respect to the Motion for Show Cause Order and Supplement filed by RFI on March 27, 1984 and May 14, 1984 respectively, OHA decided that the motion and supplement must be dismissed because one of the elements of the tort of misrepresentation was lacking. Even though OHA dismissed RFI's pleadings, it did find, as a threshold matter, that there is a preponderance of evidence in the record to support RFI's allegations that Oasis engaged in a practice to divert motor gasoline from purchasers with allocation entitlements to Apex.

OHA also evaluated those allegations of non-willful violations of the DOE regulations contained in the pending Counterclaim, Cross-Claim and Third Party Action styled, *Research Fuels, Inc.* v. *Oasis Petroleum Corporation,* No. CA3–80–1353–F (N.D. Tex. filed July 11, 1980). It is OHA's recommendation that the district court dismiss paragraphs 13, 16 and 20 of the above-referenced pleading and sustain paragraph 7 of that same document.

Finally, with respect to the Petition for Special Redress filed by Lucky in this proceeding, we found that Oasis was under no regulatory obligation to supply Lucky with its entitlement of motor gasoline from RFI and a proportionate share of its available product during the period, March 1979 through August 3, 1979. OHA did determine, however, that Oasis was obligated to supply Lucky with product after August 3, 1979 pursuant to the terms of an order issued on August 3, 1979 by the United States District Court for the Northern District of Texas. OHA further concluded that Lucky and similarly situated wholesale purchasers of RFI probably incurred injury as a result of Oasis' diversion activities and therefore should be permitted to demonstrate their injuries and prove entitlement to a portion of the escrow money and any other monies that may be disgorged by Oasis.

VI. Remedy

Now that we have resolved the underlying controversies in this case, we are prepared to commence the remedial phase of this proceeding. In previous cases, OHA has stated that the DOE has considerable latitude in fashioning remedies to compensate firms injured by [DOE] violation[s] and to disgorge benefits from firms which have violated the regulations. *See Koch Industries, Inc.,* 8 DOE 83,024 (1981), *citing. Koch Industries, Inc.,* 2 FEA 80,580 (1975).

A. Distribution of Escrow Funds

In the instant case, we have determined that the most appropriate manner in which to distribute the monies currently held in escrow [68] by the registry of the district court is to utilize a process similar to that employed in refund proceedings convened pursuant to 10 C.F.R. Part 205, Subpart V. The Subpart V refund process is used primarily by the DOE to identify and compensate persons for injuries incurred as a result of actual or alleged violations of the DOE regulatory program. *See* 44 Fed. Reg. 8,562 (1979). ("The new subpart provides a general framework pursuant to which the DOE Office of Hearings and Appeals may order refunds to be made to *injured* persons from funds remitted by regulated firms. . . ") (emphasis added).

Account name	Amount	Date of balance
Oasis Petroleum Corp v. DOE.	$321,370.35	May 23, 1986.
Baldridge	192,810.28	Do.
Kash N' Karry	464,910.12	Do.
Sigmor	207,776.19	Do.

From the record before us, we can readily identify those firms that were potentially injured by Oasis' violations of the DOE allocation regulations. Those firms are RFI, Lucky and the other 21 wholesale customers[69] who were identified by the Texas court as firms that Oasis was required to supply in accordance with the court order entered on August 3, 1979. The chief focus of the remedial phase of this proceeding, then, will be on whether the firms identified as potential claimants to portions of the escrow monies and any other monies that Oasis may be required to disgorge can demonstrate that they were economically injured as a result of Oasis' unlawful regulatory practices. In order to prove injury, a claimant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of the injury which was sustained by the claimant. We expect that the typical claimant will submit evidence of its base period allocation entitlement of motor gasoline during the updated base period; the volumes of gasoline, if any, supplied by Oasis as putative base period supplier to the firm; evidence indicating whether the firm, if deprived of product by Oasis, was able to obtain surplus motor gasoline at marketable prices to replace the gasoline which Oasis failed to supply and evidence indicating that the firm, if it secured higher priced motor gasoline to replace product which Oasis refused to supply was unable to pass all of the costs on to its customers. Although, we will not engage in a time-consuming legal and factual analysis leading to a precise measure of damages, we wish to emphasize that the burden of establishing eligibility for a portion of the escrow monies and any other monies rests on the claimant.

We realize that in the case of small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants could be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need to submit and analyze extensive, detailed proof of the result of the impact of Oasis' regulatory violations. Under the small claims presumption, a claimant will not be required to submit any additional evidence of injury except 1) evidence of its base period allocation entitlement during the updated base period; 2) evidence showing that Oasis did not supply it with its entire allocation entitlement and 3) evidence that it was unable to obtain that supply from other sources. The small claims presumption will apply to all claimants that are seeking a refund in the amount of $5,000 or less. This threshold amount has been deemed reasonable in previous Subpart V proceedings. *See Texas Oil & Gas Corp.,* 12 DOE ¶85,069 at 88,210

[68] As of the end of May 1986, the escrow fund totalled $1,186,866.94. We have been advised by the financial department of the Texas district court that four separate accounts have been set up in connection with Case No. CA3–79–0778–F. The four accounts and the respective amount of money in each account as of the specified dates are as follows:

[69] The 21 firms are the following: Encorp, Inc., National Convenience Stores, Reeder Distributing Company, Texas Gas & Oil, Trans-Texas Petroleum, Gleason Oil Company (formerly Winn Oil Company), Consolidated Sales Corporation, Globe Oil Company (d/b/a U-Save), Delta Petroleum, Fuel Distributors, Inc., Lamar Refining Company, Tiger Petroleum Company, Thornton Oil Company, H. S.& L., Sigmor Corporation, Southeast Oil Company, Munford, Inc., Martin Oil Company, Patriot Petroleum Company, Mitchell Oil Company and Baldridge Oil Company.

(1984); *Office of Special Counsel*, 11 DOE ¶85,226 (1984), and case cited therein.

Once OHA has concluded that an allocation claim is meritorious, we will make our determination of the refund amount taking into consideration the equitable factors present in each particular case. Among the equitable factors we will consider are whether the violation has a significant deleterious impact on the claimant and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action.

1. Claim Procedure

In order to receive a portion of the escrow monies or any other monies that Oasis may be required to disgorge, each claimant must file a claim within 30 days of the issuance of this decision. This filing deadline may be extended upon a showing of good cause. *See* 10 C.F.R. § 205.6. Each claimant will be required to submit evidence of its base period allocation entitlement during the updated base period evidence showing that Oasis did not supply it with its entire allocation entitlement and evidence that it was unable to obtain that supply from other sources. A person claiming injury of more than $5,000 shall also include specific information concerning the ecomomic impact of Oasis' actions on its business operations. A claimant must also indicate whether it has previously received a refund, from any source, with respect to Oasis' regulatory violations. Each claimant must also state whether there has been a change in ownership of the firm since August 1979. If there has been any change in ownership, the claimant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the claimant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a portion of the escrow monies or any other monies that Oasis may be required to disgorge. Finally, a claimant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the claimant should furnish a copy of any final order issued in the matter. If the action is still in progress, the claimant should briefly describe the action and its current status. The claimant must keep OHA informed of any change in status while its claim is pending.

B. Calculation of Additional Monies to Be Disgorged by Oasis

In one of the numerous interlocutory orders issued in connection with this case, OHA stated that if Oasis diverted motor gasoline to Apex from wholesale customers with base period entitlements Oasis profited by the amount of money attributable to the Apex sales while the escrow account was depleted by that same amount. *Oasis Petroleum Corporation/Research Fuels, Inc.*, 12 DOE ¶ 82,549 at 85,266 (1985). Since we have found in this decision that there is a preponderance of evidence to establish that Oasis did divert motor gasoline from customers with base period entitlements to Apex, we must now attempt to quantify the amount by which the escrow fund has been depleted. In this connection, we note that Lucky has already submitted to OHA considerable documentation on this very point. For example, Lucky has provided OHA with information concerning Oasis' sales to Apex showing total sales of Cities product to Apex during the period, March 1979 to April 1980, of 46,340,658 gallons. The firm has also furnished OHA with a comparison of Oasis' profits on sales to Apex based on two variables: the terms of the Apex Purchase Order showing an average profit of 20.9 cents/gallon, and the terms stated in Oasis' invoices to Apex, showing an average profit of 9.5 cents/gallon. *See* Lucky's May 7, 1984 Brief at Appendix C, Exhibits 19 and 24. In its submission, Lucky stated that if the DOE desires to audit the firm's summaries, Lucky will make its workpapers and source documents available upon request. At this time, we request that Lucky provide OHA and Oasis with the material which supports the information contained in Appendix C to Lucky's May 7, 1984 Brief. We further request that this material be submitted within 30 days from the issuance of this decision. We invite Oasis to submit any information that it desires to challenge the accuracy of Lucky's documentation concerning the profits which Oasis allegedly reaped as the result of its diversion activities. Oasis may submit its evidence within 15 days of its receipt of the materials that Lucky provides it. Absent any evidence by Oasis to the contrary, we will rely on Lucky's material to determine how much money Oasis will be required to disgorge. Any monies that Oasis disgorges will be distributed in accordance with the procedures set forth in section VI. A. above.

It Is Therefore Ordered That:

(1) The one remaining issue presented by Research Fuels, Inc. in its Motion for Show Cause Order and Supplement thereto, Case No. KEX–0017, which were filed on March 27, 1984 and May 14, 1984 respectively be and hereby is dismissed.

(2) The underlying controversies presented in the consolidated case remanded to the Office of Hearings and Appeals by the United States District Court for the Northern District of Texas, Case No. KEX–0018, be and hereby are decided as set forth in the foregoing decision.

(3) The sole issue retained for adjudication by the Office of Hearings and Appeals in connection with the Petition for Special Redress filed by Lucky Stores, Inc. on January 6, 1984, Case No. HEG–0031, be and hereby is decided as set forth in the foregoing decision.

(4) Within thirty days of issuance of this Decision and Order, Research Fuels, Inc, Lucky Stores, Inc. and any of the other 21 wholesale purchasers identified in this decision may submit a claim, as outlined in the foregoing decision, to Thomas O. Mann, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

(5) Within thirty days of issuance of this Decision and Order, Lucky Stores, Inc. shall provide the Office of Hearings and Appeals and Oasis Petroleum Corporation with workpapers and source documents which support the information contained in Appendix C to its May 7, 1984 Brief in Support of Petition for Special Redress. Oasis Petroleum Corporation may submit any evidence that it desired to challenge the accuracy of the documentation provided by Lucky pursuant to this Decision and Order within fifteen days of its receipt of that documentation.

(6) This is a final order of the Department of Energy.

Dated: August 22, 1986.

Richard W. Dugan,

For Director, Office of Hearings and Appeals.

[FR Doc. 86–20054 Filed 9–4–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[A–9–FRL–3074–9]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Stanislaus Waste Energy Co. (EPA Project Number SJ 86–03)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 11, 1986, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct

a resource recovery facility to be located in Stanislaus County, California. The permit is subject to certain conditions, including allowable emission rates as shown below:

	The more stringent of:	
	lbs/hr or	ppm (dry, at 12 percent CO_2)
For SO_2:		
(3-hour average)	35.6	42
(24-hour average)	33.3	40
For NO_x:		
(3-hour average)	107	175
(24-hour average)	100	165
For CO:		
(3-hour average)	33.3	400

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of combustion controls, ammonia injection, a dry scrubber system and a fabric filter baghouse.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 4, 1986.

Dated: August 26, 1986.

Thomas W. Rarick,

Acting Director, Air Management Division Region 9.

[FR Doc. 86-20033 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-3075-1]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Pacific Gas & Electric Co. (EPA Project Number SFB 86-01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 25, 1986, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 49.9 MW gas-fired cogeneration facility to be located at the existing Station T facility in San Francisco, California. The permit is subject to certain conditions, including an allowable emission rate for NO_x (as NO_2) at the more stringent of 63 lbs/hr or 25 ppmv at 15% O_2, dry (3-hour average.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of a steam injection system to reduce emissions of NO_x and an oxidizing catalyst system for the control of CO emissions.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 4, 1986.

Dated: August 27, 1986.

Thomas W. Rarick,

Acting Director Air Management Division Region 9.

[FR Doc. 86-20034 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-3074-8]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Rio Bravo Refining Co. (EPA Project Number SJ 85-07)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 19, 1986, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 36 MW circulating fluidized bed cogeneration system (TEORCO Project) to be located in the Jasmin Oil Field, Kern County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: SO_2 at 14.0 lbs/hr, NO_x at 38.9 lbs/hr, and CO at 105.1 lbs/hr .

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements for SO_2 include the use of limestone injection into the fluidized bed at Ca/S molar ratio of 1.6 to 1 (with an emission limit of 20 ppm SO_2 at 3% O_2) BACT for NO_x includes the use of selective non-catalytic reduction (ammonia injection) at temperature range 1,500-1,700 °F at a minimum NH_3/NO_x ratio of 6.1 to 1 on a weight basis (with an emission limit of 78 ppm NO_x at 3% O_2).

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by November 4, 1986.

Dated: August 26, 1986.

Thomas W. Rarick,

Acting Director Air Management Division Region 9.

[FR Doc. 86-20035 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3075-6]

Environmenal Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 18, 1986 through August 22, 1986 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) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (FISs) was published in **Federal Register** dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DR-AFS-J61067-CO, Rating EC2, Wolf Creek Valley Ski Area Development, Special Use Permit, CO. Summary: EPA is primarily concerned with water quality impacts related to sediment increases and temporary exceedence of acute water quality criteria for toxic pollutants resulting from changes in existing land uses. Additional mitigation prescriptions are suggested to reduce water quality impacts.

ERP No. D-BLM-K70002-CA, Rating EC2, Arcata Resource Area Wilderness Recommendations, Eden Valley and Thatcher Ridge Wilderness Study Areas, Wilderness or Non-Wilderness Designation, CA. Summary: EPA expressed its concern that mitigation measures for potential impacts to water quality and beneficial uses were not fully addressed, and that management practices for the Middle Fork of the Wild and Scenic Eel River be fully compatible with the corridor

management plan scheduled for completion in 1987.

ERP No. DS-COE-F90004-MI, Rating EO2, Upper Saginaw River, Dredged Material Disposal Facility, Revised Recommended Plan, Confined 52 Acre Island, Construction, Crow Island State Game Area, Northwest Unit, MI. Summary: EPA's review resulted in concerns regarding the potential for significant adverse impacts on human health and the environment from contaminants located at the site. EPA's concerns are related to an inadequate evaluation of sediment contamination and the structure and pollution containment capability of the proposed confined disposal facility.

ERP No. D-COE-G28010-TX, Rating LO, Stacy Reservoir, Dam and Pump Station, Municipal and Industrial Water Supply Development, Colorado River Basin, Permit, 10 and 404 Permit, TX. Summary: EPA expressed no objection to the proposed action. Implementation of this project as an alternate water supply source would be a viable solution to existing groundwater public water supply problems within the project vicinity.

ERP No. D-IBR-K39027-NV, Rating EO2, Newlands Project, Operating Criteria and Procedures, Adoption, (possible 404 permit), Carson River Basin, Truckee Carson Rivers Water Diversion, NV. Summary: EPA expressed concerns that the draft EIS did not fully discuss: (1) Water quality impacts in the Lower Truckee River Basin, and (2) the unmitigated loss of Lahontan Valley wetlands and possible degradation of water quality due to reduced flows. EPA requested that a new alternative be analyzed that would mitigate or offset the loss of wetlands and adverse water quality impacts while still meeting the areas agricultural and domestic water needs.

ERP No. D-SCS-H36096-00, Rating LO, Upper Locust Creek Watershed, Protection/Flood Prevention, MO and IA. Summary: EPA has no objections to the project and did not have any specific comments on the draft EIS.

Final EISs

ERP No. F-CDB-F89026-MI, Oakland Technology Park Development, CDB Grant, MI. Summary: EPA feels that impacts of the project have been satisfactorily minimized and mitigated. Potential concerns with wetlands impacts from future highway development have been addressed by a commitment in the final EIS to further coordinate as detailed design plans become available. EPA has requested that the Record of Decision reflect this commitment.

ERP No. F-COE-E35080-AL, Mallard-Fox Creek Area, Waterfront Development and Use, Navigation Channel Improvements (Adoption from TVA final EIS 800367, filed 5-13-80), AL. Summary: EPA made no formal comments. EPA has no objections to the subject EIS or the COE adoption of same.

ERP No. F-TVA-A82115-00, Gypsy Moth Suppression and Eradication on Federal and Non-Federal Lands in the United States (TVA adopted AFS/APHIS final supplemental EIS, filed 3/1985), US. Summary: EPA has no objections to adoption by TVA of the final EIS prepared by the USDA for gypsy moth suppression. We recommend that site-specific environmental review be done for proposed eradication projects.

Regulations

ERP No. R-NRC-A22107-00, 10 CFR Part 60, Disposal of High-Level Radioactive Wastes in Geological Repositories, Conforming Amendments (51 FR 22288). Summary: EPA made some minor suggestions for clarifying NRC's proposal.

Amended Notices

The following reviews should have appeared in the **Federal Register** Notice published on August 29, 1986.

ERP No. D-COE-D39022-WV, Rating EC2, Kanawha River Navigation Study, Winfield Locks and Dam, Lock Replacement, WV. Summary: EPA identified environmental concerns regarding fisheries and wetlands, and the proposed measures to mitigate impacts to these resources. Further detailed comments will be provided upon receipt of data from the Fish and Wildlife Service and the EPA Region III Kanawha Valley Integrated Environmental Management Program (IEMP) study (due September 30, 1986). EPA has requested a cooperative session with the Huntington COE to review this new data.

ERP No. F-BLM-J36039-UT, West Desert Pumping Project, Great Salt Lake Flood Control Construction, Right-of-Way Permit, Grant, 404 Permit, UT. Summary: EPA did not identify significant environmental concerns in its review of the draft and final EIS.

Dated: September 2, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-20096 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3075-5]

Environmental Impact Statements; Notice of Availability of Weekly Receipts

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed August 25, 1986 through August 29, 1986, pursuant to 40 CFR 1506.9.

EIS No. 860349, Final, COE, TT, Kwajalein Atoll Causeway Dredge and Fill Material Discharge Project, Permit, Republic of the Marshall Islands, Due: October 6, 1986, Contact: Michael T. Lee (808) 438-9258.

EIS No. 860350, DSuppl, COE, AL, MS, Tombigbee River and Tributaries, Luxapalila Creek, Phase 2 Channel Modifications, Due: October 20, 1986, Contact: Howard Danley (205) 694-3833.

EIS No. 860351, Draft, CDB, CA, Anaverde Retention Basin, Construction, Flood Control Project, Los Angeles County, Due: October 20, 1986, Contact: N.C. Datwyler (213) 226-8111.

EIS No. 860352, DRevised, BLM, NM, New Mexico Statewide Wilderness Study, Wilderness Study Areas Recommendations, Wilderness Designation, December 12, 1986, Contact: Joe Sovick (505) 988-6565.

EIS No. 860353, Final, COE, MI, Great Lakes Connecting Channels and Harbors Improvement, Chippewa County, Due: October 6, 1986, Contact: Jim Galloway (313) 226-7590.

EIS No. 860354, Final, FHW, CA, "D" Street Extension, Construction, Mytle Street/Soto Road to Second Street, Alameda County, Due: October 6, 1986, Contact: David Eyres (916) 440-3541.

EIS No. 860355, DSuppl, IBR, UT, Bonneville Unit, Central Utah Project, Municipal and Industrial Water System, Construction and Modifications, Updated Information, Due: October 28, 1986, Contact: Jay Henrie (801) 379-1172.

EIS No. 860356, Draft, FRC, ID, Salmon River Basin, Fifteen Hydroelectric Power Projects, Construction, Operation and Maintenance, Licenses, Due: October 20, 1986, Contact: John Staples (202) 376-9064.

EIS No. 860357, Draft, FRC, ID, Japanese Salmon Fishery, 1987 through 1991, Incidental Take of Dall's Porpoise, Permit Issuance, Due: October 20, 1986, Contact: Robert Brumsted (202) 673-5351.

EIS No. 860358, Draft, USN, CA, Target Ranges R-2510 (West Mesa) and R-2512 (East Mesa), Range Safety Zones, Land Aquisition and Land

Management on Non-Federal Lands, Naval Air Facility, El Centro, Imperial County, Due: October 20, 1986, Contact: Dana Sakamoto (415) 877-7590.

EIS No. 860359, DSuppl, USN, CA, Treasure Island Naval Station, San Francisco Bay Region Ship Homeporting, Basing Additional Ships and Constructing Support Facilities, San Francisco County, Due: October 20, 1986, Contact: Dana Sakamoto (415) 877-7590.

EIS No. 860360, Draft, USN, FL, MS, AL, LA, TX, Gulf Coast Strategic Homeporting Action, Dredging, Construciton, Operation and Maintenance, Due: October 27, 1986, Contact: Laurens Pitts (803) 743-3864.

EIS No. 860361, DRevised, AFS, NV, Sierra National Forest, Land and Resource Management Plan, Fresno, Madera and Mariposa Counties, Due: October 20, 1986, Contact: James Boynton (209) 487-5155.

Amended Notices

EIS No. 860227, Draft, BLM, UT, San Juan Resource Area, Resource Management Plan, San Juan County, Due: November 3, 1986, Published FR 6-20-86—Review period extended.

EIS No. 860245, Draft, AFS, CA, Los Padres National Forest, Land and Resource Management Plan, Due: October 30, 1986, Published FR 7-3-86-Review period extended.

Dated: September 2, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-20095 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

[SW-FRL-3075-7]

Recordkeeping Requirement

This is to notify interested parties that EPA's Office of Emergency and Remedial Response is directing its current Superfund Remedial and Removal contractors to microfilm, in the regular course of business, supporting documentation for removal actions and remedial investigations, feasibility studies, designs and any additional related activities (including financial and cost accounting records) undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* The microform copying is being done in accordance with the technical regulations concerning micrographics of Federal Government records (36 CFR § 1230 *et seq.*) and EPA records management procedures (EPA Order 2160). The original documents will be microfilmed periodically in the regular course of business and disposed of upon EPA approval. No document destruction will begin until 30 days after this notice appears in the Federal Register. This notification does not modify the retention requirements for EPA contractor or subcontractor records set forth in 41 CFR 1-20.000 *et seq.*

FURTHER INFORMATION CONTACT: David Huber, Remedial Actions and Contracts Branch (WH-548E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202/475-6706.

Dated: August 22, 1986.

Walter W. Kovalick, Jr.,

Acting Director, Office of Emergency & Remedial Response.

[FR Doc. 86-20032 Filed 9-4-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Martime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this seciton before communicating with the Commission regarding a pending agreement.

Agreement No. 202-000050-043.

Title: Pacific/Australia-New Zealand Conference.

Parties:

Blue Star Line, Ltd

Columbus Line

Pacific Australia Direct Line

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 202-006200-026.

Title: U.S. Atlantic & Gulf/Australia-New Zealand Conference.

Parties:

Columbus Line

Pacific America Container Express

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 202-008090-027.

Title: Mediterranean North Pacific Coast Freight Conference.

Parties:

"Italia" di Navigazione S.p.A/d'Amico Societa de Navigazione per Azioni (Joint Service)

United Yugoslav Lines

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 202-009238-016.

Title: Greece/ United States Atlantic and Gulf Conference.

Parties:

Farrell Lines, Inc.

Sea-Land Service, Inc.

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No. 212-009847-015.

Title: U.S. Atlantic Coast/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia de Navegacao Maritime Netumar

United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend until December 31, 1986 previously approved adjustments necessitated by the integration of alternate coast service into the pooling arrangements and would add to the list of commodities which are excluded from the pool.

Agreement No. 212-009848-017.

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia Maritima Nacional

United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend until December 31, 1986 previously approved adjustments necessitated by the integration of alternate coast service into the pooling arrangements and would add to the list of commodities which are excluded from the pool.

Agreement No. 213-009975-011.

Title: Five Lines' Atlantic Coast Space Charter and Sailing Agreement.

Parties:

Japan Line, Ltd.

Mitsui O.S.K. Lines, Ltd. (Mitsui)

Nippon Yusen Kaisha (NYK)

Yamashita-Shinnihon Steamship Co., Ltd. (Y-S Line)

Synopsis: The proposed amendment reflects the withdrawal of Kawasaki Kisen Kaisha from the agreement and makes other changes necessitated by the overlap in the operations of Mitsui, NYK and Y-S Line under this agreement and their new space charter agreement which became effective August 30, 1986.

Agreement No. 212-010320-013.

Title: Brazil/U.S. Gulf Ports Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia Maritima Nacional

United States Lines (S.A.) Inc.

Empresa Lineas Maritima Argentina S.A.

A. Bottacchi S.A. de Navegacion C.F.I.I.

Transportacion Maritima Mexicana S.A.

Synopsis: The proposed amendment would extend until December 31, 1986 previously approved adjustments necessitated by the integration of alternate coast service into the pooling arrangements.

Agreement No. 204-010986.

Title: United States/Peru Equal Access Agreement.

Parties:

Compania Peruana de Vapores

Lykes Bros. Steamship Co., Inc.

Naviera Neptuno, S.A.

Coordinated Caribbean Transport, Inc.

Synopsis: The proposed amendment would establish equal access between the parties to cargoes in the U.S./Peru trade. The agreement covers the total import and export cargo in the trade and requires that the parties be members of the respective conferences covering the agreement trades. The parties may discuss, and agree upon, vessel schedules and service frequency, and may exchange statistical data and cargo information. Cargo carried under Agreement No. 217-010467 (Latin American Common Carrier Charter Agreement) would count as cargo covered by the agreement.

Dated: September 2, 1986.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-20098 Filed 9-4-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Mitsubishi Trust and Banking Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Mitsubishi Trust and Banking Corporation*, Tokyo, Japan; to engage *de novo* through its subsidiary, MTBC Finance, Inc., New York, New York in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the United States and Canada.

Board of Governors of the Federal Reserve System, August 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19993 Filed 9-4-86; 8:45 am]

BILLING CODE 6210-01-M

Saban S.A., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 26, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Saban S.A.*, Panama City, Republic of Panama; to acquire 3.58 percent of the voting shares of Republic New York Corporation, New York, New York, and thereby indirectly acquire Republic National Bank of New York, New York, New York. Comments on this application must be received by September 18, 1986.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Nicholson Voting Trust Agreement*, Forest City, Pennsylvania; to acquire 53 percent of the voting shares of The First

National Bank of Nicholson, Nicholson, Pennsylvania.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The Central Bancorporation, Inc.*, Cincinnati, Ohio; to merge with Oberlin Bancshares, Inc., Oberlin, Ohio, and thereby indirectly acquire The Oberlin Bank Company, Oberlin, Ohio.

Board of Governors of the Federal Reserve System, August 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-19994 Filed 9-4-86; 8:45 am]

BILLING CODE 6210-01-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 August 29, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Office of the Assistant Secretary for Health

Subject: 1987 National Medical Expenditure Survey (Round 1 of Household Survey and Survey of American Indians and Alaska Natives; Phase I of Institutional Population Component)—Revision—(0937-0163)

Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

National Institutes of Health

Subject: St. George, Utah Cancer Screening and Detection Project—New

Respondents: Individuals or households

Food and Drug Administration

Subject: Produce License Application for the Manufacture of Anti-Human Globulin Sera—Revision—(0910-0065)

Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Subject: Notice of Availability of Sample Electronic Product—Revision—(0910-0048)

Respondents: Businesses or other for-profit; Small businesses or organizations

Centers for Disease Control

Subject: Epidemic Investigations—Extension (0920-0008)

Respondents: Individuals or households

Subject: Update Survey of Areas Closed or Otherwise Restricted Because of Toxic Substance—New

Respondents: State or local governments

Subject: Fluoridation Census, 1985 (Concept Clearance)—New

Respondents: State or local governments

Subject: National Disease Surveillance Program—I. Case Reports—Revision—(0920-0009)

Respondents: State or local governments

Health Resources and Services Administration

Subject Indian Health Service, Hospital Dental and Other Contract Health Service Reports—Revision—(0915-0020)

Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Subject: Grants for the Development and Operation of Facilities and Services—Extension—(0915-0045)

Respondents State or local governments

Alcohol, Drug Abuse & Mental Health Administration

Subject: Drug Abuse Warning Network—Revision (0930-0078)

Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions

Subject: Determination of Current American Attitudes Toward "Drug Use"—New

Respondents: Individuals or households

OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Representative Payee Report—Revision—(0960-0068)

Respondents: Individuals or households

Subject: Application for Benefits Under a U.S. International Social Security Agreement—New

Respondents: Individuals or households

OMB Desk Officer: Judy A. McIntosh

Subject: Worksheet for Integrated AFDC, Food Stamp and Medicaid Quality Control Reviews—Extension—(0960-0176)

Respondents: State or local governments

OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

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, DC 20503

ATTN: (name of OMB Desk Officer)

Dated: August 27, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant, Secretary for Management, Analysis and Systems.

[FR Doc. 86-19904 Filed 9-4-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 81D-0148]

Defect Action Levels for Canned Tomato Products; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is confirming the defect action level (DAL) for catsup contaminated with mold and deletion of criteria for rot fragment counts for all tomato products, as announced in the **Federal Register** of April 8, 1985 (50 FR 13880).

ADDRESS: Written comments on these defect action levels and requests for single copies of Compliance Policy Guide 7114.30 are available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1985 (50 FR 13880), FDA announced the availability of FDA Compliance Policy Guide 7114.30 which revised the defect action level for

catsup by raising the mold count criterion from 35 to 55 percent based on examination of six subsamples. Also in that **Federal Register** notice, FDA announced that the revised Compliance Policy Guide 7114.30 eliminated the limit for rot fragment count for all tomato products.

In accordance with established procedure, the agency invited interested persons to submit, within a year, any relevant data and information showing why the action level should be changed. No comments, data, or information were submitted to FDA in response to the **Federal Register** notice announcing the revision of Compliance Policy Guide 7114.30. Therefore, FDA concludes that the defect action level for tomato catsup and the elimination of the criterion for rot fragments for all tomato products announced in Compliance Policy Guide 7114.30 will remain in effect without change.

Dated: August 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-19999 Filed 9-14-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Agency Information Collection Activities for OMB Review

The proposal for the collection of information listed has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the OMB Interior Desk Officer at (202) 395-7340.

Title: 25 CFR Part 41, Subchapter E—Tribally Controlled Community Colleges and Navajo Community Co11ege Annual Report, Pub. L. 95-471.

Abstract: Information generated by the annual report from the Tribally Controlled Community Colleges will be compiled for program evaluation and statistical data. This information will be used as the basis for reports to Congress.

Frequency: Annually.

Description of Respondents: Indian/Alaskan Native students applying for admission to postsecondary schools.

Annual Response: 20.

Annual Burden Hours: 800 hours.

Bureau Clearance Officer: Anne Bolton (202) 343-3577.

Henrietta Whiteman,

Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 86-19971 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-02-M

Submission of Agency Information Collection Activities for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the OMB Interior Desk Officer at (202) 395-7340.

Title: 25 CFR, Subchapter E, Part 41—Grants to Tribally Controlled Community Colleges and Navajo Community College, Grants Application.

Abstract: The collection of information is necessary to provide financial assistance to the Tribally Controlled Community Colleges and Navajo Community College.

Frequency: Annually.

Description of Respondents: Tribally Controlled Community Colleges, and the Navajo Community College Indian students.

Annual Response: 20.

Annual Burden Hours: 60 hours.

Bureau Clearance Officer: Anne Bolton (202) 343-3577.

Henrietta Whiteman,

Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 86-19972 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-6680-H]

Alaska Native Claims Selection; Paug-Vik Inc., Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Paug-Vik Incorporated, Limited, for approximately 0.36 acre. The lands involved are in the vicinity of Naknek, Alaska.

U.S. Survey No. 6074, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 6, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-19973 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-JA-M

[ID-040-06-4331-12]

Closure of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of vehicle closure for the Chief Tendoy Cemetery located on public lands in Lemhi County, Idaho. The Cemetery will be closed to vehicles except for the authorized access road to the monument.

DATE: The closure will commence October 16, 1986.

SUMMARY: The Chief Tendoy Cemetery will be closed to vehicular traffic except for the authorized access road to the monument. The land is a 40 acre parcel located in T.19N., R.24E., B.M., Section 28: NE¼SW¼ and was reserved for an Indian Cemetery on October 1, 1907, by a Secretarial decree. This vehicle closure is necessary to ensure the protection of the Cemetery and the associated Native American burials.

SUPPLEMENTARY INFORMATION: For more information concerning this closure

contact the Salmon District Manager at Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467.

Jerry W. Goodman,

District Manager.

[FR Doc. 86-20076 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-06-4333-11; NV5-86-37]

Temporary Closure of Certain Public Lands in the Las Vegas District and the California Desert District for Management of the Frontier 500 Off Highway Vehicle (OHV) Race

August 27, 1986.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Temporary closure of certain Public Lands in the Las Vegas District, Clark County, Nevada and the California Desert District, San Bernardino County, California, on and adjacent to the Frontier 500 OHV race course, on September 6 and 7, 1986. Access will be limited to race officials, entrants, law enforcement and emergency personnel, licensed permittees and right-of-way grantees. The entire California portion of the course will be restricted to a 30 mph speed limit starting on August 28, 1986 and ending September 5, 1986.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada and the California Desert District, San Bernadino County, California will be temporarily closed to public access from 0001 hours September 6, 1986 to 0600 hrs September 7, 1986 to protect persons, property, and public land resources on and adjacent to the 1986 Frontier 500 OHV race course. Traffic will be restricted to a 30 mph speed limit for the entire portion of the course within California, on the Stateline Pass Road, from 0001 hrs. August 28, 1986 to 2400 hrs September 5, 1986. These temporary closures and restrictions are made pursuant to 43 CFR 8364.

The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1986 Frontier 500 OHV race course. The following lands restricted or closed are described as: T. 24 S., R. 60 E., all of sections 22, 27, 30 and 31; T. 24 S., R. 59 E., all of sections 25, 35 and 36; T. 25 S., R. 59 E., all of sections 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 35, and 36; T. 25 S., R. 58 E., all of sections 1, 12, 13, 24, 25, and 36; T. 25 S., R. 57 E., all of sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36; T. 26 S., R. 59 E., sections 1, 4 (west of Interstate 15) and 5; T. 26 S., R. 60 E., all of sections 3, 4, 5, and 6 and T. 25 S., R. 60 E., all of sections 33, 34 and 35. The above legal land descriptions are for public lands within Clark County, Nevada.

The following closed and restricted areas apply to the Frontier 500 course on public lands within San Bernardino County, California and are described as: T. 18 N., R. 13 E., all of sections 1, 2, 12, 13, 24,; T. 18 N., R. 14 E., all of sections 18, 19, 20, 21, 27, 28, 33, 34, and 35; T. 17 N., R. 14 E., all of sections 1 and 2; and T. 17 N., R. 15 E., the SE¼ of section 6 and all of section 7.

A map showing specific areas closed to public access is available from the following BLM offices: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126 (702) 388-6403; the Stateline Resources Area Office, P.O. Box 7384, Las Vegas, Nevada 89125, (702) 388-6627 and the Needles Resource Area Office, 901 Third St., Needles, CA 92363, (619) 326-3896.

Any person who fails to comply with this closure order issued under 43 CFR 8364 may be subject to the penalities provided in 43 CFR 8360.7.

Charles Frost,

Acting District Manager.

[FR Doc. 86-19974 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-HC-M

[UT-050-06-4410-08]

Capitol Reef Reservoir Maintenance

AGENCY: Bureau of Land Management, Richfield, Utah, Interior.

ACTION: Final EA preparation on project in Wilderness Study Area.

SUMMARY: A final EA has been prepared and is available for public inspection.

The final environmental analysis and decision for the Capitol Reef Reservoir and Spring Maintenance Proposal in a National Park Service proposed wilderness area is available for public inspection at the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 for 15 days after the printing of this Notice in the **Federal Register.** For additional information, contact Roy Edmonds, Environmental Coordinator at the above address or call (801) 896-8221.

August 25, 1986.

Donald L. Pendleton,

District Manager.

[FR Doc. 86-19975 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-DQ-M

[UT-050-06-4410-08]

Final Decision for the Tercero Trespass Road in the Mount Ellen/Blue Hills Wilderness Study Area (WSA)

AGENCY: Bureau of Land Management, Richfield, Utah, Interior.

ACTION: On November 14, 1985, a decision was issued to resolve the problems associated with a road built by the Tercero Corporation across the Mount Ellen/Blue Hills WSA. This decision was later rescinded because of new policy. The decision has now been reaffirmed.

SUMMARY: The decision is to accept the Ceja/Tercero Corporation's offer to relinquish 166 allocated grazing AUMs in the Sawmill Basin Allotment as mitigation in exchange for a temporary right-of-way on their trespass road sections in the Mt. Ellen/Blue Hills Wilderness Study Area. The BLM's State of Utah Wilderness Environmental Impact Statement will document the need for an amendment to the All Wilderness Alternative to the effect that the Mt. Ellen/Blue Hills WSA boundary be modified so that the potential wilderness boundary line follows the north side of the trespass road sections (this would eliminate about 5 acres from the WSA). The AUMs offered by Ceja/Tercero Corporation will be placed in reserve for use by the Henry Mountain bison herd. If Congress accepts the proposal, and the boundary is modified as proposed, the AUMs would remain reserved for bison use and a permanent right-of-way would be issued to Ceja/Tercero Corporation for the road segments. If Congress rejects the proposal and includes the disturbed lands as part of a wilderness area, then the AUMs would still be held in reserve for bison use. The BLM would then accept full liability for any rehabilitation work required by the mitigation measures in this EA, or subsequent rehabilitation that might be required by wilderness enabling legislation.

August 25, 1986.

Donald L. Pendleton,

District Manager.

[FR Doc. 86-19976 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-DQ-M

[DES 86-36]

Revised Draft Environmental Impact Statement; New Mexico Statewide Wilderness Study; Availability and Notice of Public Hearings

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability of the Revised Draft Environmental Impact (DEIS) Statement and Public Hearings.

SUMMARY: Pursuant to sections 202 and 603 of the Federal Land Policy and Management Act of 1976 and section 102 of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Revised DEIS for the New Mexico Statewide Wilderness Study.

ADDRESS: Copies of the Revised DEIS are available upon request from the New Mexico State Office, NM (912), Bureau of Land Management, P.O. Box 1449. Comments on the Revised DEIS should be sent to this same address.

FOR FURTHER INFORMATION CONTACT: Joe Sovcik, EIS Team Leader, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, (505) 988–6565.

SUPPLEMENTARY INFORMATION: The Revised DEIS for the New Mexico Statewide Wilderness Study analyzes 46 Wilderness Study Areas (WSA's) which encompass 943,356 acres of public land in New Mexico. The purpose of this study is to determine the suitability or nonsuitability of these WSA's for recommended inclusion in the National Wilderness Preservation System.

Alternatives evaluated include an all wilderness alternative, an alternative which emphasizes manageability, a proposed action, a conflict resolution alternative and a no wilderness alternative.

The Revised DEIS contains four volumes. Volume 1 is the Statewide overview which analyzes the Statewide environmental consequences for each alternative. Volumes 2, 3, and 4, the appendices, provide a detailed analysis for each of the 46 WSA's.

Written comments should be directed to State Director, NM (912), New Mexico State Office, Bureau of Land Management P.O. Box 1449, Santa Fe, NM 87504–1449. Written comments on the Revised DEIS must be received by close of business December 12, 1986.

Public hearings have been scheduled for the following dates, times and locations:

October 21, 1986, 3 and 7 p.m., High Mesa Inn, 3347 Cerrillos Road, Santa Fe, NM

October 22, 1986, 3 and 7 p.m., Albuquerque Convention Center, 401 Second St., NW, Albuquerque, NM

October 23, 1986, 3 and 7 p.m., Branigan Library, 200 E. Picacho, Las Cruces, NM

Monte G. Jordan,

Acting State Director.

August 22, 1986.

[FR Doc. 86–19593 Filed 9–4–86; 8:45 am]

BILLING CODE 4310-FB-M

[CO-050-06-4212-08]

Availability of the Royal Gorge Resource Area Management Framework Plan Realty Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: The Royal Gorge Management Framework Plan Realty Amendment/ Environmental Assessment for the Royal Gorge Resource Area, Canon City District, Colorado.

SUMMARY: In accordance with 43 CFR Part 1600 and Pub. L. 94–579, Section 202, the Bureau of Land Management (BLM), Canon City District, Colorado has completed an amendment to the Royal Gorge Resource Area Management Framework Plan. This amendment clarifies plan decisions concerning land tenure adjustments within a three-township area in Park County, Colorado. The preferred alternative identifies the following: five parcels of public land comprising approximately 4,280 acres as suitable for disposal only through exchange, boundary adjustment with the Forest Service, or through the Recreation and Public Purposes Act; twenty-one additional parcels, comprising approximately 2,760 acres, meet the criteria for sale under Section 203 of the Federal Land Policy and Management Act; however, Exchange and Recreation and Public Purposes Act disposals will be given priority consideration. A 30-day protest period is provided.

DATE: The protest period ends October 5, 1986.

ADDRESS: Protests should be sent to BLM Director, Bureau of Land Management, 18th and C Streets NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dennis Zachman, Realty/Minerals Staff Leader, Bureau of Land Management, Royal Gorge Resource Area Office, P.O. Box 1470, Canon City, Colorado 81212, telephone 303/275–7578.

SUPPLEMENTARY INFORMATION: The document is available from the Royal Gorge Resource Area Office at the above address. Persons who have participated in this planning process and have interests that may be adversely affected may protest approval of the plan in accordance with the planning regulations, 43 CFR 1610.5–2. Protests should be made in writing to the BLM Director (760) in Washington. The protest should include the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts being protested.

4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

5. A concise statement explaining why the proposed decision is believed to be wrong.

Ralph Smith,

Action State Director.

[FR Doc. 86–19977 Filed 9–4–86; 8:45 am]

BILLING CODE 4310-JB-M

[ID-010-06-4322-02]

Boise District Grazing Advisory Board

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Boise District, Idaho, Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given that the Boise District Grazing Advisory Board will meet on October 1 and 2, 1986 from 9:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9:00 a.m. each day in the lower conference room at the Bureau of Land Management, Boise District Office, at 3948 Development Avenue in Boise, Idaho. A public comment period is scheduled from 2:00 p.m. to 3:00 p.m. each day. The agenda includes the following topics:

—Election of Officers
—Update on Jarbidge and Cascade Resource Area Planning Efforts
—Report of Range Betterment (8100) Expenditures for FY–85, 86
—Proposed FY–87 8100 Projects
—Future Distribution of Range Betterment (8100) Funds

FOR FURTHER INFORMATION CONTACT: Further information is available from the Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be

available for public inspection at the District Office.

J. David Brunner,

District Manager.

August 28, 1986.

[FR Doc. 86-20075 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-GG-M

[UT-040-06-4830-12]

Cedar City District Advisory Council; Meeting.

Notice is hereby given in accordance with Pub. L. 92-463, that a field tour/meeting of the Cedar City District Advisory Council will be held October 3 and 4, 1986.

The meeting will begin at 9:30 a.m. Oct. 3rd, at the BLM's Bryce Canyon field camp. For specific directions contact the address given below. The agenda will include: update on Alton coal field activity; land treatments in the Paria drainage; Upper Valley oil field management; and the proposed CO_2 EIS in the Boulder area. On Oct. 4th the council will depart Escalante at 8 a.m. and spend the day in the Escalante River drainage. The topic will be the proposed Escalante Recreation Area Management Plan and its correlation with other resources in the area.

All Advisory Council meetings are open to the public. Since the two day meeting will be entirely in the field, anyone wishing to participate must have transportation and make arrangements for meals and lodging.

Interested persons may make oral statements at 9:30 a.m. at the BLM's Bryce Canyon field camp or may submit written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager, P.O. Box 724, Cedar City, Utah 84720 by Sept. 30, 1986. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: August 29, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-19978 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-010-06-4310-33: GP6-320]

Lakeview District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Federal Register Notice.

Notice is hereby given, in accordance with Pub. L. 92-463 that the Lakeview District will hold a meeting on October 2, 1986. The meeting and tour will begin at 9:00 a.m. at the Gerber Guard Station at Gerber Reservoir. A short meeting will follow the morning tour. Public comments will be accepted between 2:00-3:00 p.m. The agenda will center on forage allocation, Beatty's Butte Wildhorse Fertility Study, and range improvements. Other topics will be discussed if time allows.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address before September 25, 1986. Summary minutes of the meeting will be available for review within 30 days following the meeting.

Dated: August 28, 1986.

Robert G. Bolton,

Acting District Manager.

[FR Doc. 86-19979 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-33-M

[WY-920-06-4990-11-6001; W-88237]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-88237 for lands in Crooks County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lessee as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-88237 effective October 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-19980 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-06-4212-11; Nev-047245]

Opening of Public Lands; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Order providing for opening of public lands.

SUMMARY: Pursuant to the Act of June 14, 1926 (43 U.S.C. 869), as amended, the following described lands have been reconveyed to the United States:

Mount Diablo Meridian, Nevada

T. 36 N., R. 38 E.,
Sec. 8, NW¼NW¼, N½SW¼NW¼.

The lands are located in Humboldt County approximately 1½ miles north of the City of Winnemucca. Slopes are moderate and soils are sandy loams supporting big sage and cheatgrass.

DATES: Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the above-described lands are hereby opened to application, petition, location, and selection including location under the United States mining laws. All valid applications received prior to 10:00 a.m. by October 6, 1986. Shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

FOR FURTHER INFORMATION CONTACT: District Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445.

Dated: August 28, 1986.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-19981 Filed 9-4-86; 8:45am]

BILLING CODE 4310-HC-M

[WY-010-06-4212-11:W-0318463]

Wyoming Realty Action, Lease of Public Land for Recreation and Public Purposes in Hot Springs County; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of realty action, lease of public land for recreation and public purposes in Hot Springs County.

In the **Federal Register**, Volume 51, No. 159, appearing on page 29523 in the issue of Monday, August 18, 1986, please make the following correction under Item 1, concerning existing rights:

1. Wind River Partnership Placer Mining Claim Dome No. 5. Wind River Partnership, the owner and lessor, and Wyo-Ben Inc., the lessee, have agreed tc the use for which this lease is proposed, only for the 1.875 acres occupied by the

existing frame school residence, for the remaining term of Recreation and Public Purposes Lease W-0318463, expiring January 31, 1992.

Chester E. Conrad,

District Manager.

[FR Doc. 86-20077 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-22-M

[CO-942-06-4520-12]

Colorado; Filing of Plats of Survey

August 26, 1986.

The official filing of the following described plat is hereby stayed, pending adjudication by the Interior Board of Land Appeals, of an appeal. The plat will not be officially filed until further notice. It was originally to be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 A.M., September 5, 1986.

The plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North (south boundary, T. 41 N., R. 12 W.), the survey of Private Land Claims, and a Public Land Tract, and the independent resurvey of the east boundary, T. 40 N., R. 12 W., New Mexico Principal Meridian, Colorado, Group No. 738, was accepted June 20, 1986.

Jack A. Eaves,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-19983 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-JB-M

[F-85316]

Alaska; Notice of Proposed Withdrawal and Opportunity for Public Meeting

Correction

In FR Doc. 86-16434, appearing on page 26311, in the issue of Tuesday, July 22, 1986, make the following corrections:

1. In the second column, under "Kateel River Meridan", twenty-first line, after "Noatak" insert "National".

2. In the second column, under "Kateel River Meridan", twenty-third line, "T.30 N., R. 13 E.," should read "T. 30 N., R. 14 E.,".

BILLING CODE 1505-01-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1241, Block 52, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on August 27, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: August 27, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-19984 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3336, Block 35, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on August 27, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

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Dated: August 29, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-19985 Filed 9-4-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Park Service Golden Gate National Recretation Area; Notice of Public Hearing

Section 460bb-2(i) of the legislation establishing the Golden Gate National Recreation Area ("GGNRA"), 16 U.S.C. 460bb-2(i), prescribes limitations on new construction or development at the Presidio of San Francisco, which is located entirely within the boundaries of the GGNRA. The legislation also

requires that a public hearing conducted by the Secretary of the Interior or his designated representative be held in connection with any proposed new construction or development.

Accordingly, notice is hereby given that a public hearing will be conducted by the Superintendent of the GGNRA on Monday October 6, 1986, in order to present to the public and solicit its views on seven new construction projects currently proposed to be undertaken by the U.S. Army at the Presidio. The hearing will commence at 7:00 p.m. at the Golden Gate Community Center, Building 135 of the Presidio, located near the intersection of Sheridan Avenue and Infantry Terrace at the Presido of San Francisco, California.

This development proposal, consisting of seven new construction projects, as currently planned and sited, is the result of a settlement agreement reached by the U.S. Army and Postal Service and the Sierra Club, following litigation brought by the Sierra Club challenging portions of the original proposed development plan.

The projects which are proposed to be built by the Army are listed below:

Project No., Name, and Location Description

1. Enlisted Barracks with Dining, Operations and Supply Facilities—Proposed site is in the vicinity of Thompson Hall at the northwest corner of the intersection of Lincoln Boulevard and Girard Road, and/or south of Lincoln Boulevard east of the Main Post Gymnasium, on Funston Avenue.
2. Child Support Service Center—Proposed site is presently an athletic field, west of the library, south of Moraga Avenue and east of Infantry Terrace.
3. Medical Enlisted Barracks—Proposed site is adjacent to and slightly overlaps an existing parking lot at the northwest corner of the intersection of Edie Road and Girard Road.
5. Commissary—Proposed site is a paved surface which was formerly a motor pool complex on the south side of Old Mason Street, west of the Main Post Exchange and north of Doyle Drive.
6. Bowling Center—Proposed site encompasses an existing parking lot, and soon-to-be-vacated building, southeast of the intersection of Sheridan Avenue and Montgomery Street, and northeast of the Post Theater.
8. Main Post Exchange Expansion—This single-story addition will be south of the southern curb of Old Mason Street, and west of the existing Exchange building.
9. Branch Exchange/Convenience Store—The proposed site is presently a parking lot south of Doyle Drive and south of the interesection of Gorgas and Marshall Streets.

The Postal Service Facility, originally project number 4 and at this point a partially completed structure on Crissy Field, will be demolished as part of the settlement agreement. For the present, postal service and other mail-related functions will remain in the structures where they are presently housed. Construction of a Fast Food Service Facility at a location north of Old Mason Street on the Crissy Field area of the Presidio, originally project number 7, has been cancelled.

A map indicating the locations of each of the currently proposed projects by the project number is on file for review by the public at the office of Mr. Michael Feinstein, Staff Assistant, GGNRA, Building 201, Fort Mason, San Francisco, California, 94123. Copies of such a map may be obtained by writing to Mr. Feinstein at the above address or by telephoning (415) 556–4484.

For each of these seven projects, there is available a fact sheet describing the proposed project and its location; how the project relates to the mission of the Army at the Presidio; any buildings which have been or are to be demolished to compensate for the proposed construction; whether the project provides for an expansion of an existing use or activity; and where and under what conditions the use or activity to be accommodated by the proposed construction project is now housed. For the Child Support Service Center (project number 2), there also are available: (a) A Record of Environmental Consideration of the project; (b) a map of the area outlining the project site and actual construction boundaries; and (c) a sketch, drawing, or photograph showing the approved or conceptual design and appearance of the proposed project. Copies of these documents, together with copies of the written settlement agreement signed by the Army/Postal Service and the Sierra Coub, may be obtained by writing to or telephoning Mr. Feintein at the address or telephone number specified above.

According to the terms of the Army/Postal Service-Sierra Club settlement agreemnt, none of the projects addressed by the settlement other than the Child Support Service Center may be authorized until the Army has prepared for each project an environmental assessment plus the map and sketch, drawing or photograph described above, and has made such documents available to the public at least 30 days prior to a public hearing held in connection with that project. Thus there will be subsequent public hearings on Project Numbers 1, 3, 5, 6, 8, and 9.

Finally, an additional item on the agenda for the October 6, 1986 hearing is the proposed construction by the Golden Gate Bridge, Highway and Transportation District of East Parking Lot Public Restrooms at the Golden Gate Bridge. This proposed construction project is not a part of the Army/Postal Service-Sierra Club settlement agreement. Information available with respect to this project includes an Initial Environmental Study and a Project Decription, and may be obtained by contacting Mr. Feinstein at the address or telephone number provided above.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the General Superintendent on the Presidio settlement agreement. Statements will be accepted until October 20, 1986.

This meeting will be recorded for documentation and transcribed for dissemination.

Dated: August 29, 1986.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 86–20024 Filed 9–4–86; 8:45 am]

BILLING CODE: 4310-70-M

Bureau of Reclamation

[INT FES 86–25]

Availability of Final Environmental Impact Statement; Contingency Program For Westlands Water District Drainage Disposal Project, California

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a Final Environmental Impact statement addressing contingency plans to ensure the continued cessation of subsurface agricultural drainage flows from Westlands Water District (WWD) into the San Luis Drain and Kesterson Reservoir. The proposed action is long-term plugging of a portion or all of the subsurface drainage collector system within the 42,000 acres of the Westlands Water District.

The proposed action would be undertaken only if WWD fails to continue to comply with its obligations under the April 3, 1985, Agreement with the Department of the Interior to eliminate drainage flows into the San Luis Drain. All subsurface agricultural flows from the WWD into the San Luis Drain ceased during the week of June 9, 1986. WWD is thus presently in full compliance with the April 3, 1985, Agreement.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room

7429, 18th & C Streets, NW., Washington, DC 20240, Telephone: (202) 343–4991

Division of Acquisition and Property Management, Document Systems Management Branch, Library Section, Code 823, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303 236–6963

Chief, Environmental Compliance Branch, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825, Telephone: (916) 978–5130

Fresno Office, Bureau of Reclamation, 1130 "O" Street, Fresno, CA 93721, Telephone: (209) 487–5137

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, the Sacramento Office or the Fresno Office, at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: September 2, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86–20040 Filed 9–4–86; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 464]

Railroad Cost of Capital, 1985; Notice of Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1985 cost of capital.

SUMMARY: The Commission is instituting a proceeding to determine the railroad industry's cost of capital rate for 1985. The decision solicits comments on: (1) The railroads' 1985 current and embedded cost of debt capital; (2) the railroads' 1985 current and embedded cost of preferred stock equity capital; (3) the railroads' 1985 cost of common stock equity capital; (4) the 1985 capital structure mix of the railroad industry on both a book value and market value basis; and (5) the amount of the railroads' 1985 accumulated deferred tax reserve. The decision also seeks comments on a proposed procedure to permit a more timely cost of capital finding by the Commission in the future.

DATES: Notices of intent to participate due September 15, 1986. Statements of railroads due October 24, 1986. Statements of other interested parties due November 24, 1986. Rebuttal statements by railroad due December 15, 1986.

ADDRESSES: Send an original and 15 copies of comments and an original and one copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489.

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.

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact of a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: August 26, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee

Secretary.

[FR Doc. 86–20022 Filed 9–4–86; 8:45 am]

BILLING CODE 7035–0–M

[Finance Docket No. 30874]

Norfolk and Western Railway Co.; Filing of Exemption To Operate Properties of Interstate Railroad Co. and Virginia and Southwestern Railway Co.

Norfolk and Western Railway Company (NW), Southern Railway Company (Southern), Interstate Railroad Company (Interstate), and Virginia and Southwestern Railway Company (VSW) have filed a joint notice of exemption for NW to operate certain properties of Interstate and VSW. NW and Southern are common carriers controlled by Norfolk Southern Corporation, a holding company. Interstate and VSW are common carriers owned by Southern. Southern currently operates all of VSW's properties. NW operates most of Interstate's properties. Under this notice of exemption, by contract, NW will operate most of VSW's properties and all of Interstate's properties.

Interstate's properties and the involved VSW properties are located in the coal fields of southwestern Virginia. They are the Interstate agency operations at Norton and Andover, Andover Yard, the Interstate line segment between Andover (MP IN 2.4) and Appalachia (MP IN 6.0, MP O.OT), VSW's St. Charles Branch between Appalachia (MP O.OT, MP 1.7T) and St. Charles (MP 23.OTB), including all related branches, and that portion of VSW's Appalachia-Big Stone Gap line between MP O.OT and MP 3.36T necessary for NW to serve the St. Charles Branch and the coal transloader at Appalachia, VA.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the transaction shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: August 25, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–20023 Filed 9–4–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 15–86]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Executive Office for United States Trustees, publishes a new system of records entitled "United States Trustee Program Case Referral System, JUSTICE/UST–004."

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the routine uses of a system; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system. Therefore, the Department invites the public, OMB, and the Congress to submit any written comments to J. Michael Clark, Assistant

Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530 by November 4, 1986.

In accordance with Privacy Act requirements, the Department has provided a report on this system to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: August 18, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/UST-004

SYSTEM NAME:

United States Trustee Program Case Referral System, JUSTICE/UST-004.

SYSTEM LOCATION:

Executive Office for United States Trustees (EOUST), United States Department of Justice, Room 812, 320 First Street, NW., Washington, DC 20530. Records may also be located in the various field offices. (See Appendix identified as JUSTICE/UST-999.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system encompasses entities and individuals involved in the bankruptcy process who are suspected of having engaged in criminal conduct or of having violated other Federal laws, and whose activities have been reported by the U.S. Trustees or EOUST to a U.S. Attorney pursuant to 18 U.S.C. 3057, or to other law enforcement authorities for investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of any information about a case filed under Title 11 of the U.S. Code which is the subject of, or is associated with, a referral to law enforcement authorities. Records will consist of any information pertaining to the subject of the referral who may be the debtor himself, or any other individual associated with the bankruptcy case who is suspected of having engaged in criminal conduct or having violated other Federal laws. The information may include the subject's name, address, date of birth, or social security number; a chronological account of the incident(s); the source of the information; names and addresses of witnesses; the law enforcement agency to whom the referral is made; and the status or final disposition of the referral. The system may also contain information about the bankruptcy case with which the subject of the referral is associated. Such information may include the debtor's name, address, social security number; case number and case chapter; the trustee's name, address and phone number; the judge assigned to the case; and such other case data as may be filed in the records of the court or of the U.S. Trustee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 586, 18 U.S.C. 3057.

PURPOSE(S):

The purposes of this system are to assist the U.S. Trustees: (1) In supervising the administration of cases and trustees in cases filed under Chapters 7, 11 and 13 of Title 11, U.S. Code, as codified by Title I of the Bankruptcy Reform Act of 1978 (11 U.S.C. 101, *et seq.*); (2) in carrying out their congressional mandate "to serve as bankruptcy watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena" (H.R. Rep. No. 595, 95th Cong., 2d Sess. 88 (1978)); and (3) in complying with 18 U.S.C. 3057 which directs trustees to report for investigation any instance where there are reasonable grounds for believing that there has been a violation of Federal laws relating to insolvent debtors or reorganization plans. The U.S. Trustees and EOUST will inform the appropriate law enforcement authorities when fraud or other violations of Federal law are suspected or discovered in a bankruptcy case and will maintain records thereof described under "Categories of Records in the System." The data will be used for program-wide evaluation purposes, for statistical purposes, and to track the number, type, and outcome of cases referred for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy or would impede an ongoing law enforcement proceeding.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual to whom the records pertain.

These records may be disclosed to members of the judicial branch of the Federal Government where disclosure appears relevant to the authorized function of the recipient judicial office or court system.

These records may be disclosed to any civil or criminal law enforcement authorities, whether Federal, State, local or foreign, for investigation of suspected violations of Federal or State laws. Records may also be disclosed to these law enforcement authorities to assist in ongoing investigations. These records may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under the authority of Title 44 of the U.S. Code.

These records may be disclosed to a trustee in a case filed under Chapter 7, 11 or 13 of Title 11, U.S. Code, when the U.S. Trustee determines that the release of information is necessary to enable the trustee to properly administer the case and to perform the duties and responsibilities of a case trustee set forth in Title 11 and in 18 U.S.C. 3057.

These records may be disclosed, except when the bankruptcy court has moved to protect an entity as provided in 11 U.S.C. 107, in a proceeding before a court or adjudicative body or any proceeding relevant to the administration of a case filed under Title 11 in which the U.S. Trustee is authorized to appear when (a) the U.S. Trustee, or (b) any employee of the U.S. Trustee in his or her official capacity, or (c) any employee of the U.S. Trustee in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or (d) the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the U.S. Trustee to be arguably relevant to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM. STORAGE:

All records are stored in paper folders in cabinets. All records are also stored on computer disks.

RETRIEVABILITY:

Computerized records will be retrievable by using any one or various combinations of the assigned case referral number, the judicial district or U.S. Trustee's field office from which the referral is generated, the date of the referral, the debtor's name, the case chapter, the name, social security or employer identification number and date of birth of the individual who is the subject of the referral, the subject's relationship to the debtor, the general nature of the charges and/or the status of the referral. Records stored in paper

folders will be filed chronologically by the case referral number.

SAFEGUARDS:

Paper folders are stored in a file cabinet which is located inside a room with a bolt lock. The computer disks are located in the same room. Only those persons with a need to know have access to the records.

RETENTION AND DISPOSAL:

A detailed records retention plan and disposal schedule is being developed by NARA and EOUST.

SYSTEM MANAGER AND ADDRESS:

Deputy Director for Legal Services, Executive Office for United States Trustees, United States Department of Justice, Room 812, 320 First Street NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager. These records will be exempted from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

RECORDS ACCESS PROCEDURE:

Make all requests for access to records from this system in writing to the system manager and clearly mark both the letter and the envelope "Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the request, and a return address.

CONTESTING RECORD PROCEDURES:

Make all requests to correct a record in writing to the system manager. The request must identify the particular record in question, state the correction sought and set forth the justification for correcting or contesting it. These procedures are in accordance with Department regulations (28 CFR 16.50) **Federal Register,** March 29, 1984, page 12258.

RECORD SOURCE CATEGORIES:

The records will contain information obtained by or furnished to the U.S. Trustee or EOUST (1) from Federal or State court records; (2) from debtors or debtors' principals, agents or representatives; and (3) from informants and interested third parties.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 86-19989 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act; Moore, OK

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on August 13, 1986 a proposed Consent Decree in *United States* v. *City of Moore and State of Oklahoma,* Civil Action No. 84-618(E) (W.D. Okla.) was lodged with the United States District Court for the Western District of Oklahoma. The complaint filed by the United States alleged numerous violations of the Clean Water Act, various administrative orders, and the NPDES permit for the City of Moore's wastewater treatment facility. The complaint sought injunctive relief against the City to halt the violations and to impose a compliance schedule, as well as to impose civil penalties. The proposed Consent Decree requires the City of Moore to undertake extensive remedial measures and develop and implement a local pretreatment program, and imposes civil penalties of $52,500.00 for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *City of Moore and State of Oklahoma,* Civil Action No. 84-618(E) (W.D. Okla.), D.J. No. 90-5-1-1-2068.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 4434, U.S. Courthouse and Federal building, Oklahoma City, Oklahoma 73102 and at the Region VI Office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-19986 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act; Phelps Dodge Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 26 , 1986, a proposed Consent Decree in *United States* v. *Phelps Dodge Corp.,* Civil Action No. 85-507-GLO-WDB, was lodged with the United States District for the District of Arizona. In May, 1985, the United States filed the present action against Phelps Dodge Corporation, the owner and operator of the Morenci mine complex, under the Clean Water Act for its unpermitted discharges of mine overburden and acidic mine drainage into Chase Creek and Gold Gulch, navigable waters of the United States. The proposed consent decree resolves the litigation by requiring Phelps Dodge to construct flood control systems in Chase Creek and Gold Gulch, to divert Chase Creek around the active mining areas and to pay a one million dollar penalty for its past violations of the Act. The Decree also prohibits Phelps Dodge from discharging pollutants from the flood control systems into downstream waters of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Phelps Dodge Corp.,* D.J. Ref. 90-5-1-1-2392.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Arizona, 4000 U.S. Courthouse, 230 N. First Avenue, Phoenix, Arizona, 85025 and at the office of the Regional Counsel, Region IX, Environmental Protection Agency, 215 South Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of

the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-19987 Filed 9-4-86; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

Direct Mail of Applications and Petitions to the Regional Adjudications Center in Lincoln, NE

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of change of location where applications and petitions are filed.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-3048.

For Specific Information: Lloyd Sutherland, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I street, NW., Washington, DC 20536. Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service has four regional adjudications centers (RACs). These centers originally adjudicated various petitions and applications under delegated authority from district directors; on October 15, 1985, specific authority to adjudicate was extended to the directors of the four RACs (8 CFR 103.1(s)). Work required by the Service to be adjudicated at RACs is currently filed with district offices and shipped from there to the RACs. Believing this to be inefficient and a cause of delays, the Service initiated a test program in the Eastern Region on January 6, 1986 to evaluate the feasibility of requiring the public to mail applications and petitions directly to RACs. In conducting this test, the Service was able to use and test its newly developed automated fee accouting and receipt entry system (FARES). Under the test program, the public was asked to mail in specified districts directly to the Eastern Region RAC. District directors in the affected offices were authorized to accept those applications and petitions only in cases of genuine emergencies.

The test included the following petitions and applications from the districts of New York and Washington, DC:

I-129B—Temporary Worker Petition
I-506—Application to Change Nonimmigrant Status (when changing to H or L status)
I-539—Application for Extension of Stay (when filed with an I-129B petition)

The direct mail test has been an unqualified success. Average processing time has been reduced by over 50% for all cases filed by direct mail. One of the key features of this new initiative has been an automated receipt mailed to each applicant one day after the case was received at the RAC. This automated receipt has assured applicants that the case has been received, has provided specific information on when a decision would be made, and has eliminated a considerable amount of status inquiries. Direct mail has almost entirely eliminated emergency requests. It has also allowed affected districts to devote more resources to casework which requires interviews, such as applications for asylum or naturalization and cases involving fraud.

Letters were sent to selected applicants seeking reaction to the direct mail initiative. Ninety-seven percent of responses recommended expansion of direct mail. Based on the overall efficiency of this initiative and the enthusiastic response from the public, the direct mail initiative in the Eastern Region was expanded to include certain additional applications and petitions and all districts in the Eastern Region.

Effective October 1, 1986, except in cases of genuine emergency, the following petitions and applications shall no longer be filed at districts within the Northern Region, but shall be mailed directly to the Northern Adjudications Center, Federal Building and U.S. Courthouse, Room 393, 100 Centennial Mall North, Lincoln, Nebraska 68508:

Applications and Petitions

I-129B—Temporary Worker Petition
I-129F—Finance Petition
I-140—Petition for Third or Sixth Preference Classification (except when Form I-140 is filed with an I-485, Application for Adjustment of Status)
I-506—Application for Change of Nonimmigrant Status (when changing to H or L)
I-539—Application for Extension of Stay (when filed with an I-129B petition)

District Offices

Detroit, Michigan

Jurisdiction over the State of Michigan.

Chicago, Illinois

Jurisdiction over the State of Illinois, Indiana, and Wisconsin.

St. Paul, Minnesota

Jurisdiction over the State of Minnesota, North Dakota, and South Dakota.

Kansas City, Missouri

Jurisdiction over the State of Kansas and Missouri.

Seattle, Washington

Jurisdiction over the State of Washington and over the following counties in the State of Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.

Denver, Colorado

Jurisdiction over the State of Colorado, Utah, and Wyoming.

Cleveland, Ohio

Jurisdiction over the State of Ohio.

Omaha, Nebraska

Jurisdiction over the State of Iowa and Nebraska.

Helena, Montana

Jurisdiction over the State of Montana and all counties in Idaho, except Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.

Portland, Oregon

Jurisdiction over the State of Oregon.

Anchorage, Alaska

Jurisdiction over the State of Alaska.

This notice constitutes authority for the Northern Adjudications Center Director to accept filing fees for the petitions and applications listed above.

Dated: September 2, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-19996 Filed 9-4-86; 8:45 am]

BILLING Code 4410-10-M

DEPARTMENT OF LABOR
Employment and Training Administration
[TA-W-17,572]

BASF Corp. Chemicals Division Hawthorne, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 23, 1986 in response to a petition which was filed by the Oil, Chemical and Atomic Workers International Union, Local 8-328, on behalf of workers at BASF Corporation, Chemicals Division, Hawthorne, New Jersey.

The petitioner has requested, in a letter dated July 17, 1986, that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of July 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 86-20059 Filed 9-4-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; Bethlehem Steel Corp. et al.

Petitions have been filed with the Secretary of labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 15, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 15, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 25th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Steel Corp. (IAMAW)	Beaumont, TX	8/15/86	8/8/86	TA-W-17,871	Offshore oil rigs.
LTV Steel Co. (USWA)	Cleveland, OH	8/7/86	7/31/86	TA-W-17,872	Flat rolled steel.
Hanford Foundry Co. (USWA)	San Bernardino, CA	8/7/86	7/31/86	TA-W-17,873	Direct pump castings in steel alloys, castings for cement mills, and oil tools.
Lilliston Corp. (workers)	Albany, GA	8/8/86	8/6/86	TA-W-17,874	Farm equipment—rolling cultivator, peanut harvesting equipment and grain drills.
Clark Material Systems Technology Co. (Co.)	Georgetown, KY	8/11/86	7/31/86	TA-W-17,875	Fork lift trucks.
Gambles, Inc. (workers)	Minneapolis, MN	8/11/86	8/7/86	TA-W-17,876	Distributor of hardware goods.
Herman Shoe, Inc. (workers)	Scarborough, ME	7/31/86	7/25/86	TA-W-17,877	Leather shoes and boots.
Bay Bee Shoe Co. (workers)	Dresden, TN	8/12/86	8/7/86	TA-W-17,878	Childrens and mens boots.
American Bag Corp. (company)	Stearns, KY	8/12/86	8/8/86	TA-W-17,879	Sleeping bags.
M.F. Machen Contractor (workers)	Midland, TX	8/21/86	8/13/86	TA-W-17,880	Build foundations (locations) for oil drilling.
Southwestern Portland Cement Co. (workers)	Odessa, TX	8/15/86	7/28/86	TA-W-17,881	Cement for oil drilling.
Petroleum Information Corp. (workers)	San Antonio, TX	8/19/86	7/21/86	TA-W-17,882	Produces and updates maps and ownership leases for oil and gas exploration.
Highland Fashions, LTD (ACTWU)	Northampton, PA	8/7/86	8/4/86	TA-W-17,883	Ladies skirts and blouses.
Duluth Missabe & Iron Range Ry Co. (Brotherhood of Maintenance of Way).	Duluth, MN	8/18/86	8/11/86	TA-W-17,884	Transports taconite and iron ore from mines to ships.
Cambridge Title Manufacturing Co. (AB&GW)	Cincinnati, OH	8/14/86	8/11/86	TA-W-17,885	Ceramic floor and wall tiles.
ASARCO, Inc., Amarillo Copper Refinery (workers)	Amarillo, TX	8/18/86	8/15/86	TA-W-17,886	Refined copper cathodes.
J.I. Case Company (UAW)	Racine, WI	8/18/86	8/15/86	TA-W-17,887	Agriculture wheel tractors (farm tractors).
Levi Strauss (workers)	Blackstone, VA	8/11/86	8/6/86	TA-W-17,888	Mens blue jeans.
Harbor Electronics Co. (company)	Aransas Pass, TX	8/5/86	7/28/86	TA-W-17,889	Sale and servicing electronic equipment on vessels.
Xerox Corporation, IDP (workers)	Lewisville, TX	8/13/86	8/4/86	TA-W-17,890	Personal computers.
Statesville Sportswear (ILGWU)	Statesville, NC	8/12/86	8/6/86	TA-W-17,891	Men's sport shirts.
Bethlehem Steel Corp., Burns Harbor Plt (USWA)	Chesterton, IN	8/5/86	8/1/86	TA-W-17,892	Steel plate strip and sheet.
Keystone Lamp (USWA)	Slatington, PA	8/5/86	8/1/86	TA-W-17,893	Lamps.
Dawn Mining Co. (workers)	Ford, WA	8/11/86	8/3/86	TA-W-17,894	Uranium mining.
Petco Fishing & Rental (workers)	Corpus Christi, TX	8/7/86	7/29/86	TA-W-17,895	Rental tools for oilfield drilling and workover rigs.
Miller Picking Corp. (USWA)	Johnstown, PA	8/5/86	8/1/86	TA-W-17,896	Air conditioners.

[FR Doc. 86-20060 Filed 9-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,789]

BJM Drilling & Exploration, Inc., Midland, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 4, 1986 in response to a worker petition received on July 25, 1986 which was filed on behalf of the workers at BJM Drilling and Exploration, Incorporated, Midland, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-17,427). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 13th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-20061 Filed 9-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,766]

Trojan Luggage Co., Memphis, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 28, 1986 in response to a worker petition received on May 5, 1986 which was filed by the United Furniture Workers of America on behalf of workers at the Trojan Luggage Company, 2070 Channel Avenue and 508 East Bodley Avenue, Memphis, Tennessee.

With respect to the workers of the Trojan Luggage plant located at 2070 Channel Avenue, an active certification covering the petitioning group of workers remains in effect (TA-W-15,376). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

With respect to the workers of Trojan Luggage plant located at 508 East Bodley Avenue, a negative determination applicable to the petitioning group of workers was issued on June 11, 1985 (TA-W-15,807). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 11th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-20062 Filed 9-4-86; 8:45 am]

BILLING CODE 4510-30-M

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 are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, 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 Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. 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 current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions 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, must 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 and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit 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, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

	Decisions	Pages
Volume I		
Florida	FL86-17 (Jan. 3, 1986)	145
Massachusetts	MA86-1 (Jan. 3, 1986)	347-352
Massachusetts	MA86-2 (Jan. 3, 1986)	362-366
Massachusetts	MA86-3 (Jan. 3, 1986)	375-377 380
Maryland	MD-86-1 (Jan. 3, 1986)	386
Maryland	MD-86-2 (Jan. 3, 1986)	391
Maryland	MD-86-15 (Jan. 3, 1986)	420
New York	NY86-2 (Jan. 3, 1986)	646, 659b
New York	NY86-10 (Jan. 3, 1986)	727
West Virginia	WV86-2 (Jan. 3, 1986)	1117-1118 1128
Volume II		
Iowa	IA86-5 (Jan. 3, 1986)	46
Iowa	IA86-7 (Jan. 3, 1986)	56
Iowa	IA86-9 (Jan. 3, 1986)	60
Illinois	IL86-2 (Jan. 3, 1986)	88-100
Louisiana	LA86-5 (Jan. 3, 1986)	360
Michigan	MI86-16 (Jan. 3, 1986)	487a
Minnesota	MN86-8 (Jan. 3, 1986)	536
Missouri	MO86-1 (Jan. 3, 1986)	540-557a
New Mexico	NM86-1 (Jan. 3, 1986)	654
Texas	TX86-2 (Jan. 3, 1986)	845
Texas	TX86-4 (Jan. 3, 1986)	852
Texas	TX86-7 (Jan. 3, 1986)	860-861
Texas	TX86-17 (Jan. 3, 1986)	889
Volume III		
Idaho	ID86-1 (Jan. 3, 1986)	133, 140
Oregon	OR86-1 (Jan. 3, 1986)	257-259
Washington	WA86-2 (Jan. 3, 1986)	328-329
Washington	WA86-3 (Jan. 3, 1986)	339-340
Washington	WA86-7 (Jan. 3, 1986)	362
Washington	WA86-8 (Jan. 3, 1986)	365b
Washington	WA86-9 (Jan. 3, 1986)	365f

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of August 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-19954 Filed 9-4-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Grand Canyon, Arizona Aircraft Accident

In connection with its investigation of the accident involving a Grand Canyon Airlines, Inc., deHavilland DHC-6 and Helitech Bell 206 helicopter over the Grand Canyon, Arizona, on June 18, 1986, the National Transportation Safety Board will convene a public hearing at 1:00 p.m. local time on September 17, 1986, in the Navajo Room of the Squire Inn, Grand Canyon, Arizona. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Ave., SW., Washington, DC 20594, telephone (202) 382-6605.

Ray Smith,

Federal Register Liaison Officer.

August 29, 1986.

[FR Doc. 86-19990 Filed 9-4-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provision of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: Questionnaire Regarding the Tennessee Valley Authority's Nuclear Safety Review Staff.

3. The form number if applicable: Not applicable.

4. How often the collection is required: One time.

5. Who will be required or asked to report: Current and former TVA and NRC employees.

6. An estimate of the number of responses: 200.

7. An estimate of the total number of hours needed to complete the requirement or request: 100.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Congressman John Dingell has requested information concerning reports prepared by TVA's Nuclear Safety Review Staff. NRC has prepared a questionnaire to gather the requested information.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland this 29th day of August 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-20041 Filed 9-4-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-528 and STN 50-529]

Arizona Public Service Co. et al.; Environmental Assessment and Finding of No Significant Impact.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of 10 CFR 50.71(e)(3)(i) to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Public Service Company of New Mexico, Southern California Edison Company, Los Angeles Department of Water and Power, and Southern California Public Power Authority (the licensees) for the Palo Verde Nuclear Generating Station, Units 1 and 2, located at the licensees' site in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to submit an updated Final Safety Analysis Report (UFSAR) for Units 1 and 2 of the Palo Verde Nuclear Generating Station within 24 months of the issuance of the operating licenses. Operating licenses were issued for Palo Verde Units 1 and 2 on December 31, 1984 and December 9, 1985 respectively. By letter dated January 30, 1986, supplemented by letter dated March 18, 1986, the licensees requested an exemption to 10 CFR 50.71(e) which would defer submittal of the UFSAR for Palo Verde Units 1 and 2 until one year following receipt of a low-power operating license for Palo Verde Unit 3 on the basis that the present FSAR applies to all three units. It has been updated on April 28, 1986 and will continue to be updated twice a year until Palo Verde Unit 3 is licensed.

The Need for the Proposed Action

10 CFR 50.34 requires that, until Palo Verde Unit 3 receives an operating license, the information contained in the FSAR docketed with the operating licenses application be maintained current. Hence, if an extension to the submittal date for the UFSAR is not granted, the licensees would be required to maintain current both the present FSAR as well as the UFSAR until Palo Verde Unit 3 is licensed. Maintaining two versions of the same document for the three Palo Verde units would cause a hardship, could lead to ambiguities or confusion and would serve no useful purpose if the existing FSAR is maintained up-to-date until Unit 3 is licensed.

Therefore an extension is needed to eliminate the hardship of maintaining two versions of the same document. Until Unit 3 receives an operating license, the licensees have committed to maintain the present FSAR current for all three units by amending the document twice a year.

Environmental Impact of the Proposed Action

The proposed exemption affects only the required date for submitting the UFSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require an earlier date for submittal of the UFSAR. Such an action would not enhance the protection of the environment and would result in unnecessary hardship of maintaining two versions of the same document.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Palo Verde Nuclear Generating Station, Units 1, 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated January 30, 1986 and March 18, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Bethesda, Maryland, this 29th day of August, 1986.

For the Nuclear Regulatory Commission.

E. A. Licitra,

Acting Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86-20042 Filed 9-4-86; 8:45 am]

BILLING CODE 7590-01-M

License No. SNM-1945; Docket No. 70-3013

Commonwealth Edison Co., Will County, IL; Finding of No Significant Impact From Issuance of Special Nuclear Materials

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1945 to the Commonwealth Edison Company for the Braidwood Nuclear Generating Station, Unit 2, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action.

The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear materials in the form of unirradiated fuel assemblies. In addition, the license would also authorize the applicants to receive, possess, inspect, and use other radioactive materials in the form of post-accident neutron monitoring detectors. Because the neutron detectors are sealed and contain only small amounts (gram quantities) of nuclear material, storage and use of these materials will pose no threat to the environment. Therefore, the discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel at Braidwood, Unit 2.

The Need for the Proposed Action

The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel and to finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action

A. Nuclear Criticality and Radiation Safety

Once at Braidwood, Unit 2, the new fuel may be temporarily stored in shipping containers in the receiving area of the Fuel Handling Building prior to placement in their designated storage locations: the new fuel storage area and the spent fuel pool. The shipping container array to be utilized at Braidwood, Unit 2, has been analyzed for nuclear criticality safety under all degrees of water moderation and/or reflection and found to be safe.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for any external contamination. Assuming no contamination is found, the assemblies are transferred to their designated storage location. Criticality safety of the storage locations (new fuel and spent fuel racks) is maintained by limiting the interaction between adjacent fuel assemblies. This is accomplished in the new fuel storage racks such that 3 groups of 44 assemblies, in 2 rows per group, have a center-to-center spacing of 21 inches. In the spent fuel storage racks, the fuel assemblies will be stored in a checkerboard pattern; the four adjacent storage locations to each fuel assembly are vacant. The staff has confirmed the nuclear criticality safety of the specified storage arrays under all degrees of water moderation and/or reflection.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For low-enriched uranium fuel (<percent U-235 enrichment), the exposure level to an individual standing 1 foot from the surface of the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. In addition, the applicants are committed to establishing a program for maintaining general public exposure as low as reasonably achievable. Therefore, the staff has concluded that the applicants' requested operations can be carried out with adequate radiation protection of the public and environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packaged material) is expected to be generated as a result of fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

B. Transportation

In the event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the fuel rod cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

C. Conclusion

The environmental impacts associated with the handling and storage of new fuel at Braidwood, Unit 2, are expected to be insignificant. Essentially, no effluents, liquid or airborne, will be released and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternative to the Proposed Action

The principal alternative would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at Braidwood, Unit 2. Although denial of the Special Nuclear Materials License for Braidwood, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved to the satisfaction of regulatory authorities involved.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–1026) dated June 1984 related to this facility.

Agencies and Persons Consulted

The Commission's staff reviewed the applicant's request of June 8, 1984, and its supplements dated September 18, and November 19, 1984, and June 7, July 31, and November 14, 1985, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commisison has prepared an Environmental Assessment related to the Issuance of Special Nuclear Materials License No. SNM–1945. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Assessment. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301)427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Silver Spring, Maryland, this 15th day of August 1986.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 86–20043 Filed 9–4–86;8:45am]

BILLING CODE 7590-01-M

[Docket No. 40–8697]

Rocky Mountain Energy Co.; Draft Finding of No Significant Impact Regarding Termination of Source Material License SUA–1338 for the Reno Creek R&D in Situ Leach Facility Located in Campbell County, Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Draft Finding of No Significant Impact.

(1) *Proposed Action.* The U.S. Nuclear Regulatory Commission (the Commission) is proposing to terminate Source Material License SUA–1338 for the Rocky Mountain Energy Company's Reno Creek R&D in situ leach facility located in Campbell County, Wyoming.

(2) *Reasons for the Draft Finding of No Significant Impact.* The Commission's Uranium Recovery Field Office has reviewed the Rocky Mountain Energy Company's decommissioning report which was prepared in accordance with the Rocky Mountain Energy Company's decommissioning plan. The plan was approved by the Commission on May 2, 1985 and the report was submitted to the USNRC on August 13, 1986. Based on the decommissioning report, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the contents of the decommissioning report:

(a) Two test patterns were utilized in the Reno Creek R&D project. Lixiviant consisted of sodium bicarbonate with hydrogen peroxide as the primary oxidant. Test Pattern II was operated for three months in 1980. Restoration of Test Pattern II was completed and approved by the Commission on April 12, 1982 after utilizing ion exchange and ground-water sweep methods.

Test Pattern I was operated for nine months in 1979 and was restored with a ground-water sweep. Restoration was completed and approved by the Commission on February 24, 1986. Post restoration stability monitoring was performed for twelve months prior to the Commission's approval of restoration of both test patterns.

(b) The decommissioning report addressed well abandonment, the removal of process equipment, evaporation reservoir removal, contamination surveys, soil sampling and environmental monitoring.

The wells from Patterns I and II were abandoned in accordance with the Wyoming State Engineer's Office permit requirements. Following cementation, each well casing was cut two feet below the ground surface. The tops were capped and the area was backfilled and seeded.

All process tanks, columns, pipes and associated equipment as well as the evaporation reservoir were removed and disposed of at a nearby licensed tailings impoundment. Area gamma surveys indicated contaminated soil which was subsequently removed and disposed of in the licensed tailings impoundment.

Soil samples were collected to a 15-centimeter depth from each former well pattern site and the evaporation reservoir site. Radium-226 concentrations did not exceed the limits specified in 40 CFR Part 192. Environmental monitoring for airborne radionuclides and direct gamma radiation continued through the decommissioning process with results well below the respective maximum permissible concentrations for unrestricted areas.

(c) Final decontamination tasks were completed in June of 1986. Utilities were disconnected, remaining buildings were cleaned and final radiation surveys were performed. Independent verification of site cleanup was

performed by the USNRC on August 15, 1986.

Accordingly, the Commission's Uranium Recovery Field Office has determined that the proposed action i.e., termination of Source Material License SUA–1338, will not have a significant effect on the quality of the human environment. This determination is based on the fact that all contamination has been cleaned up and removed from the site.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a Draft Finding of No Significant Impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register.** Comments should be addressed to the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225.

This finding, together with the decommissioning report setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 25th day of August, 1986.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief Licensing Branch 2 Uranium Recovery Field Office Region IV.

[FR Doc. 86–20017 Filed 9–4–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8728]

UNC Teton Exploration Drilling, Inc.; Draft Finding of No Significant Impact Regarding Termination of Source Material License SUA–1373 for the Teton Leuenberger R&D In Situ Leach Facility Located in Converse County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Draft Finding of No Significant Impact.

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(1) Proposed Action

The U.S. Nuclear Regulatory Commission (the Commission) is proposing to terminate Source Material License SUA–1373 for the UNC Teton Exploration Drilling, Inc. (UNC Teton) facility located in Converse County, Wyoming.

(2) Reasons for the Draft Finding of No Significant Impact

The Commission's Uranium Recovery Field Office has reviewed the UNC Teton's decommissioning report which was prepared in accordance with the UNC Teton decommissioning plan. The plan was approved by the Commission on May 13, 1985 and the report was received at the USNRC on August 14, 1986. Based on the decommissioning report, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the contents of the decommissioning report:

(a) One test pattern was utilized in the N ore zone formation (220–270 feet deep.) Lixiviant consisted of sodium bicarbonate. This test pattern was operated during the first six months of 1980. Restoration of this test pattern was completed in November of 1980 after performing a ground-water sweep. Fourteen months of post restoration stability monitoring was performed prior to the Commission's approval of restoration which occurred on February 28, 1983.

(b) Three test patterns were operated in the M ore zone formation (320–390 feet deep) during eleven months in 1980 and the first two months in 1981. Restoration methods utilized included filtration of recovered solutions, ion exchange, reverse polarity electrodialysis and reinjection of diluted solution. Post restoration stability monitoring was performed for nine months prior to the Commission's approval of the restoration which occurred on February 22, 1983.

(c) The decommissioning report addressed well abandonment, the removal of process equipment, evaporation pond removal, contamination surveys, disposal methods, soil sampling and environmental monitoring.

The wells from the four test patterns were abandoned in accordance with the Wyoming State Engineer's Office permit requirements. Each well casing was cut two feet below the ground surface. Plugging material consisted of bentonite with a top layer and cap of cement.

All process tanks, columns, pipes and associated equipment as well as the two evaporation ponds were removed and disposed of at several nearby licensed tailings impoundments. Area gamma surveys indicated contaminated soil which was subsequently removed and disposed of in these licensed tailings impoundments.

Soil samples were collected to a 15-centimeter depth from each former well pattern site, the evaporation pond sites and other locations as indicated by the area gamma surveys. Radium-226 concentrations did not exceed the limits specified in 40 CFR Part 192. Environmental monitoring for airborne radionuclides continued throughout the decommissioning process with results well below the respective maximum permissible concentrations for unrestricted areas.

(c) Final decontamination tasks were completed in June of 1986. Utilities were disconnected, the remaining building was cleaned and final radiation surveys were performed. The entire project site was recontoured, covered with topsoil and reseeded. Independent verification of site cleanup was performed by the USNRC on June 17, 1986.

Accordingly, the Commission's Uranium Recovery Field Office has determined that the proposed action i.e., temination of Source Material License SUA–1373, will not have a significant effect on the quality of the human environment. This determination is based on the fact that all contamination has been cleaned up and removed from the site.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a Draft Finding of No Significant Impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register.** Comments should be addressed to the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225.

This finding, together with the decommissioning report setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 29th day of August, 1986.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office Region IV.

[FR Doc. 86–20044 Filed 9–4–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-528, 50-529, 50-530]

Arizona Public Service Corp. (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated July 16, 1986, Barbara Bush, Lyn McKay and Myron Scott, on behalf of the Coalition for Responsible Energy Education (CREE), has requested that the Director of Inspection and Enforcement consider a request for action under 10 CFR 2.206. The petition alleges that Arizona Public Service Corp., et al. (Licensees) have knowingly violated the provisions of 10 CFR 50.7 by requiring certain employees to submit to polygraph testing as a means of discouraging employees from reporting unsafe conditions at the Palo Verde facility. Relief requested against Licensees includes: (1) Imposing a stringent civil penalty; (2) Requiring the posting of notices to employees regarding protection afforded under 10 CFR 50.7 and the Energy Reorganization Act; (3) Requiring the posting of a public apology by Licensees for the alleged violation of 10 CFR 50.7 and the Energy Reorganization Act; and (4) Denying or revoking all Palo Verde licenses. A decision will be made on CREE's request within a reasonable time.

Copies of the petition are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555 and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Bethesda, Maryland this 28th day of August, 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-20045 Filed 9-4-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382, License No. NPF-38, EA 86-50]

Louisiana Power & Light Co.; Waterford Steam Electric Station Unit 3: Order Imposing Civil Monetary Penalty

I

Louisiana Power & Light Company (the licensee) is the holder of Operating License No. NPF-38 (the license) issued by the Nuclear Regulatory Commission (the NRC or the Commission). The license authorizes the licensee to operate the Waterford Steam Electric Station, Unit 3 in accordance with the conditions specified therein.

II

A safety inspection of the licensee's activities under its license was conducted from January 1-31, 1986. The results on this inspection indicated that the licensee had not concluded its activities in full compliance with the Technical Specifications in its license. The results of this inspection were discussed with licensee representatives during an enforcement conference on March 5, 1986.

A written Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was subsequently served upon the licensee by letter dated April 16, 1986. This NOV stated the nature of the violations, the license conditions that were violated, and the amount of civil penalty proposed for one of the violations. An answer dated May 16, 1986 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation of the proposed civil penalty or reclassification of the severity level of Violation I contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violation occurred as stated and the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 295), and 10 CFR 2.205, it is **hereby ordered that**

The licensee pay the civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, the 27th day of August 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

APPENDIX

On April 6, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during a routine NRC safety inspection. Louisiana Power and Light responded to the NOV on May 16, 1986. Only Violation I in the NOV was assessed a civil penalty and, accordingly, was reconsidered in response to the licensee's requests for reclassification of the violation to Severity Level IV and for mitigation of civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of Violation

Technical Specification (TS) 3.6.2.1 requires that two independent containment spray systems be *OPERABLE* with each spray system capable of taking suction from the RWSP on a containment spray actuation signal and automatically transferring suction to the safety injection system sump on a recirculation actuation signal. This applies to *MODES* 1, 2, 3, and 4.

TS 3.0.4 requires that entry into an *OPERATIONAL MODE* or other specified condition shall not be made unless the conditions of the limiting condition for operation are met without reliance on provisions contained in the *ACTION* requirements.

Contrary to the above, on December 16, 1985, the plant entered Mode 3 while relying on the *ACTION* requirements of TS 3.6.2.1 in that Train B of the Containment Spray system was

inoperable due to a closed discharge header valve (CS–111B).

This is Severity Level III violation (Supplement I). (Civil Penalty—$50,000)

Summary of Licensee's Response

The licensee admits the violation but requests reduction in its severity level. The licensee believes that the characteristics of a Severity Level III violation as described in 10 CFR Part 2, Appendix C, Supplement I are more severe than those of the subject violation. The licensee points out that while no specific example in Supplement I deals with a violation of TS 3.0.4, it should be noted that TS 3.6.2 allows a single Containment Spray System (CSS) train to be inoperable for up to 72 hours and that prompt action on the part of the licensee personnel restored operability of CSS Train B in approximately 15 hours. In addition, similar Severity Level III examples in Supplement I involve a safety system not being able to perform its safety function. The redundant CSS train in this case was available to perform its intended safety function throughout the time in question. Thus, the licensee believes the violation should be classified as a Severity Level IV since it is more similar to the Severity Level IV examples given in 10 CFR Part 2, Appendix C, Supplement I.

The licensee also requests mitigation of the proposed civil penalty based on prompt identification and reporting, and its corrective action to prevent recurrence. The licensee feels it identified the problem with the closed valve (CS–111B) which made Train B of the CSS inoperable some 15 hours after the action statement of TS 3.6.2.1 was entered. The TS action statement can be relied on for 72 hours if no mode change is made. The licensee feels that the operations staff, considering the level of plant activity, performed quickly and professionally in identifying the problem of the disconnected reach rod to CS–111B and subsequent reporting of the TS violation to the NRC. Furthermore, the licensee indicates that a detailed corrective action plan has been implemented as outlined in the Appendix to its letter of May 16, 1986. Corrective actions were implemented to prevent recurrence as well as longer term in-depth actions to assure that remote operators would be considered as essential components of plant equipment. The licensee states that "All corrective actions were implemented on its initiative, independent of NRC's inspection activities." These actions were promnpt and effective in preventing recurrence of a similar situation.

Evaluation of Licensee's Response

After a thorough review of the licensee's response and its request for reduction of the severity level of the violation, the NRC has determined that the classification at a Severity Level III is appropriate. The licensee argues that a safety system (all redundant trains) not being able to perform its safety function is a Severity Level III violation. The staff disagrees. Where this condition exists it may represent a Severity Level II violation (Supplement I, B.1). Inoperability of one train of a system may be a Severity Level III violation (Supplement I, C.2). In this case, although only one train of the CSS was inoperable, a number of factors led to the inoperability of CSS Train B that indicate a significant lack of attention to detail and that a Severity Level III classification of the violation is warranted. Improper maintenance of plant equipment, inaccurate procedures, and a misleading annunciator window were causes of the violation. The Shift Supervisor made a decision to change modes in violation of Technical Specification requirements based on the assumption that there was only a valve electrical indication problem, yet he did not thoroughly investigate nor verify that assumption. As discussed in Inspection Report 50–382/86–02, it also appeared that at the time of the valve lineup, licensee personnel other than those performing the lineup knew valve reach rods were disconnected yet no corrective action had been initiated. These factors reflected significant weaknesses in the operation of the Waterford facility that are cause for significant concern and that resulted in the inoperability of CSS Train B for 15 hours. Therefore, a reduction in the Severity Level of the violation is not appropriate.

In evaluating the licensee's request for mitigation, the NRC considered the factors addressed in the licensee's response, and in each instance, found that mitigation was not appropriate. Although the NRC staff recognizes that the licensee reported the event, implicit in prompt reporting is the necessity to provide an accurate report of the event. In this case, the report of the event did not address the fact that valve CS–117B was found to have a disconnected reach rod, that an annunciator window had been poorly labeled, and that an annunciator response procedure had been mislabeled. It is also misleading in that it referred to the white annunciator window as an "annunciator green light." Because of these errors and omissions in reporting, mitigation on the basis of prompt identification and reporting is not considered appropriate.

The NRC staff also recognizes that prompt short-term corrective actions were taken. However, the actions taken by the licensee would normally be expected in response to such an event. Furthermore, the NRC staff believes that not all corrective actions were taken independent of NRC inspection activities. NRC inspectors identified deficiencies in the reporting of the event and some of the corrective actions were subsequently generated as a result of the NRC inspectors' questions in this area. The inspectors were concerned that the licensee's corrective actions failed to address timely response to actuated annunciators per approved procedures, to address proper and timely identification of out-of-service plant equipment including disconnected reach rods, and whether other annunciators were also ambiguous. The NRC expects licensees to vigorously pursue root causes of abnormal plant conditions so that prompt and effective corrective actions can be taken. The licensee failed to identify the root causes of the event and provide comprehensive corrective actions to preclude recurrence. Therefore, an adequate basis has not been provided for mitigating the civil penalty.

NRC Conclusion

Neither an adequate basis for a reduction of the severity level of Violation I nor for mitigation of the civil penalty associated with Violation I was provided by the licensee. Consequently, the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 86–20046 Filed 9–4–86; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Notice Concerning Review of Petitions in the 1986 Annual Review

On July 18, 1986 notice was published (51 FR 26088) listing petitions accepted for review in the 1986 annual review of the Generalized System of Preferences (GSP) Program. The purpose of this notice is to provide notification that our review of Case No. 86–35 has been terminated, at the request of the petitioner.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86–19991 Filed 9–4–86; 8:45 am]
BILLING Code 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from Securities and Exchange Commission, Office of Consumers Affairs, Washington, D.C. 20549.

Extension:

Rule 17a-1–File No. 270–244
Rule 17a-7–File No. 270–147
Rule 19h-1(a), (c)-(e), (g)–File No. 270–242

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted the following rules for extension of OMB approval:

Rule 17a-9–Recordkeeping rule for national securities exchanges and national securities associations
Rule 17a-7–Records of non-resident broker-dealers
Rule 19h-1(a), (c)-(e), (g)–Notice of self-regulatory organization of proposed admission to or continuance in membership or participation or association

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395–3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,
Secretary.
August 28, 1986.
[FR Doc. 86–20079 Filed 9–4–86; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-23573; File Nos. SR-Amex-86-15, Amex-86-23]

Self-Regulatory Organizations; American Stock Exchange, Inc. Order Approving Proposed Rule Change and Granting Accelerated Approval of Proposed Rule Change

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Commission on May 30, 1986, and August 11, 1986, respectively, proposed rule changes to list and trade a broad-based market index option contract, tentatively titled the Institutional Index Option ("XII" or "Index") and to extend the Exchange's AUTO–EX rapid order execution system to XII options. SR–Amex–86–15 was noticed in Securities Exchange Act Release No. 23311 (June 9, 1986), 51 FR 21815 (June 16, 1986). No comments were received on the proposal.

II. Description of Proposal

The XII is a capitalization or market-weighted index [3] composed of the seventy-five stocks most favored by institutional investors, as determined by the dollar value of shares held by such investors. The stocks comprising the Index represent approximatley 22 distinct industry groups, including oil, automotive, retail, electronics, and telecommunications concerns. As of June 30, 1986, the total market capitalization of the Index was $932 billion.[4] The New York Stock Exchange ("NYSE") is the primary market for the stocks comprising the XII.

The Amex proposes to select stocks for inclusion in the XII by reviewing reports submitted to the Commission by institutional investment managers pursuant to Section 13(f) of the Act and Rule 13f–1 thereunder ("13(f) reports")[5] and selecting those stocks which meet certain screening criteria developed by the Amex. These criteria provide that each stock initially included in the Index must be held by at least 200 of the reporting institutions, and must have traded a minimum of 7 million shares per quarter in both the current and preceding calendar quarters. Stocks meeting both of these requirements will then be ranked on the basis of dollar value of shares held by the institutions, and the 75 stocks with the highest dollar value of shares held shall be included in the Index. The Amex has indicated that the minimum requirement of 200 institutional holders is intended to screen out stocks which are dominated in ownership by a relatively small number of institutions. The trading requirement is intended to screen out stocks which, although widely held by institutions, are relatively inactive.

The Amex will review summaries of the 13(f) reports on a quarterly basis to ensure that the component stocks in the Index continue to meet the criteria outlined above. In the event that a stock(s) does not meet these criteria, the Exchange shall replace it, pursuant to the following guidelines: (1) A component stock shall be replaced if it trades less than 7 million shares in each of the preceding two calendar quarters; and (2) in order to replace a current, component stock which is no longer among the 75 largest dollar holdings of the reporting institutions, the dollar holdings of the replacement stock must exceed those of the component stock by at least 5%.[6] In the event this latter requirement is not met, no replacement will be made. The Amex believes that the application of these guidelines will help avoid repeated replacements of stocks in the Index which are only marginally more liquid or widely-held.[7]

The XII will be a European-style [8] option, exercisable only at the time of the option's expiration.[9] The Amex

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[1] 15 U.S.C. 78s(b) (1982).
[2] 17 CFR 240.19b–4 (1985).

[3] In a capitalization-weighted index, the current (daily) market price of each component stock is multiplied by its total number of shares outstanding, and the sum of these products is divided by a divisor selected by the Exchange.

[4] Letter from Nathan Most, Vice President, New Products Development, Amex, to Holly Hasley Smith, Attorney, Divison of Market Regulation, dated July 3, 1986.

[5] Section 13(f) requires institutional investment managers that exercise investment discretion over accounts holding equity securities in excesss of $100 million, to file quarterly reports with the Commission identifying, among other things, the issuer, number of shares or principal amount, and aggregate fair market value of each security held in the account. These reports, which are made available to the public, presently are filed by approximately 800 institutional investment managers. For purposes of Section 13(f), the term "institutional investment manager" includes any person (other than a natural person) buying or selling securities for its own account, and any person exercising investment discretion concerning the account of any other person.

[6] The Commission understands that, in addition to these criteria, the Amex also plans to require that component stocks continue to be owned by at least 200 of the 13(f) reporting institutions. The Exchange will monitor institutional share ownership on a quarterly basis and will replace component stocks that fall below the 200 institutional holder requirement. Telephone conversation on August 20, 1986, between Nathan Most, Vice President, New Products Development, Amex, and Rob Mooney, Attorney, Division of Market Regulation.

[7] The Amex proposes to announce changes in component stocks immediately after replacement stocks have been selected. Any such changes in the Index shall be made effective on the business day following the next option expiration. As a practical matter, investors may receive notification of stock substitutions only shortly prior (*e.g.*, one week) to the substitutions taking effect. In the event of any such substitutions, the divisor will be adjusted if necessary to maintain continuity in the Index value.

[8] A European option may be exercised only during a specified period (which may be as short as a single day), just before the option expires. This is in contrast to an American option which may be exercised by the holder at any time after it is purchased until it expires. The writer of a European option is subject to the assignment of an exercise only during the exercise period.

[9] The Amex proposes to amend Exchange Rules 900C and 901C to provide definitions for both American and European-style options, and to permit the Exchange to list options on stock indexes on both types of contracts.

states in its filing that the European-style feature of the contract will enable spread, straddle or combination writers to hold positions in the XII without concern that one leg of their short positions may be exercised prior to the option's expiration. The Amex further states that the contract will allow investment managers to maintain a hedged position against their portfolios for the duration of the option's life.[10]

The Amex also proposes to amend Exchange Rule 904C to provide for position limits for the XII not in excess of 15,000 contracts on the same side of the market.[11] The Amex believes that a 15,000 contract limit is appropriate because the market value of the component XII stocks is approximately equal to the current market value of the component stocks in the Chicago Board Options Exchange's ("CBOE") two broad-based index options, the Standards & Poor's 100 and 500 Indexes ("OEX" and "SPX," respectively). The position limits for both the OEX and SPX currently are effectively set at 15,000 contracts.[12]

Finally, the Exchange proposes to extend its AUTO-EX program to XII options.[13] Pursuant to the pilot, member firms may route public customers' market and marketable limit orders up to 10 contracts through the Exchange's AUTO-AMOS system [14] to be executed against the best bid or offer at the time the order is entered. The AUTO-EX system ensures that customers' orders on the book retain priority over orders in the crowd.

[10] Subsequent to the filing of its initial proposal, the Amex amended its filing to indicate that XII would trade until 4:15 p.m. each business day, so that investors in XII options who choose to hedge their risks with futures contracts on the S&P 500 can adjust their XII positions in response to price movements in the futures market during the last five minutes of futures trading. *See* letter to Eneida Rosa, Branch Chief, Division of Market Regulation, SEC, from Heidi Litt Spitzer, Senior Attorney, Amex, dated July 23, 1986.

[11] *See* text accompanying notes 15 to 17, *infra*.

[12] CBOE Rule 24.4 provides that option contracs on a market index shall be subject to a contract limitation fixed by the CBOE Board. The CBOE Board has authorized 15,000 contract limits for both OEX and SPX options. *See* letter to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, from Fredric Krieger, Assistant General Counsel, CBOE, dated March 5, 1996.

[13] Since the inception of the program, AUTO-EX has been confined to XMI options only.

[14] AUTO–AMOX is the Exchange's automatic order delivery and execution system for options that permits member firms to electronically route certain orders directly to specialists' posts for execution, and to receive back confirmation of trades by the same route. *See* Securities Exchange Act Release No. 22610, November 8, 1985, 50 FR 47480, November 18, 1985.

II. Discussion

The Amex proposal to trade options on the XII does not, for the most part, raise novel questions. The Commission previously has approved options trading on European-style contracts, among them, the CBOE's SPX, which, like the XII, is a broad-based index option.[15] In approving the CBOE proposal, the Commission recognized that there are advantages and disadvantages to both American and European-style options, with purchasers generally benefiting from American-style options and sellers from the European-style.[16] With the latter type of option, the purchaser is disadvantaged to some extent because he must rely on the continued existence of a liquid secondary market in the options in order to close out an option position before expiration. In contrast, the writer of the contract benefits from the contract's European-style exercise feature, because the writer cannot be exercised against until expiration, and accordingly, can engage in long-range planning and strategies. While the Commission recognizes that the European-style of the XII may limit the flexibility of options purchasers, we also believe that the exercise feature of the contract may facilitate certain trading strategies and prove useful to investors. The Commission also is not inclined to substitute its judgment for the business judgment of a self-regulatory organization in matters of contract design, absent regulatory concerns.

The Commission believes, however, that the unique risks associated with the exercise restrictions of European-style options mandate adequate disclosure. In this regard, the Commission notes that disclosure information pertaining to the special characteristics of European-style options recently was added to the options disclosure document prepared by the Options Clearing Corporation and the options exchanges, and distributed to all options investors.[17] Moreover, as part of its marketing efforts regarding XII, the Amex will publicize extensively the European-style exercise feature of the Index.

[15] At the present time, three European-style option contracts are approved for trading in the United States. *See* Securities Exchange Act Release Nos. 22471 (September 26, 1985), 50 FR 40636, approving a CBOE proposal to trade European-style foreign currency options; 22309 (August 9, 1985), 50 FR 32934, approving a CBOE proposal to convert the SPX from an American to a European-style option; and 22999 (March 12, 1986), 51 FR 9733, approving an Amex proposal to trade European-style 13-week Treasury bill options.

[16] The Commission anticipates that the premium for each kind of contract generally will reflect the differences in benefits for purchasers and writers.

[17] *See* Securities and Exchange Act Release No. 22418 (September 17, 1985), 50 FR 38732.

Accordingly, investors who elect to purchase XII contracts will be alerted in a timely manner to the risks associated with European-style options.

In addition to proposing that the XII be traded as a European-style contract, Amex proposes to amend Exchange Rule 904C to provide that position limits for the XII be set at a maximum of 15,000 contracts on the same side of the market. The Commission previously approved the use of a fixed number of contracts, as opposed to a dollar value, as the basis for establishing position and exercise limits for the Amex's Major Market and Market Value Indexes ("XMI" and "XAM," respectively), and the Pacific Stock Exchange's High Technology Index. In approving position limits of 10,000 contracts for the XMI and XAM, and 15,000 contracts for the High Technology Index, the Commission found that limits expressed in number of contracts may be appropriate for broad-based index options if they are set at levels that adequately protect against disruption or manipulation of the underlying securities. Applying this standard to the proposed XII contract, we agree with the Amex's characterization of the index as broad-based,[18] and believe that a 15,000 contact limit will be appropriate for the new Index. The Commission notes that the dollar value of this number of contracts is comparable to that of the XMI,[19] and unlikely to cause disruptions either by congestion or manipulation [20] in the options or related markets.[21]

[18] Based upon the number of stocks included in the Index, the diversity of industries represented, and the fact that no one stock or industry dominates the Index, we conclude that the Index is representative of the market as a whole. The Commission also notes that the XII has a very high degree of correlation with the CBOE's SPX Index.

[19] At the current XII index value of 250 on June 24, 1986, the dollar value of a 15,000 contract position would be $375 million. In comparison, a 10,000 contract position in XMI on July 3, 1986, was equivalent to approximately $362 million.

[20] The Amex has not proposed any exercise limits for the XII because the contracts only can be exercised on the day prior to expiration. We note that the Amex can grant exemptions to existing position limits under certain circumstances. Accordingly, in considering exemptions for higher position limits in the XII, the Commission expects Amex to consider, among other things, whether such increased limits could have any adverse effects at expiration.

[21] The Commission notes, in this regard, that while it continues to be concerned about the volatility which has been associated with the liquidation of index arbitrage positions on the four Fridays in which both the index options and futures expire, it does not believe that the introduction of the XII Index will materially effect those developments. In any event, the Commission will continue its efforts to evaluate alternative methods of addressing Expiration Friday concerns.

The Commission notes that the Index may be updated by the Amex on a quarterly basis, with stocks that have demonstrated to be more popular with institutional investors replacing current component stocks. The Amex believes that making these substitutions will ensure that the XII closely tracks the investment portfolios of institutional money managers.

The Commission does not believe this aspect of the Amex proposal presents any particular regulatory concerns. The criterion by which the Amex proposes to make stock substitutions (7 million shares traded and dollar holdings at least 5% greater than the component stock) are objective in nature, and the information upon which substitutions will be made is filed with the Commission pursuant to specific reporting requirements of the Act, and made publicly available. Moreover, it is unlikely that investor confusion will be caused by quarterly replacement of component stocks. The Amex anticipates that quarterly changes in the Index will not exceed two or three of the lower market valued stocks. In addition, changes to the list of component stocks will be announced as soon as such changes are determined, and will not take effect until the business day following the next option expiration.[22]

Finally, the Commission believes that it is appropriate to incorporate XII options into the Exchange's AUTO-EX pilot. The Exchange has received very favorable comments from member firms participating in the AUTO-EX pilot program regarding the rapid execution and reporting of their XMI orders. The Exchange believes that extending the benefits of AUTO-EX to XII will contribute to the liquidity of the markets in XII options contracts.

IV. Conclusion

Under section 19(b)(2) of the Act, the Commission must approve a proposed rule change if it determines that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission has reviewed carefully the rules proposed by the Amex to accommodate the listing and trading of XII options, and has concluded that the rules provide for adequate and proper regulation of the proposed market. Accordingly, the Commission finds that SR-Amex-86-15 is consistent with the requirements of the Act and the rules and regulations thereunder, in particular, the requirements of Section 6.

The Exchange also requests that its proposal to use AUTO-EX for XII options, SR-Amex-86-23, be given accelerated effectiveness pursuant to section 19(b) of the Act because the Exchange has received very favorable comments from member firms participating in the AUTO-EX program regarding the rapid execution and reporting of their XMI orders. The Exchange believes that extending the benefits of AUTO-EX to XII will contribute to the liquidity of the markets in XII options contracts.

The Commission finds that SR-Amex-86-23 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving SR-Amex-86-23 prior to the thirtieth day after the date of publication of notice of filing thereof because the Exchange states that the AUTO-EX pilot already has proven beneficial to the market in XMI options by providing rapid order execution and contributing to liquidity. AUTO-EX should substantially expedite the execution and reporting of XII options contracts and in so doing should benefit the market in these securities.

V. Solicitation of Comments

Interested persons are invited to submit written data views, and arguments concerning SR-Amex-86-23. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filings also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file numbers in the caption above and should be submitted by September 26, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20080 Filed 9-4-86; 8:45 am]

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[22] As a separate matter, the Commission notes the federal securities laws, unlike the regulations under the Commodity Exchange Act, do not contain an explicit "economic purpose" test for new options products. Nevertheless, to approve a new options proposal the Commission must be satisfied that its introduction is in the public interest [*See* Section 6(b)(5) of the Act, 15 U.S.C. 78(f)(b)(5) (1984)]. Such a finding would be difficult with respect to an options product that served no hedging or other economic function because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the Commission believes that the XII will permit institutional money managers to efficiently hedge their investment portfolios.

[Rel. No. 34-23563; File No. SR-DTC-86-06]

Self-Regulatory Organizations; Depository Trust Company; Order Approving Proposed Rule Change (File No. SR-DTC-86-06)

The Depository Trust Company ("DTC") on June 26, 1986, filed a proposed rule change (File No. SR-DTC-86-06) under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in the **Federal Register** on July 22, 1986, to solicit public comments.[1] No public comment was received. This Order approves the proposal. The rule change will allow DTC Participants to exercise warrant subscriptions by book-entry.

I. Description

DTC's proposal will allow DTC Participants to exercise qualifying warrant subscriptions by book-entry processing. When DTC is notified of a partial or full call for redemption of a qualifying warrant, DTC will notify Participants of the call and a cut-off date and time by which Participants must notify DTC that they will exercise the qualifying warrant. Participants wishing to exercise their warrants must submit to DTC a Warrant Subcription Instructions authorization form. Upon receipt of the authorization form, DTC will deduct the quantity of surrendered warrants from the Participant's account and add the quantity of underlying securities. DTC also will debit the

[1] Securities Act Release No. 23444 (July 16, 1986), 51 FR 26324 (July 22, 1986).

Participant's money settlement account (or securities account in the case of surrendered payment securities as permitted by the terms of the subscription) to pay for the cost of the subscription. DTC will send the authorization form, an Agent Receipt and Confirmation form and the warrants to the subscription agent for redemption. If the authorization form is submitted before 11:00 a.m. for same-day processing, the underlying securities will become available that day for the full range of DTC services, including book-entry delivery to other Participants and book-entry pledge for collateral loans.

DTC may reject a Participant's request for book-entry exercise of the warrant subscriptions if (1) the authorization form is incomplete or inaccurate; (2) the Participtant's account has insufficient position to permit the warrants to be surrendered; or (3) DTC determines that the request may result in money loss to DTC and/or Participants generally. If DTC rejects a Participant request for book-entry exercise, DTC will, ordinarily on the same day as the rejection occurs, place a telephone call to a coordinator identified on the Participant's instructions form and make available to the Participant a copy of the instructions.

DTC will notify Participants from time to time which warrants may be exercised by book-entry. A warrant ordinarily will qualify for exercise by book-entry if DTC has sufficient certificate inventory in the underlying securities issue to continue meeting expected certificate withdrawal requests pending receipt of certificate reflecting warrant exercises.

II. DTC's Rationale

DTC believes the proposal is consistent with the Act. DTC believes that the proposed rule change will provide its Participants with an economic and orderly method for exercising warrant subscriptions. DTC also believes that the proposal will allow Participants much speedier access to the underlying securities and will make it unnecessary for Participants to borrow securities or delay deliveries until the underlying securities are received.

III. Discussion

The Commission believes DTC's proposal is consistent with section 17A of the Act and therefore is approving DTC's proposal. The proposal will facilitate the prompt, safe and accurate clearance and settlement of securities transactions. Currently, DTC Participants wishing to exercise their warrants must withdraw the warrant from their DTC account and physically present it to the subscription agent along with payment. Once the underlying securities are received, they must be deposited in the Participant's DTC account to be eligible for book-entry processing. The proposal, however, is designated to reduce the movement and handling of certificates, thereby reducing the risks of loss and theft. Morever, in many cases, after exercise of the warrants, the underlying securities will be available on the same day for the full range of DTC services.

The Commission believes the proposal is consistent with DTC's obligation to safeguard funds and securities. Because the proposal would permit Participants to withdraw securities certificates reflecting exercised warrants pending issuance of related certificates in DTC's nominee name, DTC's certificate inventory could be inadequate to meet participant's withdrawal requests on a routine and prompt basis. The Commission is satisfied that DTC's proposal adequately addresses this risk; DTC will make eligible for book-entry processing only those issues in which DTC has sufficient certificate inventory of the underlying securities issue to meet anticipated Participant withdrawal requests pending DTC's receipt of certificates reflecting warrant exercise.

IV. Conclusion

On the basis of the foregoing, the Commission finds that proposed rule change (File No. SR-DTC-86-06) consistent with the Act, and more specifically, with section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-86-06) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 26, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20081 Filed 9-4-86; 8:45 am]

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[Rel. No. 34-23564; File No SR-MSE-86-5]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to Amendments to Midwest Stock Exchange's Listing Rules.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1986, the Midwest Stock Exchange, Inc. ("MSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XXVIII, Rule 7 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

Article XXVIII—Listed Securities

Requisites for Listing on Exchange.

Rule 7. The prime requisite for listing on the Midwest Stock Exchange is the quality of the corporation. Its products and services must enjoy public acceptance and good reputation. Its management must operate the company in the public interest. Its securities must also meet the technical requirements of an auction market.

The Exchange is desirous of assisting new enterprises, as well as smaller businesses, but is not interested in purely promotional ventures or a company whose products and services do not benefit the public. Therefore, the following requirements must be met in order for the Exchange to entertain an application for listing:

A through G—No change in text.

H. Each listed company shall establish and maintain and Audit Committee, a majority of the members of which shall be independent directors.

I. Each listed company shall maintain a minimum of two independent directors on this board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company of its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

No change in remainder of Rule 7.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The next of these statements may be

examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Midwest Stock Exchange is proposing to amend its listing rules to require: (i) that an audit committee be established comprised of a majority of directors of a listed company's board who are independent of management, and (ii) that there be a minimum of two independent directors on a listed company's board of directors. These changes are being proposed in an effort to ensure that companies whose shares are listed on the Midwest Stock Exchange will continue to maintain financial integrity and favorable reputation while meeting minimal standards necessary for the protection of investors.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

On July 12, 1985 a Notice to Members/Listed Companies (attached as Exhibit A) was issued soliciting comments on the proposed rule change. MSE received nine comments on the proposed rule change (attached as Exhibit B). All the comments generally supported the proposed rule change and several indicated that they already comply with the proposed changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 26, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20083 Filed 9-4-86; 8:45 am]

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[Rel. No. 34-23568; File No. SR-MSTC-85-7]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving Proposed Rule Change

I. Introduction

On November 14, 1985, the Midwest Securities Trust Company ("MSTC") filed with the Commission a proposed rule change (File No. SR-MSTC-85-7) pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"). Notice of that proposal was published in Securities Exchange Act Release No. 22738 (December 23, 1985), 51 FR 143 (January 2, 1986). No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The proposal amends Article I, Rule 1 and Article VII, Rule 9 of MSTC's Rules to reflect recent amendments to Section 8-320 of the Illinois Uniform Commercial Code ("IUCC").[1] Those amendments recognize the validity of book-entry movements effected on the books of a domestic clearing corporation of its securities held in a fungible bulk at a "Foreign Clearing Corporation."[2] The proposal expands the definition of "Correspondent Depository" in MSTC Article I, Rule 1 to include a "Foreign Clearing Corporation" and defines "Foreign Clearing Corporation" by referring to its meaning in IUCC Article 8.[3] The proposal also amends MSTC Article VII, Rule 9 to clarify that all securities deliveries, pledges and transfers through MSTC facilities are governed by the IUCC.[4]

MSTC stated in its filing that the proposed rule change is consistent with Section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions. More specifically, MSTC represents that the proposal will conform MSTC rules to Illinois law, which will enable MSTC to construct full, efficient, "two-way" securities processing interfaces with foreign clearing corporations. MSTC believes that those interfaces will facilitate the clearance and settlement of securities transactions effected by United States broker-dealers abroad and will reduce processing costs and delays associated with those transactions.[5]

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[1] State corporate, contract and commercial law generally govern the mechanics of, and rights and liabilities of, persons effecting securities transfers and pledges. *See generally* Article 8 of the Uniform Commercial Code, entitled "Investment Securities."

[2] IUCC § 8-320, entitled "Transfer or Pledge Within a Central Depository System," recognizes that a "clearing corporation" (defined in IUCC § 8-102 as an entity registered with the Securities and Exchange Commission as a clearing agency under Section 17A of the Securities Exchange Act of 1934) can effect valid book-entry transfers and pledges of securities held by the clearing corporation, another clearing corporation, a custodian bank or a nominee subject to clearing corporation instruction. The amended version of the Section adds a "foreign clearing corporation" to the entities holding securities. *See also* IUCC 8-313(1)(g).

[3] New IUCC § 8-320(7) defines "Foreign Clearing Corporation" to be an "entity or organization in the business of holding securities outside the United States on behalf of others and with which a registered clearing corporation is permitted by the . . . Commission to maintain securities positions." New IUCC § 8-320(6) defines "Registered Clearing Corporation" for purposes of that Section as "an entity or organization registered with the . . . Commission as a clearing agency under Section 17A of the . . . Act."

[4] MSTC provided an opinion of counsel representing that book-entry movements at United States depositories of securities held in a fungible bulk at a foreign clearing corporation would be valid under the Uniform Commercial Code. *See* Letter of June 5, 1986, from Michael Wise, Associate Counsel, to Marc L. Weinberg, Branch Chief, Division of Market Regulation.

[5] In an October 23, 1985, letter, MSTC and Midwest Clearing Corporation ("MCC"), along with

Continued

III. Discussion

Foreign Clearing Corporations as MSTC Correpondent Depositories

The Commission agrees with MSTC that the proposal should facilitate the prompt and accurate clearance and settlement of international securities transactions and therefore is approving the proposal. The Commission recognizes that MSTC's proposal represents a significant step toward enabling clearing agencies to create true, "two-way" international securities processing arrangements, which, if constructed carefully, should enable routine, safe and efficient processing of transnational securities transactions. Safe, efficient processing of transnational trades has become increasingly important to investors and securities professionals because of the increase in international trading.[6] As discussed in several staff "no-action" letters [7] and Securities Exchange Act Release No. 21958,[8] processing of international securities transactions traditionally has been inefficient, labor-intensive and costly.[9]

The Commission generally does not believe that the proposal exposes MSTC to any special risks. First, the proposal conforms MSTC's rules to IUCC § 8–320; it does not authorize MSTC to take any further action, such as implementing a two-way, international clearance and settlement interface. Second, because the proposal's terms incorporate by reference the new IUCC definition of foreign clearing corporation, the proposal should ensure that any MSTC plans respecting such an interface, including the creation of essential international custodial arrangements, will be subject to prior Commission review.[10]

IV. Conclusion

On the basis of the foregoing discussion, the Commission finds that the proposal is consistent with the requirements of the Act in general and with Section 17A in particular. The Commission encourages MSTC to continue to take thoughtful and careful steps toward the creation of safe, efficient, two-way international securities processing interfaces with foreign clearing corporations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1986.

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010-01-M

the Canadian Depository for Securities Ltd. ("CDS"), indicated that they intend to establish a full securities clearance and settlement interface for processing trades flowing through a proposed trading link between the Midwest Stock Exchange ("MSE") and the Toronto Stock Exchange ("TSE"). (For a detailed description of the trading link, *see* File No. SR–MSE–85–4 and the Commission's Order approving that linkage, Securities Exchange Act Release No. 23075 (March 28, 1986), 51 FR 11854 (April 7, 1986).) In their letter, MSTC/MCC and CDS specifically requested that the staff of the Commission's Division of Market Regulation ("the Division") not recommend that the Commission take enforcement action if CDS does not register as a clearing agency under Section 17A of the Act. The Division granted MSTC/MCC and CDS no-action relief only with respect to CDS's membership in MSTC/MCC, *i.e.*, the implementation of a "one-wy" link. *See* Letter of March 21, 1986, from Jonathan Kallman, Assistant Director, to Michael Wise, Associate Counsel, MSTC/MCC.

[6] *See generally* Securities Exchange Act Release No. 21958 (April 18, 1985), 50 FR 16302 (April 25, 1985). This Release requested comment on the issues raised by the growing internationalization of the securities markets. The Commission has approved several proposed rule changes of United States national securities exchanges that establish international trading links. *See, e.g.*, Securities Exchange Act Release Nos. 21449 (November 1, 1984), 49 FR 44575 (November 7, 1984); 21925 (April 18, 1985), 50 FR 14480 (April 12, 1985), (trading link between the Montreal Stock Exchange ("Montreal") and the Boston Stock Exchange ("BSE")); 22422 (September 20, 1985), 50 FR 39201 (September 27, 1985), (trading link between the Toronto Stock Exchange ("TSE") and the American Stock Exchange ("Amex")); and 23075 (March 28, 1986), 51 FR 11854 (April 7, 1986) (trading link between TSE and Midwest Stock Exchange ("MSE")).

[7] *See, e.g.*, Letter of November 26, 1984, from Dan W. Schneider, Deputy Associate Director, to Karen L. Saperstein, Assistant General Counsel, National Securities Clearing Corporation ("NSCC") (clearance and settlement link for trades associated with the BSE-Montreal trading link); Letter of September 20, 1985, from Jonathan Kallman, Assistant Director, to Karen L. Saperstein, Assistant General Counsel, NSCC (clearance and settlement link between NSCC and CDS in connection with the Amex-TSE link); Letter of September 12, 1985, from Jonathan Kallman, Assistant Director, to Michael Wise, Associate Counsel, MSTC/MCC (clearance and settlement link between MSTC/MCC and the Vancouver Stock Exchange Service Corporation).

[8] *See* note 6 *supra*.

[9] For example, without an automated clearance and settlement link, the U.S. broker-dealer would be unable to deliver or receive securities to or from the foreign broker-dealer by book-entry movement. Instead, the U.S. broker-dealer would have to deliver or receive physical certificates, thereby risking loss or theft of the certificates and settlement delays with attendant financing costs.

[10] Indeed, the Commission first must permit MSTC to maintain securities positions at the foreign entity, before that entity can qualify as a foreign clearing corporation.

[Rel. No. 34–23569; File No. SR–MSRB–86–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice and Immediate Effectiveness of Proposed Rule Change; Relating to Calculations

Pursuant to section 19(b)(1) of the Securities Exhange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 1986, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing an interpretation of rule G–33 on calculations (hereafter referred to as "the proposed rule change") explaining the appropriate method of calculating price from yield in transactions involving securities that have an initial non-interest paying period and then pay interest on a periodic basis until redemption. The securities which are the subject of the proposed rule change function essentially as zero coupon securities for a period of time after issuance, accuring interest for payment upon redemption. On a certain date after redemption ("the interest commencement date") the securities begin to accrue interest for semiannual payment. The proposed rule change states that prices of such securities should be computed from yields using a two-step method, employing the formulas contained in rule G–33(b)(i)(B). The full text of the proposed rule change is available for inspection and copying at the Commission's Public Reference Section and at the offices of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Board has received inquiries on the appopriate method to be used in

the calculation of price from yield of certain types of securities which, after an initial non-interest paying period, pay interest periodically. The Board is of the view that the formulas of rule G–33(b)(i)(B) should be used to calculate the price of securities such as those described above using the method described in the proposed rule change. The Board understands that the method conforms to current industry practice, is capable of being performed using bond calculators that are widely available in the industry and produces results that are accurate within the standards of the industry. The Board also believes that use of the method will assist in standardizing price calculations of such securities, and minimize the likelihood of disputes that could arise from use of different methods of calculation.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, ("the Act") which requires and empowers the Board to adopt rules which are

designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

The Board believes that the proposed rule change will further the purposes of the Act by standardizing the method by which the dollar prices on inter-dealer and customer transactions are computed for securities having an initial non-interest paying period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change would not impose any burden on competition since it merely formalizes a method of calculating price from yield in transactions involving specific types of securities. The Board also notes that the proposed rule change applies uniformly to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board solicited comments on the proposed rule change in an exposure draft of the method of calculation, published in March 1986. Five comment letters on the exposure draft were received, four of which expressed support for the proposed rule change and one of which expressed no opinion on the proposed rule change. The comment letters supporting the proposed rule change generally noted that the method of calculation proposed was the current industry practice (or yielded equivalent results), could be performed on bond calculators widely available in the industry and yielded results that were accurate within industry standards.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 26, 1986.

For the Commission by the division of Market Regulation, pursuant to delegated authority.

Dated: August 28, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20084 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23572; File No. SR–NASD–86–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc.; Relating to Additional Regulation of Short Selling in the Over-the-Counter Market

The National Association of Securities Dealers, Inc. ("NASD") on July 10, 1986, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to provide for additional regulation of short selling in the over-the-counter market. Article III, section 21 of the NASD's Rules of Fair Practice is being amended to require members to mark customer order tickets "long" or "short." The NASD Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities also is being amended to require a member accepting a "short" sale order from a customer to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer for delivery by settlement date.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23446 (51 FR 26616, July 24, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: August 28, 1986

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20085 Filed 9–5–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23575; File No. SR–PCC–86–02]

Self-Regulatory Organizations; Pacific Clearing Corp.; Order Approving Proposed Rule Change Allowing Comparison and Settlement of When-Issued Municipal Bonds

The Pacific Clearing Corporation ("PCC"), on June 17, 1986, filed a proposed rule change [File No. SR–PCC–

86–02) under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in **Federal Register** on July 15, 1986, to solicit public comment.[1] No public comment was received. This Order approves the proposal. The proposal allows Participants in PCC's MuniComparison System ("MCS") to submit when-issued municipal bond trades, including syndicate takedowns, for automated comparison.[2]

I. Description

Under the proposal, Participants can submit municipal bond when-issued trade data for comparison and settlement. For a normal processing and output schedule to be followed, the proposal requires when-issued trades to be executed no later than six business days prior to the new issue's announced settlement date.

When settlement date notification is received less than six days prior to settlement, some changes to the normal processing and output schedule will be necessary. A when-issued bond should be submitted to MCS for comparison even if no settlement date has been announced as long as it has been assigned a cusip number. Compared when-issued trades are pended until settlement date, at which time the settlement figure, including accrued interest, is computed by PCC. Price figuration for when-issued trades will be made by one of two methods: dollar price or yield (basis) price. To compare a trade successfully, both sides must submit the same pricing method and their codes must be identical.

The proposal also provides for the comparison of syndicate takedown trades. The syndicate manager alone submits these trades for comparison through one-sided trade data input and compared trades are reported to the syndicate manager and syndicate members. The syndicate manager or a syndicate member may delete a compared takedown trade by using a one-sided delete on the day the compared trade appears on the contract sheet or on the next business day. For syndicate buy-backs, the syndicate manager can submit a sell-side withhold of the takedown trade, which results in a compared withhold trade reported on takedown contract sheets. Syndicate members' contracts will automatically show a purchase-withhold matching the sell-side withhold. Syndicate members will not be able to submit a purchase-withhold for takedown trades.

II. PCC's Rationale

PCC states that the proposed rule change is intended to comply with Rule G–12 of the Municipal Securities Rulemaking Board ("MSRB") which generally mandates automated clearing and book-entry settlement of dealer-to-dealer municipal bond trades. The enhancements to the MCS will keep it in step with the National Clearance and Settlement System (the "National System") and provide PCC's Participants with full automated securities processing services for their municipal securities transactions. PCC also states that it hopes the enhancements will foster cooperation and coordination within the securities processing industry and will remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions under Section 17A of the Act.

III. Discussion

The Commission agrees with PCC that the proposed rule change is consisent with the Act and should be approved. For reasons discussed in Securities Exchange Act Release No. 22004 (May 1, 1986), 50 FR 24370, (June 12, 1985) and Securities Exchange Act Release No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1985), in which the Commission approved NSCC's proposals that extended automated comparison services to when-issued and syndicate takedown transactions, the Commission believes that the proposal should facilitate the prompt and accurate clearance and settlement of municipal bond transactions. The Commission notes that with its approval of PCC's proposal (and today's approval of Pacific Securities Depository Trust Company ("PSDTC") proposal) enhanced municipal securities comparison service now are available to municipal securities brokers and dealers throughout the National Clearance and Settlement System.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and, in particular, with section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that PCC's proposed rule change (SR–PCC–86–02) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20086 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 23408 (July 9, 1986), 51 FR 25625 (July 15, 1986).

[2] PCC's proposal is substantively identical to previously approved proposed rule changes of the National Security Clearing Corporation ("NSCC"). *See* Securities Exchange Act Release No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) and Securities Exchange Act Release No. 22004 (May 1, 1985), 50 FR 24370 (June 12, 1985). NSCC provides municipal securities comparison services for PCC and other clearing agencies through the National Municipal Securities Comparison System.

[Release No. 34–23574; File No. SR–PSDTC–86–03]

Self-Regulatory Organizations; Pacific Securities Depository Trust Co., Order Approving Proposed Rule Change Adding Enhancements to the MuniComparison System

The Pacific Securities Depository Trust Company ("PSDTC") on June 17, 1986, filed a proposed rule change (File No. SR–PSDTC–86–03) under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in the **Federal Register** on July 15, 1986, to solicit public comment.[1] No public comment was received. This Order approves the proposal. The proposal enhances PSDTC's MuniComparison System ("MCS") by adding three new features: (1) Automatic book-entry settlement of transactions between PSDTC Participants; (2) The ability to compare and settle when-issued municipal bonds, including syndicate takedowns; and (3) Extended settlement on both regular-way and when-issued transactions.[2]

I. Description

The proposal adds three new features to PSDTC's MCS. First, the proposal will make available automatic book-entry settlement for municipal bond trades on a trade-for-trade basis between PSDTC Participants. The delivering (selling) Participant only will be able to select automatic settlement. Once this is done and the settling Participants have been checked for valid depository account records by PSDTC, the trade is pended

[1] Securities Exchange Act Release No. 23409 (July 9, 1986), 51 FR 25629 (July 15, 1986).

[2] PSDTC's proposal is substantively identical to previously approved proposed rule changes of the National Securities Clearing Corporation ("NSCC"). *See* Securities Exchange Act Releases No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) and Securities Exchange Act Release No. 222004 (May 1, 1985), 50 FR 24370 (June 12, 1985). PSDTC's proposal incorporates the services available in NSCC's National Municipal Securities Comparison System.

for automatic settlement. On settlement date (T+5 extended), the Automatic MuniComparison Trade Settlements Report, which lists that day's settling trades, is issued to Participants, and PSDTC appropriately credits buying Participants' securities accounts and debits selling Participants' securities accounts. Money settlement respecting each day's municipal securities transactions is folded into each Participant's single daily net money settlement figure and the Participant must pay to, or receive from, PSDTC the net settlement amount at day's end.

Second, the proposal will allow PSDTC Participants to submit and compare when-issued municipal bond trades. PSDTC defines a when-issued trade as a transaction authorized for issuance which has a trade date at least six days prior to the announced settlement date. When settlement date notification is received less than six days prior to settlement, some changes to the normal processing and output schedule will be necessary. A when-issued trade should be submitted to MCS for comparison even if no settlement date has been announced as long as it has been assigned a cusip number. Compared when-issued trades will be pended until settlement date, at which time the settlement figures, including accrued interest, to the trade will be computed by PSDTC. Price figuration for when-issued trade will be made by one of two methods: dollar price or yield (basis) price. to compare a trade successfully, both sides must agree on the pricing method and their codes must be identical.

In addition to when-issued trade comparison, the proposal will allow the comparison of syndicate takedown trades. Only the syndicate manager will submit trade data input to MCS. The one-sided input will result in compared trades reported to the syndicate manager and syndicate members. The syndicate manager or syndicate member may delete a compared takeover trade by using a one-side delete on the day the compared trade appears on the contract sheet or the next business day. For syndicate buy-backs, the syndicate manager can submit a sell-side withhold trade reported on takedown contract sheets. Syndicate members' contract will automatically show a compared withhold matching the sell-side withhold. Syndicate members will not be able to submit a withhold for takedown trades.

Finally, the proposal will provide an extended settlement feature for when-issued and regular-way trades that require settlement time beyond the standard industry practice of five business days. MCS will allow up to fifteen additional business days for extended settlement date processing. The proposal does not make available extended settlement capabilities for syndicate takedown trades.

II. PSDTC's Rationale

PSDTC states that the proposed rule change is intended to comply with Rule G–12 of the Municipal Securities Rulemaking Board, which mandates automated clearing and book-entry settlement of dealer-to-dealer municipal bond trades. The enhancements to the MCS will keep it in step with the national system and provide its Participants with full services. PSDTC also states that it hopes the enhancements will foster cooperation and coordination within the seurities processing industry and will remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission agrees with PSDTC that the proposed rule change is consistent with the Act and should be approved. For the reasons discussed in Securities Exchange Act Release No. 22906 (February 13, 1986), 51 FR 6337 (February 21, 1986) and Securities Exchange Act Release No. 22004 (May 1, 1985), 50 FR 24370 (June 12, 1985), in which the Commission approved NSCC's proposals that extended automatic comparison services to when issued, syndicate takedown and extended settlement transactions, the Commission believes that the proposal should facilitate the prompt and accurate clearance and settlement of municipal bond transactions under section 17A of the Act. The Commission notes that with its approval of PSDTC's proposal (and today's approval of a companion Pacific Clearing Corporation ("PCC") proposal) enhanced municipal securities comparison services now are available to municipal securities brokers and dealers throughout the National Clearance and Settlement System.

IV Conclusion

For the reasons stated above, the Commission finds that the proposal rule change is consistent with the requirements of the Act, and, in particular, with section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that PSDTC's proposed rule change (SR–PSDTC–86–03) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20087 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23566; File No. SR–PSE–86–18]

Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1986, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to amend Rule IX, sections 1(a) and 1(b) of the Rules of the Board of Governors, regarding the minimum price increments that will be allowed in a formal membership bid or offering. Under the proposal, formal membership bids or offerings must be in increments of fifty dollars. The purpose of the proposed rule change is to clarify the PSE's prior procedure for acceptance of a formal bid or offer for membership on the Exchange and to formalize that procedure through a rule filing.

The PSE states that this proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to foster cooperation and coordination between members of the Exchange and the Exchange's regulatory staff.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. Copies of the submission, all subsequent amendments, all written communication relating to

the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to file number SR–PSE–86–18 and should be submitted by September 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 27, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20088 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23576; File No. SR–PHILADEP–86–03]

Self-Regulatory Organizations; Philadelphia Depository Trust Co.; Order Approving Proposed Rule Change Establishing Bearer Municipal Bond Program

The Philadelphia Depository Trust Company ("Philadep"), on May 28, 1986, filed a proposed rule change (File No. SR–PHILADEP–86–03) under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in the **Federal Register** on July 8, 1986, to solicit public comment.[1] No public comment was received. Initially, Philadep requested that the Commission grant accelerated effectiveness. On August 7, 1986, however, Philadep extended the time period for Commission action until August 22, 1986. This Order approves the proposal.

I. Introduction

Philadep's proposal establishes the Philadep Bearer Municipal Bond Program ("BMBP") and related service fees. Specifically, the proposal makes certain bearer municipal bonds eligible for deposit at Philadep and establishes procedures for ancillary services. The proposed procedures govern, among other things, deposits of certificates, custody, book-entry deliveries, pledges, interest collection and payment, call and maturity processing and withdrawals in bearer form.

[1] Securities Exchange Act Release No. 23380 (June 20, 1986), 51 FR 24768 (July 8, 1986).

II. Description

Under the proposal, Participants who wish to utilize BMBP must sign a Municipal Bearer Bond Participant Agreement. Participants may make deposits by delivering certificates, in good deliverable form,[2] to Philadep's Municipal Bearer Bond Window or other locations specified in the Procedures. Similarly, Participants may withdraw certificates by submitting appropriate instructions at those locations.

The proposal provides Participants with several important ancillary services. First, Philadep will provide a coupon clipping, collection and payment service. Philadep Participants will receive coupon interest payments for deposited bearer municipal bonds automatically (*i.e.*, without any Participant instruction). Participants will be provided with a due date report for each payable date. Philadep will forward clipped bond coupons to the issuers' paying agents for collection. On payment date, Philadep will pay Participants the interest payment for the deposited securities, subject to receipt of payment by Philadep in finally collected funds.

Second, Philadep will provide bond call processing services. Philadep will make a reasonable effort to monitor bond calls notices appearing in certain publications.[3] Reorganization notices will be distributed to all Participants affected by the call. For whole issue calls and redemptions, Philadep will not process deposits and withdrawals after the publication date. For partial redemptions, Philadep will use an impartial lottery to allocate the called certificates among all Participants' positions. Called securities will be forwarded to the paying agent for collection and Participants affected by the call will be paid on redemption date, subject to receipt of payment by Philadep in finally collected funds.

Third, Philadep will process maturing bonds. Reorganization notices will be sent to Participants, and as of the cut-off date (one calendar month prior to maturity date), Philadep will not process deposit and withdrawal requests. Philadep will submit maturing certificates to the appropriate paying agent. Participants will be paid on maturity date for those issues whose paying agent is located within the Third Federal Reserve District. For those issues whose paying agent is located outside the Third Federal Reserve District, Participants will be paid when the funds are collected.

Philadep's proposal includes a fee schedule for the proposed services. The fees cover, among other things, account charges,[4] book-entry movements,[5] custody services,[6] deposits [7] and withdrawals.[8] All out-of-pocket charges for the shipment of bearer bonds will be passed through to the Participant whose transaction incurs such cost.

Under an agreement between Philadep and the Federal Reserve Bank of Philadelphia (the "FRBP"), the FRBP will perform most custodial and certificate handling services for Philadep's BMBP. The FRBP at all times will maintain custody of deposited bonds and will segregate the deposited bonds from all other securities it maintains. The FRBP will collect interest, redemption and maturity payments from paying agents and will credit Philadep's FRBP account with those payments according to the Credit Availability Schedule in the Philadep/FRBP Procedures. Philadep and the FRBP will monitor their bearer municipal bond activity daily. Philadep and the FRBP each will bear the risk of damages arising out of their own acts and omissions. Where a discrepancy arises between Philadep and the FRBP regarding the amount of interest payments, redemption proceeds or such other sums received in respect of any deposited security, and the resolution is resolved in favor of Philadep, the FRBP will compensate Philadep by crediting Philadep's FRBP account with an "as of" credit of interest for the time between payment date and resolution date. The FRBP will be responsible for and will

[2] A security is in "good deliverable form" under Philadep's procedures if: (1) The issue is eligible for deposit as a bearer bond; (2) The deposit ticket is correctly completed and not altered in any way; (3) The CUSIP number is imprinted or written clearly on the certificates; (4) The par value of the certificates equals the quantity indicated on the deposit form; (5) Deposits presented on or before record date (payable date minus one month) have current and subsequent coupons attached and in correct sequence; (6) The legal opinion is imprinted on the certificate or attached; and (7) Where required, insurance papers are attached to the certificate.

[3] Philadep intends to list those publications in its Participants Procedures in the near future.

[4] Account charges are $100 per month in addition to the normal Philadep account charge and $260 per month for a sole bearer bond user.

[5] Book-entry movement fees are $1.40 per delivery or receive originated by terminal, paper or computer tape.

[6] Custody service fees are $1.35 per issue per month, plus $.60 for each issue held by a single Participant. In addition, a custody fee is imposed based on par value and ranges from $0.010 per $1000 of par value (between $0 and $0.5 billion) to $0.005 per $1000 of par value (more than $1 billion).

[7] Deposit charges are $8.00 per Cusip and $0.60 per deposit added for deposits containing certificates without printed Cusip numbers on certificates.

[8] Withdrawal charges are $10.00 per Cusip requested, maximum 50 certificates per request.

replace at equivalent value any bond or coupon lost while in its custody. Finally, to enable Philadep to comply with all federal or state laws, the FRBP has agreed to provide information and access to Philadep's appropriate federal, state and local auditors and examiners.

III. Philadep's Rationale

Philadep believes that the proposal is consistent with section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of transactions in bearer municipal securities. Philadep believes that the BMBP will provide its participants with efficient cost-effective services for eligible bearer municipal bonds. Philadep states that benefits to be derived from participation in BMBP include reduced Participant clearing costs, centralized safekeeping facilities for bearer issues, book-entry settlement of trades, reduction in risk associated with physical deliveries and centralized income collection services. Philadep also believes that the agreements between Philadep and its Participants and between the FRBP and Philadep are consistent with section 17A of the Act in that they will assure the safeguarding of municipal bonds and funds which are in Philadep's custody or control or for which it is responsible. Finally, Philadep believes that the fee schedule it proposes is consistent with section 17A(b)(3)(D) of the Act in providing for equitable allocation of reasonable dues, fees and other charges among Participants.

IV. Discussion

As discussed below, the Commission is approving Philadep's proposal. The Commission believes that the proposal promotes the prompt and accurate clearance and settlement of municipal securities transactions and is consistent with Philadep's duty to safeguard securities and funds under section 17A of the Act. The Commission also believes that the proposed fees are equitably allocated consistent with that section of the Act.

Under the proposal, Philadep will make its automated depository services available to Participants for bearer municipal bonds for the first time. Currently, Philadep Participants must process and settle their bearer municipal securities transactions outside the depository environment using labor-intensive, inefficient and costly procedures or by becoming direct or indirect participants in one of the securities depositories with a bearer municipal bond processing program.[9] Philadep's new program should enable Philadep Participants to compare and settle eligible bearer municipal securities trades in an automated, centralized system using procedures that generally are far more efficient than physical processing. Indeed, the proposed program insures that bearer municipal bonds are eligible for deposit at all National System depositories, thereby promoting further the benefits of immobilization and efficient National System processing.[10]

With respect to the safeguarding of securities and funds, the Commission believes that Philadep has chosen a subcustodian that has extensive experience safekeeping securities and processing payments related to those securities. The Commission notes, however, that Philadep's determination to utilize a subcustodian in no way releases Philadep from its responsibilities under section 17A of the Act.

Finally, the Commission believes that Philadep's proposed fees for bearer municipal securities processing services are designed to allocate equitably BMBP service costs among Philadep's Participants using that service.

V. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule change (File No. SR–PHILADEP–86–03) consistent with the Act and, more specifically, with section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–PHILADEP–86–03) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20089 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[9] Depository Trust Company, Midwest Securities Trust Company or Pacific Securities Depository Trust Company.

[10] The proposals will promote municipal dealer compliance with Municipal Securities Rulemaking Board ("MSRB") Rules G–12 and G–15. Since February 1, 1985, those Rules have required municipal securities dealers that participate in a registered clearing agency to use that clearing agency's automated comparison and book-entry settlement services for certain transactions. *See* Securities Exchange Act Release No. 20365 (November 14, 1983) 48 FR 52531 (November 18, 1983), approving these amendments to MSRB Rules G–12 and G–15.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 29, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Rubbermaid Incorporated, Common Stock, $1.00 Par Value (File No. 7–9152)

The Chubb Corporation, Captial Stock, $1.00 Par Value (File No. 7–9153)

Occidental Petroleum Corporation, Common Stock, $0.20 Par Value (File No. 7–9154)

Caterpillar, Inc. (Delaware), Common Stock, No Par Value (File No. 7–9155)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 22, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–20090 Filed 9–4–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15276; (File No. 812–6394)]

HOME MAC Mortgage Securities Corp. Application

August 27, 1986.

Notice is hereby given that HOME MAC Mortgage Securities Corporation (formerly HOMAC Conventional Securities Corporation and HOMAC Mortgage Securities Corporation), 1110 Vermont Avenue, NW., Suite 510,

Washington, DC 20005 ("Applicant"), an indirect wholly owned limited purpose finance subsidiary of Salomon Inc., filed an application on May 23, 1986, and an amendment thereto on July 22, 1986, for an order, pursuant to sectionf 6(c) of the Investment Company Act of 1940 ("Act") amending Applicant's prior order issued on June 28, 1985 (Investment Company Act Release No. 14604) exempting Applicant from all provisions of the Act ("Initial Application"). The Initial Application was filed under the name HOMAC Mortgage Securities Corporation. Subsequent thereto, Applicant changed its name and was granted an order under its present name. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of all applicable provisions thereof.

According to the application, Applicant is organized for the limited purposes of investing in mortgage loans and mortgage-backed securities and providing a source of funds to home builders, mortgage bankers, thrift institutions, commercial banks, insurance companies and other entities engaged in real estate and mortgage finance through the issuance of mortgage-backed securities of the type described below and more fully in the application. Under its Articles of Incorporation, Applicant is authorized only to issue and deliver bonds or other evidences of indebtedness ("Bonds"), to make loans out of the proceeds 'herefrom pursuant to funding agreements, to purchase or to obtain pledges of certain eligible mortgage-related collateral to secure the Bonds and to engage in activities incidental to and necessary to accomplish the foregoing. Applicant states that it is not otherwise authorized to trade or deal in securities or engage in any other acivity.

Applicant contemplates issuing one or more series of Bonds (each a "Series") and represents that each Series will be secured by collateral pledged to secure only that Series ("Bond Collateral"). Each Series will consist of one or more classes of Bonds and will be issued pursuant to an indenture between Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for each Series (collectively, "Indenture").

The Bond Collateral will consist primarily of interests in some combination of the following (collectively, "Mortgage Collateral"): (a) Funding agreements entered into with certain parties (each a single purpose corporation or partnership affiliated with a home building company, mortgage banker, thrift institution, commercial bank, insurance company or other entity engaged in real estate or mortgage finance, "Financial Affiliates") and related notes ("Collateralized Notes") secured by (i) mortgage loans secured by first liens on single family (one-to-four family) residences ("Pleged Loans"), together with payments that may become due under certain related mortgage insurance sand hazard insurance policies, (ii) certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), securities guaranteed by the Federal National Mortgage Association ("FNMA Certificates"), or certificates guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates', GNMA Certificates and FNMA Certificates collectively, "Guaranteed Mortgage Certificates"), or (iii) other pass-through certificates secured by first liens on single family (one-to-four family) residences ("Private Mortgage Certificates" and Guaranteed Mortgage Certificates, hereinafter collectively, "Mortgage Certificates") and (b) by Mortgage Certificates and Pledged Loans owned by Applicant. The Bond Collateral may also include certain reserve funds and other credit supports such as various types of insurance policies. The combination of Mortgage Collateral included in the Bond Collateral for a particular Series will be set forth in the prospectus supplement and supplemental indenture relating to that Series.

Applicant states that, pursuant to funding agreements between itself and each Financial Affilitate, as supplemented for each particular Series ("Funding Agreements"), (i) Applicant will make a loan from the net proceeds for the sale of such Series to the Financial Affiliates participating in that Series; (ii) each such Financial Affiliate will issue Collateralized Notes, evidencing the obligation to repay its loan; (iii) each such Financial Affiliate will pledge Mortgage Collateral to Applicant as security for its Collateralized Notes; and (iv) each such Financial Affiliate will be obligated to repay its Collateralized Notes by causing payments on the Mortgage Collateral to be made directly to the Trustee. Applicant will in turn pledge its entire right, title and interest in the Collaterialized Notes and the Mortgage Collateral to the Trustee as security for such Series. To the extent the Bonds are secured by Bond Collateral that Applicant owns, Applicant will use the proceeds of the sale of Bonds to purchase the Bond Collateral directly. Bond Collateral that is owned by Applicant will include Mortgage Collateral it has purchased in the open market or from other affiliates of Salomon Inc.

The Mortgage Collateral for each Series will have a scheduled cash flow sufficient, together with reinvestment income thereon at assumed rates acceptable to the Bonds' rating agencies, to make timely payment of Applicant's obligations to the holders of that Series ("Bondholders"). Bond Collateral, including Collateralized Notes and Mortgage Collateral, will be held by the Trustee for that Series.

Each Financial Affiliate will have the limited right to pledge new Mortgage Collateral ("Substitute Collateral") in place of up to 5% by principal amount of the Mortgage Collateral initially pledged as security for its Collateralized Notes. The Substitute Collateral will be required to have payment terms similar to, and in no event scheduled cash flows less than, those of the Mortgage Collateral it replaces. After giving effect to any such substitution, the scheduled cash flows on the Mortgage Collateral, together with the reinvestment income thereon, will be sufficient to make payments on the Bonds in accordance with their terms. It will be a further condition of any such substitution that the outstanding ratings of the Bonds not be affected. A Financial Affiliate will only be permitted to replace (i) Pledged Loans with Pledged Loans of equal or better quality, (ii) GNMA Certificates with other GNMA Certificates, (iii) FNMA Certificates or FHLMC Certificates with GNMA Certificates, FNMA Certificates or FHLMC Certificates and (iv) Private Mortgage Certificates with Private Mortgage Certificates of equal or better quality issued by the same entity.

Applicant states that it does not anticipate that substitution of Mortgage Collateral will occur frequently. Applicant asserts that the right to substitute Mortgage Collateral is an important element of the ownership of such Mortgage Collateral by the Financial Affilitate, but the restrictions outlined above make it unlikely that a Financial Affilitate would make frequent or repeated substitutions. On its own, Applicant will not have the right to substitute Mortgage Collateral in place of any Mortgage Collateral it owns and has initially pledged to secure any Series.

Applicant states that the rights of substitution will be within the sole

discretion of each Financial Affiliate. However, by virtue of the provisions of the Funding Agreements and those of the Indentures, Applicant plays a substantial role in any substitution by a Financial Affiliate. Even though only Finanical Affiliates may initiate any substitution, Applicant clearly has knowledge of and control over any substitution of Mortgage Collateral and is in a position to assure that any substitution is carried out in strict compliance with the terms of both the Funding Agreement and the applicable Indenture. In particular, Applicant has the power to refuse any substitution of Mortgage Collateral which does not meet the requirements as to value and quality set forth above. On the basis of the foregoing, Applicant submits that its procedures and standards for substitution of Mortgage Collateral form the functional equivalent of the restrictions set forth in recent section 6(c) exemptive orders.

The Bonds will not be redeemable at the option of the Bondholders. The Bonds may be subject to redemption by Applicant under circumstances set forth in the prosepctus supplement for each Series. Unless an event of default on a Series has occurred and is continuing, Bondholders will not be entitled to accelerate payment of the Bonds of that Series or otherwise to compel the liquidation of the related Bond Collateral. There will be no defeasance provisions for the Bonds.

Each Series will be sold to institutional or retail investors through one or more investment banking firms, which may include affiliates of Applicant. Indentures for each public offering will be qualified under the Trust Indenture Act of 1939, unless an appropriate exemption is available.

Applicant represents that its future securities offerings will be limited to offerings of Bonds meeting the conditions set forth below:

1. Each Series of Bonds will be registered under the Securities Act of 1933 ("Securities Act") unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the mortgage collateral underlying the Bonds (whether owned by Applicant or pledged pursuant to collateralized obligations) will be limited to: (i) Pledged Loans; (ii) Private Mortgage Certificates; and (iii) Guaranteed Mortgage Certificates ("Mortgage Collateral").

3. If new Mortgage Collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced, (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs 2, 4, and 6. In addition, new Mortgage Collateral may not be substituted by any Financial Affiliate for more than 5% by principal amount of the Mortgage Collateral initially pledged. Applicant will not have the right to substitute Mortgage Collateral in place of any Mortgage Collateral owned by it and initially pledged to secure any Series of Bonds.

4. All mortgages, mortgage certificates, funds, accounts or other collateral securing a Series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405 17 CFR 230.405) of Applicant, or of the master servicer or originating lender of any mortgages that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of those mortgages may be an affiliate of the custodian. The Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

6. The master servicer of any mortgages (including mortgages underlying Private Mortgage Certificates) that are pledged as Mortgage Collateral may not be an affiliate of the Trustee. If there is no master servicer, no servicer of those mortgages may be an affiliate of the Trustee. Any master servicer and servicer of such mortgages will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of such mortgages shall obligate the servicer to provide substantially the same services with respect to those mortgages as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

7. No less often than annually, an independent public accountant will audit the books and records of Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Applicant asserts that it is not the type of entity which was intended to be regulated under the Act and that its limited activities do not require the protection of the Act. Further, Applicant submits that granting the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 19, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20091 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15274; File No. 812-6380]

Application and Opportunity for Hearing; Sentry Life Insurance Co. et al.

August 25, 1986.

Notice is hereby given that Sentry Life Insurance Company (the "Company"), Sentry Variable Life Account I (the "Account") and Sentry Equity Services, Inc. (collectively, "Applicants"), at 1800 North Point Drive, Stevens Point, WI 54481, filed an application on May 14, 1986, and an amendment thereto on July 11, 1986, for an order of the Commission

pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from sections 2(a)(32), 9(a), 13(a), 15(a), 15(b), 22(c), 27(c)(1) and 27(d) of the Act and Rules 22c–1, 6e–2(b)(15), 6e–3(T)(b)(12)(ii), 6e–3(T)(b)(13)(iv) and 6e–3(T)(b)(15) thereunder, to permit the deduction of a contingent deferred administrative charge in connection with the offering of flexible premium variable life insurance contracts ("Contracts"), and to permit the Account to invest in shares of Advisers Management Trust (the "Fund"), which will be sold to variable annuity and variable life insurance separate accounts of the Company and of affiliated and unaffiliated life insurance companies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants propose to offer the Contracts through the Account. The Account, which is registered as a unit investment trust under the Act, will invest in shares of the Fund. The Fund is an open-end diversified management investment company of the series type. It is currently composed of three portfolios: Liquid Asset Portfolio, Bond Portfolio and Growth Portfolio.

Contingent Deferred Administrative Expense Charge

Applicants state that the contract is a flexible premium variable life insurance contract meeting the definition in Rule 6e–3(T)(c)(1). The Contract provides, among other items, that upon surrender, a Contingent Deferred Administrative Expense Charge (the "Charge") may be deducted. The Charge remains the same for the first five Contract Years and declines in Contract Years six through ten until it is zero. This Charge is equal to $3.50 per $1,000 on the first $100,000 of initial Specified Amount plus $1.50 per $1,000 on the excess above $100,000 of initial Specified Amount.

Applicants state that the maximum Charge is $750. Applicants represent that the Charge is reasonable, fair and not discriminatory to Contractowners of smaller Contracts. Applicants state that in the event of a full surrender, a percentage of the Charge is assessed in accordance with the following table where "Year" is the number of full Contract Years from the original Contract Date or from the Contract Anniversary on a preceding date of each increase in Specified Amount to the date of surrender.

Completed policy years	Applicable percentage
0–4	100
5	80
6	60
7	40
8	20
9+	0

Applicants state that in the event that the Contract is partially surrendered, a portion of the Charge may be assessed. The portion will be that percentage of Cash Value that the withdrawal represents.

Applicants state that in the event of an increase in Specified Amount there may be an additional Charge. The maximum additional Charge is calculated as $3.50 per $1,000 on the first $100,000 of the increase in Specified Amount plus $1.50 per $1,000 on the excess above $100,000 of the increase in Specified Amount. Applicants State that the maximum Charge is $750 for each increase in Specified Amount.

Applicants state that in conjunction with the administration of the Contract and the Account, the Company assesses each Contract a Monthly Administration Fee ("Fee") of $5 per Policy Month.

Applicants represent that the Fee is guaranteed for the life of the Contract. Applicants state that the Fee has been set at a level to cover the annual cost of contract maintenance, to reimburse the Company for first year administrative expenses, and to contribute to the surplus of the Company to the extent necessary to cover the anticipated increase in expenses in the future, thus guaranteeing this charge. Applicants represent that the Fee, in conjunction with the Charge and the manner in which it is deducted, has been designed so that the Company only recovers once its first year administrative costs. The Company represents that in establishing those charges, it did so with the intent of complying with the "at cost" requirement of Rule 6e–3(T). Thus, the Company represents that in establishing the level of the Fee, it took into account the amortization of the first year administrative expenses. Applicants state that the deduction of the Charge only upon lapse or surrender is fair to both surrendering and persisting Contractowners. They state that although the Company is willing to finance these costs out of its surplus and then recover the cost out of the Fee for Contractowners who persist, it is not possible to so recover such costs from Contractowners who lapse or surrender in the early Contract years. Applicants state that if the Company is not permitted to charge for these first year expenses in the form of a charge deducted upon lapse or surrender, it would have to deduct such a charge from all Contractowners at the time the Contract is issued, thus denying persisting Contractowners the benefit of having such costs amortized and deducted as part of the Fee. Applicants represent that the Charge does not take into account the likelihood that not all Contractowners will lapse or surrender their Contracts or that some Contractowners may redeem later than others (which would increase the charge for those surrendering or lapsing over what they would have paid had all Contractowners been required to pay this administrative charge). Applicants represent that they have set the level of the Charge to that which they believe to represent their administrative costs for contract issuance. The Charge varies according to the specified amount of the Contract. Applicants assert that this is appropriate since policy size is the primary determinant as to how much effort will be expended by the Company in underwriting a Contract, as well as how much cash outlay will be necessary. Applicants represent that the level of charges has been set at what the Company believes to be the actual initial administrative expenses.

Applicants state that because the Charge is not collected unless the Contract is terminated within the first nine years, an alternate source of expense recovery is necessary to recover the initial underwriting and issue expenses. Applicants state that it is also necessary to recover the ongoing administrative expenses. Applicants state that the Company conducted profit tests which showed that for the average anticipated Contract, a level monthly charge of $5.00 collected in all years is necessary to recover the expected high first-year expenses plus the lower, ongoing administrative expense, with no margin included for profit, in accordance with Paragraph (b)(13)(iii)(A) of Rule 6e–3T). Applicants represent that the Charge and the Fee do not take into account the time-value of money (which would increase the charges to factor in the investment cost to the Company of deferring the Charge). Applicants assert that there are various advantages to Contractowners regarding their proposed Charge. Among those advantages are: (1) Contractowners can realize an advantage of increased earnings because they have more to invest under their contracts; (2) the deductions for the cost of insurance may be lower because the net amount at risk may be less when the administrative charges are deferred rather than

deducted up front; (3) deferring the administrative charge until surrender or lapse means that the charge is not deducted from death benefits and as a result Contractowners receive the primary benefit of the contract which is insurance protection; and (4) the deduction of the charge only upon lapse or surrender means that in many cases such a charge may not be incurred at all.

Mixed and Shared Funding

Applicants propose that the Fund offer its shares to the separate accounts that issue either variable annuity contracts or scheduled or flexible premium variable life insurance contracts. It is proposed that these separate accounts will be separate accounts of other affiliated or unaffiliated insurance companies ("Participating Insurance Companies"). The use of a common management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding". Rules 6e–2 and 6e–3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e–2(b)(15), however, precludes mixed and shared funding, and Rule 6e–3(T)(b)(15) precludes shared funding. Applicants propose that the requested relief extend to a class consisting of life insurers and variable life insurance separate accounts investing in the Fund (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in the Fund by virtue of the Fund offering its shares to variable annuity separate accounts or unaffiliated separate accounts.

Applicants assert that granting the request for relief to engage in mixed and shared funding will benefit variable contractowners by: (1) Eliminating a significant portion of the cost of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

With respect to section 9(a), Applicants assert that the same policies that led the Commission to limit the provisions of section 9(a) to those employees of the insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicants argue there is no regulatory purpose to apply the provisions of section 9(a) to the many employees of the insurance companies whose separate accounts may use the Fund as a funding medium for variable life insurance contracts. Moreover, Applicants submit that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates of return realized by contractowners. Applicants state that under the relief requested, section 9 would still be in effect and insulate the Fund from those individuals who are disqualified under the Act.

In support of their request for relief, Applicants state that all variable annuity and variable life contractowners will be provided pass-through voting rights with respect to Fund shares. Because paragraphs (b)(15) of both Rule 6e–2 and Rule 6e–3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, Applicants acknowledge that this may cause an irreconcilable conflict to develop among the separate accounts. Applicants propose to resolve these potential conflicts through certain undertakings it proposes as conditions to receipt of exemptive relief, set out *infra*. Thus, according to Applicants, if a particular insurance company's disregard of voting instructions conflicted with a majority of contractowners' voting instructions, or precluded a majority vote, the insurer may be required at the Fund's election, to withdrw its separate account's investments in the Fund. Applicants represent that the Company will vote shares for which it has not received voting instructions as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions. Applicants state that they will comply with the following conditions: (1) A majority of the Board of trustees of the Fund ("Board") shall consist of persons who are not interested persons of the Fund, as defined by the Act. (2) The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners or by contractowners of different Participating Insurance Companies; or (f) a decision by an insurer to disregard the voting instructions of contractowners. (3) Participating Insurance Companies and the Investment Adviser will report any potential or existing conflicts to the Fund's Board. Participating Insurance Companies will be responsible for assisting the Board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to consider any issues raised including information as to a decision by an insurer to disregard voting instructions of contractowners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all insurers investing in the Fund under their agreements governing participation in the Fund. (4) If it is determined by a majority of the Board of the Fund or a majority of its disinterested trustees that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, including another portfolio of the Fund, or submitting the questions of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any particular group (i.e. annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of

an insuer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contractowners.

For purposes of this condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of affected contractowners. (5) The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all Participating Insurance Companies. (6) Participating Insurance Companies shall provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in Advisers. The Company will vote shares, for which it has not received voting instructions as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions. (7) All reports received by the Board of potential or existing conflicts, determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedied a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

Notice is further given that any interested person wishing to request a hearing on the application may not later than September 19, 1986, at 5:30 p.m. do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20092 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15278; (File No. 812-6439)]

Swiss Bank Corporation and SBC Finance (Delaware) Inc.; Foreign Bank Application

August 28, 1986.

Notice is hereby given that Swiss Bank Corporation ("SBC") and its wholly owned subsidiary, SBC Finance (Delaware) Inc. ("Finance") (collectively, "Applicants"), c/o Steven M. Lucas, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036, filed an application on July 22, 1986 and an amendment thereto on August 27, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the text of the Act for the various provisions thereof.

Applicants state that SBC is one of the three major Swiss commercial banks and one of the world's principal international banks, and that its principal business is the receipt of deposits and the making of loans. In addition to the receipt of deposits and the making of loans and advances, SBC engages in other banking and bank-related activities typical of the world's major international banks, including underwriting in the Swiss and Eurocapital markets, securities portfolio management, management of mutual funds, foreign exchange and precious metals, payments and fiduciary operations. SBC states that, as a Swiss Bank, it is subject to the Swiss Federal Law Relating to Banks and Savings Banks as administered by the Federal Banking Commission and the Swiss National Bank, including mandatory annual audits, specific capital requirements and specific liquidity requirements.

The Applicants state that Finance was organized solely to provide a vehicle through which SBC may sell commercial paper to certain institutional purchasers. Finance's sole business will be the issuance of debt obligations and the provision of the proceeds thereof to SBC or its other subsidiaries, and substantially all of Finance's assets will consist of amounts receivable from SBC or its other subsidiaries. All the outstanding capital stock of Finance is owned by SBC, and Finance does not currently intend to issue any additional capital stock.

The Applicants propose that Finance will issue and sell in the United States: (1) Unsecured prime quality dollar-denominated commercial paper promissory notes in bearer form with maturities of 270 days or less and (2) intermediate term unsecured dollar-denominated promissory notes in bearer form with maturities ranging from 271 days to five years (collectively, the "Notes"). To ensure that the Notes will not be advertised or otherwise offered for sale to the general public, Applicants state that the Notes will be issued and sold in denominations no smaller than $100,000 to a dealer ("Dealer") in the United States which will reoffer the Notes as principal to institutional investors and other entities and individuals who normally purchase such Notes in the United States. Applicants state that payment of the principal, interest and premium, if any, on the Notes will be unconditionally guaranteed by SBC, and that the Notes and the guarantees thereof will rank *pari passu* among themselves and superior to the rights of shareholders.

Applicants undertake that Finance will not issue and sell the Notes until it

has received an opinion of their United States legal counsel that the Notes would be entitled to an exemption under sections 3(a)(3) or 4(2) of the Securities Act of 1933, ("1933 Act") or Regulation D thereunder. Applicants do not request Commission review or approval of their United States counsel's opinion letters regarding the availability of exemptions under sections 3(a)(3) or 4(2) of the 1933 Act or Regulation D thereunder.

Applicants, or either of them, from time to time, offer other short, medium or long term debt securities for sale in the United States (but not equity securities in reliance upon or pursuant to the order requested by the application). Applicants represent that they will not sell any such debt securities required to be registered with the Commission until a registration statement pertaining to such securities has been declared effective by the Commission. Applicants further state that such future offerings will not necessarily be subject to minimum denomination requirements or sold to sophisticated investors and that, in the case of any such offering of debt securities by Finance in the United States, SBC will provide an unconditional guarantee for the payment of principal, interst and premium (if any).

Applicants undertake to ensure that the Dealer will provide each offeree of the Notes and any future offerings of debt securities in the United States (together hereinafter referred to as "Securities") prior to purchase with a memorandum ("Offering Memorandum") which briefly describes the business of Applicants, including SBC's most recent publicly available fiscal year-end balance sheet and profit and loss statement audited in such manner as is customarily done for SBC by its statutory auditors for financial statements in its Annual Report. Such Offering Memorandum will describe material differences, if any, between the accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by banks in the United States. Applicants undertake that such Offering Memorandum and financial statements will be at least as comprehensive as those customarily used by United States bank holding companies in offering comercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of SBC or Finance. Applicants undertake that, for any future offering of their debt securities made pursuant to a registration statement under the 1933 Act, they will furnish a disclosure document to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

Applicants represent that the issuance of Securities (not including deposits) in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that their United States counsel shall have certified that such rating has been received, provided, however, that no such rating need be attained with respect to any such issue if, in the opinion of United States counsel (such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act and various releases and relevant no-action letters made public by the Commission), an exemption from registration is available under section 4(2) of the 1933 Act or Regulation D thereunder.

Applicants state that they will appoint a bank or other financial institution in the United States as authorized agent to issue the Securities from time to time. In addition, they undertake to appoint either such financial institution, the Commission or a corporate entity or other United States person that normally acts in such capacity to accept service of process in any action based on the Securities and instituted by the holder of such Securities in any State or Federal court. Applicants undertake that they will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Securities have been paid by SBC. Furthermore, the application represents that the Applicants will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Securities or otherwise in connection with the Securities. Applicants consent to any order granting this application being expressly conditioned on their compliance with the undertakings set forth above.

Notice if further given that any interested person wishing to request a hearing on the application may, not later than September 22, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20093 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-741]

Application and Opportunity for Hearing; Travelers Mortgage Services, Inc.

August 28, 1986.

Notice is hereby given that Travelers Mortgage Services, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the reporting requirements of section 13 of the 1934 Act, and from the operation of section 16 of that Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than September 22, 1986, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the

application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-20094 Filed 9-4-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on August 28, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on August 28, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of,. the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on August 28, 1986.

DOT No: 2779

OMB No: New
By: Federal Aviation Administration
Title: Back to Basics Seminar Attendance System
Form(s): None
Frequency: On occasion
Respondents: Volunteers attending safety seminars (individuals)
Need/Use: There is a need to determine the effectiveness of the Back to Basics safety seminar programs. The information collected will be analyzed to provide future direction for the FAA's Accident Prevention Program. The affected public is any FAA licensed pilot who voluntarily attends an FAA sponsored seminar which has been identified for sampling.

DOT No: 2780

OMB No: 2127-0017
By: National Highway Traffic Safety Administration
Title: Odometer Complaint Form HS-387
Form(s): HS-387
Frequency: On occasion
Respondents: Individuals
Need/Use: The information is collected from used car purchasers in sufficient detail to allow the agency to decide whether odometer fraud is likely.

DOT No: 2781

OMB No: 2120-0026
By: Federal Aviation Administration
Title: Flight Plans (Domestic/International)
Form(s): FAA Forms 7233-1, 7233-4
Frequency: On occasion
Respondents: Pilots
Need/Use: Federal Aviation Act of 1958, section 307 (49 U.S.C. 1348) authorizes regulations governing the flight of aircraft. 14 CFR Part 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide protection to aircraft in flight and persons and property on the ground.

DOT No: 2782

OMB No: 2115-0540
By: United States Coast Guard
Title: Ports and Waterways Safety (33 CFR Subchapter P)
Form(s): N/A
Frequency: On occasion
Respondents: Vessel operators, masters, pilots or owners
Need/Use: This information collection requirement is needed to evaluate and approve requests for deviation from affected regulatory requirements.

DOT No: 2783

OMB No.: 2115-0081
By: United States Coast Guard
Title: State Reports of Marine Sanitation Device Regulations Violations
Form(s): N/A
Frequency: On occasion
Respondents: State or local Governments
Need/Use: This information collection requirement is needed and used by the Coast Guard to process violations of the federal marine sanitation device regulations contained in 40 CFR Part 140. The states enforcement agreement stipulates that they will forward information concerning violations on a monthly basis. Since the states have no authority to assess fines and penalties under the Clean Water Act they forward the information to the Coast Guard for processing.

DOT No.: 2784

OMB No.: 2115-0061
By: United States Coast Guard
Title: Forecastle Card
Form(s): CG-704
Frequency: On occasion
Respondents: Owners and operators of U.S. merchant vessels
Need/Use: This information collection requirement is used in the Agency's Commercial Vessel program. It is needed so that each U.S. merchant seaman employed aboard ship under contract will have a copy of the agreement available under which they are currently bound.

DOT No.: 2785

OMB No.: 2115-0536
By: United States Coast Guard
Title: Financial Responsibility for Oil Pollution—Alaska Pipeline (33 CFR Part 131)
Form(s): CG-5358-5358-6
Frequency: On occasion

Respondents: Vessel operators
Need/Use: This information collection is used to make certain that all vessels carrying oil transported through the trans-Alaska pipeline can meet statutory liability for oil pollution. The information is used to determine the financial responsibility of vessel operators.

DOT No.: 2786

OMB No.: 2115–0527
By: United States Coast Guard
Title: Appeal Process for Requirements Under Ports and Waterways Safety Control of Vessel Operations and Cargo Transfers
Form(s): N/A
Frequency: On occasion
Respondents: Businesses
Need/Use: This information collection requirement is needed and used to allow any person directly affected by a safety zone or an order or direction issued by, or on behalf of, a Captain of the Port to appeal to the Coast Guard for relief from the requirements.

DOT No.: 2787

OMB No.: 2115–0142
By: United States Coast Guard
Title: Plan Approval and Records for Marine Engineering Systems (46 CFR Subchapter F)
Form(s): N/A
Frequency: On occasion
Respondents: Pressure vessel manufacturers, shipbuilders and shipowners
Need/Use: This information collection requires the above respondents to submit vessel, equipment or installation plans to determine if the vessels' construction, arrangement and equipment meet applicable regulations. The manufacturer's certification is needed to ensure that products, welding performance and procedure qualifications meet minimal standards and technical requirements.

DOT No.: 2788

OMB No.: 2115–0077
By: United States Coast Guard
Title: Letter of Intent
Form(s): N/A
Frequency: On occasion
Respondents: Owners/operators of marine bulk oil facilities
Need/Use: This information collection requirement is needed and used by the Coast Guard to ensure compliance with pollution prevention regulations (33 CFR Parts 154 and 156). Owners/operators of waterfront bulk oil facilities which intend to transfer oil to or from vessels must notify the Coast Guard of this intention.

DOT No.: 2789

OMB No.: 2133–0008
By: Maritime Administration
Title: Statement of Shipbuilder or Ship Operator in Compliance with Section 807 of the Merchant Marine Act, 1936
Form(s): MA–807–1 and 807–2
Frequency: On occasion
Respondents: Shipbuilders, ship operators and others presenting matters before the Maritime Subsidy Board
Need/Use: Disclosure of certain business relationships.

DOT No.: 2790

OMB No.: 2120–0518
By: Federal Aviation Administration
Title: Special Federal Aviation Regulation—Special Flight Authorizations for Noise Restricted Aircraft
Form(s): None
Frequency: On occasion
Respondents: Aircraft Operators
Need/Use: Order Part 91, beginning January 1, 1985, operations of large turbojet aircraft are prohibited at U.S. airports unless compliance with Part 36 noise levels is demonstrated. Therefore, operators (foreign, domestic, and corporate) will need a Special Flight Authorization for U.S. operations to dispose of aircraft or take them to be modified to comply.

DOT No.: 2791

OMB No.: 2127–0009
By: National Highway Traffic Safety Administration
Title: Monthly Report of Motor Vehicle Traffic Fatalities
Form(s): HS Form 251
Frequency: Monthly
Respondents: States
Need/Use: This report gives a compilation of national fatality totals involving motor vehicles.

Issued in Washington, DC on August 28, 1986.

John E. Turner,

Director of Information Resource Management.

[FR Doc. 86–19958 Filed 9–4–86; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings, Manila International Airport

SUMMARY: The Secretary of Transportation has now determined that Manila International Airport maintains and administers effective security measures.

Notice

By notice published at 51 FR 28792 (August 11, 1986), I announced that I had determined on August 5, 1986 that Manila International Airport, Manila, the Philippines, did not maintain and administer effective security measures. I now find that the security measures used at Manila International Airport are effective. My determination is based on a recent Federal Aviation Administration assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my August 5 determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Manila Airport.

Dated: September 2, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86–20056 Filed 9–4–86; 8:45 am]

BILLING CODE 4910–62–N

Commercial Space Transportation Advisory Committee; Announcement of Meeting

AGENCY: Office of the Secretary of Transportation (OST); Department of Transportation (DOT).

ACTION: Commercial Space Transportation Advisory Committee; Open Meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Monday, September 22, 1986, from 9:00 a.m. to 5:00 p.m. e.t., and Tuesday, September 23, 1986, from 9:00 a.m. to 12:00 noon e.t., in Room 2230 of the Department of Transportation Headquarters Building, 400 Seventh Street, SW, Washington, DC. This will be the fourth meeting of the Committee which will address the transition requirements for an emerging private sector expendable launch vehicle industry in the United States. The members of the committee are:

Lionel Alford, Vice President for Areospace, Boeing;

Joel Alper, President, Space Communications Division, Communications Satellite Corporation;
Norman Augustine, President and Chief Operating Officer, Martin Marietta Corporation;
Jonathan Conrad, Executive Vice President, Sconset Group, Inc.;
Leonard Cormier, President, Third Millennium (MMI);
Gregg Fawkes, President, Cybron Corporation;
Dr. Jerry Grey, Publisher, *Aerospace America*, American Institute of Aeronautics and Astronautics;
David Grimes, Chairman, Transpace Carriers, Inc.;
Edmund (Kip) Hawley, Vice President and Chief of Staff, Citicorp;
John Krimsky, Jr., Deputy Secretary General, United States Olympic Committee;
T. Allan McArtor, Sr. Vice President, Telecommunications Division, Federal Express Corporation;
Adolph Medica, President, Space Transportation System;
Gerald Mossinghoff, President, Pharmaceutical Manufacturers Association
William Rector, Vice president, General Dynamics Space Division;
George Robinson, Associate General Counsel, Smithsonian Institution;
Dr. Robert Roney, Sr. Vice President, Hughes Aircraft Company;
Daniel Ruskins, Vice President, Government Requirements, Lockheed Missles;
Bernard Schriever, General, United States Air Force (Retired), consultant to the aerospace industry;
Jerome Simonoff, Vice President, Citicorp Industrial Credit, Inc.;
Donald (Deke) Slayton, President, Space Services, Inc. and former astronaut.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from the DOT Office of Commercial Space Transportation, Room 10401, 400 Seventh Street SW, Washington, DC 20590. Contact: Mary F. Couch, telephone 202–366–2934.

(Please note: Security procedures restrict admittance to the Department of Transportation Building. Your admittance will be facilitated if you call the telephone number above before arrival.)

Issued in Washington, DC, on September 2, 1986.

Madeline Johnson,

Director, Office of Commercial Space Transportation.

[FR Doc. 86–20055 Filed 9–4–86 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Supplemental Environmental Impact Statement; Charleston and Berkeley Counties, SC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for fog mitigation on a proposed bridge project in Charleston and Berkeley Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Rice, District Engineer, Federal Highway Administration, Suite 758, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina, 29201, Telephone: (803) 253–3386.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the South Carolina Department of Highways and Public Transportation, will prepare a supplemental environmental impact statement on the proposed I–526 bridge spanning the Cooper River between North Charleston and Berkeley County, South Carolina. The supplemental EIS will discuss the impact of fog on the proposed bridge and will prescribe the specific actions to be taken to mitigate any potential hazards due to fog.

Alternatives to be considered in the supplemental EIS will include mitigation measures which would best promote a safe bridge and reduce the danger of fog on the bridge to a point where it does not have a significant impact on safety.

A letter of intent inviting written comments and suggestions to ensure that the full range of fog related issues are identified and addressed will be sent to appropriate Federal, state and local agencies, and to private organizations and interested citizens. A public hearing will be conducted to further involve local citizens in the process. Public notice will be given of the time and place of the hearing. The supplemental draft EIS will be available for public and agency review and comment.

To ensure that the full range of fog related issues are addressed and identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplemental EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 28, 1986.

Arthur A. Fendrick,

Assistant Division Administrator, Columbia, South Carolina.

[FR Doc. 86–19992 Filed 9–4–86; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 29, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0384
Form Number: ATF REC 5620/2
Type of Review: Extension
Title: Airlines Withdrawing Stock from Customs Custody

OMB Number: 1512–0398
Form Number: ATF F 2093(5200.3) and ATF F 2098(5200.16)
Type of Review: Extension
Title: Application for Permit Under 26 U.S.C. Chapter 52—Manufacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2093) *AND* Application for Amended Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2098)

Clearance Officer: Robert G. Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Comptroller of the Currency

OMB Number: 1557–0157
Form Number: CC–7022–12
Type of Review: Extension

Title: Conversions

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: 1545-0099
Form Number: IRS Form 1065 and Schedules D, K and K-1
Type of Review: Revision
Title: U.S. Partnership Return of Income, Gains and Losses, Partners' Shares of Income, Credits, Deductions, etc., Partner's Share of Income, Credits, Deductions, etc.

OMB Number: 1545-0128
Form Number: IRS Form 1120L
Type of Review: Revision
Title: U.S. Life Insurance Company Income Tax Return

OMB Number: 1545-0217
Form Number: IRS Form 5735 and Schedule P
Type of Review: Revision
Title: Computation of Possessions Corporation Tax Credit Allowed Under Section 936 Allocation of Income and Expenses Under Section 936(h)(5)

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Department Reports, Management Office.

[FR Doc. 86-20016 Filed 9-4-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 29-86]

Treasury Notes, Series L-1991

Washington, August 28, 1986.

The Secretary announced on August 27, 1986, that the interest rate on the notes designated Series L-1991, described in Department Circular—Public Debt Series—No. 29-86 dated August 20, 1986, will be 6½ percent. Interest on the notes will be payable at the rate of 6½ percent per annum.

Bart Derrick,

Acting Fiscal Assistant Secretary.

[FR Doc. 86-19960 Filed 9-4-86; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 172
Friday, September 5, 1986

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

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 3, 1986.

LOCATION: Room 456, Westwood Towers, Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. General Policy Statement

The Commission will consider a proposed Statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.

2. Commission Structure

The Commission will consider certain Agency structural realignments initiated by the Chairman.

*The Commission by majority vote decided that Agency business required the waiving of the normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

September 2, 1986.

[FR Doc. 86–20097 Filed 9–2–86; 4:30 pm]

BILLING CODE 6355–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, September 15, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual Section 26, Providing Assistance to the Public
4. Proposed Compliance Manual Section 7, Withdrawals
5. Proposed Compliance Manual Section 15, Negotiated Settlement
6. Proposed Compliance Manual Section 28, Format and Content of the Investigative File
7. Revision to Cover Sheet for Section 93 of Volume I of the Compliance Manual

Closed

1. Proposed Commission Decision
2. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: September 3, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued September 3, 1986.

[FR Doc. 86–20164 Filed 9–5–86; 8:45 am]

BILLING CODE 6750–06–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:30 p.m. on Thursday, August 28, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Albany State Bank, Albany, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, August 28, 1986; (2) accept the bid for the transaction submitted by United Missouri Bank of St. Joseph, St. Joseph, Missouri, an insured State nonmember bank; (3) approve the application of United Missouri Bank of St. Joseph, St. Joseph, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in Albany State Bank, Albany, Missouri, and for consent to establish the sole office of Albany State Bank as a branch of United Missouri Bank of St. Joseph; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) adopt a resolution making funds available for (1) the payment of insured deposits made in Buena Vista Bank & Trust Company, Buena Vista, Colorado, which was closed by the State Bank Commissioner for the State of Colorado, on Thursday, August 28, 1986, and (2) for an advance payment to uninsured depositors of the closed bank equal to 20 percent of their uninsured claims; and

(C) adopt a resolution making funds available for the payment of insured deposits made in American National Bank of Eastridge, Casper, Wyoming, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, August 28, 1986; and

(D) consider a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director C.C. Hope, Jr., (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 2, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–20147 Filed 9–3–86; 12:39 am]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

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, September 9, 1986, 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.

Disposition of minutes of previous meetings.

Application for consent to merge and establish four branches:

The Islamorada Bank, Monroe County (P.O. Islamorada), Florida, an insured State nonmember bank, for consent to merge, under its charter and with the title "T.I.B. State Bank of the Florida Keys," with Florida Keys First State Bank, Key West, Florida, and for consent to establish the four offices of Florida Keys First State Bank as branches of the resultant bank.

Applications for consent to purchase assets and assume liabilities and establish branches:

Clinton Savings Bank, Clinton, Massachusetts, an insured mutual savings bank, for consent to purchase the assets of and assume the liability to pay deposits made in L.F.E. Employees Federal Credit Union, Clinton, Massachusetts, a non-FDIC-insured institution, and for consent to establish the sole office of L.F.E. Employees Federal Credit Union as a branch of Clinton Savings Bank

Peoples Bank & Trust Company, Rocky Mount, North Carolina, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Atlantic Savings and Loan Association, Inc., Wilson, North Carolina, a non-FDIC-insured institution, and for consent to establish the two offices of Atlantic Savings and Loan Association, Inc., as branches of Peoples Bank & Trust Company.

Application for consent to acquire assets and assume liabilities and establish one branch:

First-Citizens Bank and Trust Company of South Carolina, Columbia, South Carolina, for consent to acquire certain assets of and assume the liability to pay deposits made in the Lancaster Branch of Security Federal Savings and Loan Association, Columbia, South Carolina, a non-FDIC-insured institution, and for consent to establish that office as a branch of First-Citizens Bank and Trust Company of South Carolina.

Application for consent to purchase assets and assume liabilities:

AmeriTrust Company National Association, Cleveland, Ohio, for consent to purchase the assets of and assume the liability to pay deposits made in Eagle Savings Association, Cincinnati, Ohio, a non-FDIC-insured institution.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

United Bank, A Savings Bank, Tacoma, Washington, an insured stock savings bank, for consent to transfer certain assets to InterWest Savings Bank, Oak Harbor, Washington, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the Omak Branch of United Bank, A Savings Bank.

Recommendations 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. 46,641–SR
The Crossroads State Bank, Oklahoma City, Oklahoma
Case No. 46,642–NR
Peoples National Bank of Rockland County, Ramapo (P.O. Monsey), New York

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.

Reports of the Director, Division of Liquidation:

Memorandum re: Loan Sales—Quarterly Report of Actions Approved Under Delegated Authority as of March 31, 1986.
Memorandum re: Loan Sales—Quarterly Report of Actions Approved Under Delegated Authority as of June 30, 1986.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Allen County Bank and Trust Company, Leo, Indiana (2518) (Memo dated August 11, 1986)
Summary Audit Report re: Auburn Savings Bank, Auburn, Iowa (2512) (Memo dated July 25, 1986)
Summary Audit Report re: The Clarksdale Bank of Clarksdale, Clarksdale, Missouri (2516) (Memo dated August 8, 1986)
Summary Audit Report re: Security State Bank, Broken Bow, Nebraska (6637) (Memo dated August 8, 1986)
Summary Audit Report re: Chester State Bank, Chester, Texas (2517) (Memo dated August 13, 1986)
Summary Audit Report re: Northshore Bank, Houston, Texas (2513) (Memo dated August 8, 1986)
Summary Audit Report re: Yellowstone State Bank-Lander, Lander, Wyoming (6626) (Memo dated July 25, 1986)
Summary Audit Report re: Knoxville Consolidated Office, Cost Center—101 (Memo dated August 8, 1986)
Summary Audit Report re: Oak Lawn consolidated Office, Cost Center—201 (Memo dated August 11, 1986)
Summary Audit Report re: Oklahoma City Consolidated Office, Cost Center—401 (Memo dated August 8, 1986)
Summary Audit Report re: San Francisco Regional Office, Cost Center—600 (Memo dated July 29, 1986)
Summary Audit Report re: Status of Auditee Corrective Actions, (Memo dated July 28, 1986)

Discussion Agenda:

No matters scheduled.

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) 898–3813.

Dated: September 2, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–20148 Filed 9–3–86; 12:39 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

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, September 9, 1986, 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)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) 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 thereof:

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.

Recommendation regarding the Corporation's liquidation activities:

Discusson Agenda:

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Recommendation regarding the liquidation's of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re:
Abilene National Bank, Abilene, Texas (now known as MBank Abilene, National Association)

Recommendation regarding the Corporation's corporate activities.

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) 898–3813.

Dated: September 2, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86–20149 Filed 9–3–86; 12:39 pm]

BILLING CODE 6714–01–M

6

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., September 10, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Agreement No. 003–010965: Island Ocean Terminal Agreement—Consideration under section 15 of the Shipping Act, 1916.

Portion closed to the public:

1. Docket No. 86–3: Modifications to the Trans-Pacific Freight Conference of Japan Agreement, the Japan-Atlantic and Gulf Freight Conference Agreement, and the Japan-Puerto Rico and Virgin Islands Freight Conference Agreement—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 86–20107 Filed 9–3–86; 8:56 am]

BILLING CODE 6730–01–M

7

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, September 10, 1986, following a recess at the conclusion of the open meeting.

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. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on July 30, 1986.).
2. Proposals regarding the Board's internal audit function.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSONS 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: September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–20145 Filed 9–3–86; 12:21 pm]

BILLING CODE 6210–01–M

8

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposals regarding recovery of automated clearing house float costs.
2. Proposed joint policy statement regarding basic banking services by depository institutions.
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–20146 Filed 9–3–86; 12:21 pm]

BILLING CODE 6210–01–M

9

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, September 10, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456 Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Final Rule: Deletion of Part 709, NCUA Rules and Regulations: Division of Assets, Liabilities and Capital.
6. Charter Conversion: Multi-occupational to community for IRCO Employees Federal Credit Union #17395, Phillipsburg, N.J.
7. Charter Amendment: Expansion of Field of Membership for Sidney Federal Credit Union #6011, Sidney, N.Y.

RECESS: 10:30 a.m.

TIME AND DATE: 10:45 a.m., Wednesday, September 10, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456 Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.

2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Reprogramming of Agency FY 86 Budget Funds. Closed pursuant to exemption (9)(b).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86–20156 Filed 9–3–86; 1:49 am]

BILLING CODE 7535-01-M

10

POSTAL RATE COMMISSION

TIME AND DATE: September 9, 1986 at 9:30 a.m.

PLACE: Conference Room, Suite 300, 1333 H Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Meet to discuss the Opinion and Recommended Decision on Docket No. MC86–2, Third-Class Mail Preparation Requirements, 1986.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86–20110 Filed 9–3–86; 9:31 am]

BILLING CODE 7715-01-M

Federal Register

Friday
September 5, 1986

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800 and 2880

Rights-of-Way; Amendment Providing Procedures for Rental Determination; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800 and 2880

[AA-330-06-4211-02-NCPF-2410]

Rights-of-Way; Amendment Providing Procedures for Rental Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend 43 CFR Parts 2800 and 2880 to provide a rental schedule for most linear rights-of-way granted under section 28 of the Mineral Leasing Act of 1920, as amended, and title V of the Federal Land Policy and Management Act of 1976. The rental schedule in the proposed rulemaking is based on zones of similar value and the schedule would be adjusted annually using the Gross National Product Implicit Price Deflator Index as the basis of such adjustment. The proposed rulemaking also would provide that existing linear right-of-way grants not covered by the schedule may be brought under it upon reasonable notice to the holder. In addition, the proposed rulemaking is designed to substantially reduce the need for individual appraisals of rentals for new linear right-of-way grants, establish consistent rationale for determination of rental, reduce the differences between procedures now used by the U.S. Forest Service and the Bureau of Land Management, resolve conflicts which have led to numerous appeals of rental determinations and reduce both government and industry administrative costs. Finally, the proposed rulemaking would establish procedures for competitive bidding for site type right-of-way grants, such as communication sites, where there is competitive interest, and rent in the form of a royalty or a fixed percentage of the holder's gross receipts might be appropriate.

DATE: Comments should be submitted by October 20, 1986. Comments postmarked or received after the above date may not be considered as part of the decisionmaking process on issuance of final rulemaking.

ADDRESS: Comments should be sent to: Director (140) Bureau of Land Management Room 5555, Main Interior Bldg., 1800 C Street, NW. Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ted Bingham (202) 343-5441 or Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management administers approximately 42,000 right-of-way grants, of which about 38,000 are linear facilities for facilities such as powerlines, pipelines, roads and ditches or canals.

Section 28(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185(1)), provides specific direction that fees for right-of-way uses and grants should reflect fair market value as follows:

> The applicant for right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

The Office of Management and Budget Circular No. A-25, as amended and supplemented, requires agencies to establish user charges based on sound business management principles and, to the extent feasible, in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenue to the United States.

In 1964, the Bureau of the Budget (predecessor to the Office of Management and Budget) issued further guidelines in the *Natural Resources User Charges Study*, which provided for the use of Federal lands as follows:

> . . . the Government should recover the fair market value for the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

The 1976 enactment of the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) reinforced long-standing Congressional support for receipt of fair market value. Section 102(a) of the Act (43 U.S.C. 1701(a)) states that ". . . it is the policy of the United States that . . . the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute . . ." As to right-of-way grants, section 504(g) of the Act (43 U.S.C. 1764(g)) provides:

> The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: Provided, That when the annual rental is less than $100, the Secretary concerned may require advance payment for more than one year at a time . . . Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest.

Section 2803.1-2 of the existing regulations requires the payment in advance of the fair market rental value of the rights authorized as determined by appraisal by the authorized officer. The existing regulations further provide for review and adjustment, if warranted, of the rental at least every five years. In the past, these rental payments have been determined by individual Bureau of Land Management offices using a variety of appraisal methods.

In 1981, the Bureau of Land Management appraisers in New Mexico studied private transactions involving a payment per unit length and found that there was no apparent correlation with the underlying land value. Using this observed practice as a basis, they instituted a "going rate" method of appraising some oil and gas pipeline right-of-way grants. This "going rate" method is based on an analysis of prices paid by oil and gas companies for easements crossing private lands. The lump sum, the one-time private transaction price paid for these easements, was adjusted downward to reflect differences between a private easement and a right-of-way grant across public lands and was used as the basis for determining a rental by amortizing a one-time payment in perpetuity at an interest rate on similar investments. The "going rate" method was a departure from more traditional right-of-way appraisal methods and resulted in a substantial increase in holder rental payments. Later, the Bureau State offices in Wyoming and Colorado adopted the "going rate" method. Rentals determined under the "going rate" method resulted in the

holders appealing approximately 3,000 rental determinations to the Department of the Interior's Office of Hearings and Appeals. These cases have been remanded to the Bureau for reconsideration consistent with new regulations and procedures that would evolve from a series of reports, task force recommendations and comments received in response to the notices of intent to propose rulemaking.

The Interior Board of Land Appeals, a Board within the Department of the Interior's Office of Hearings and Appeals, suggested that in developing new regulations there must be a reasonable basis for the determination of fair market value even though the appropriate method of achieving fair market rental value is to be determined by the Secretary of the Interior. Further, it recommended that the Bureau of Land Management should develop a carefully reasoned analysis to support the new regulations and procedures. Additionally, it suggested the Bureau might prevent some problems by including the public in the development of the proper appraisal method. Public input would provide a broad basis upon which to make a reasonable final decision.

Public Participation in Developing a Proposed Rulemaking

On May 4, 1984, the Bureau of Land Management published in the **Federal Register** a notice of intent to propose rulemaking (49 FR 10949) requesting public comments on cost effective methods or procedures for estimating fair market rental payments. Comments were also requested concerning the application of market-derived formulas or schedules that could be applied on a State or regional basis. The notice stated that any suggested schedules or formulas should be applicable to linear right-of-way facilities crossing public lands and should result in rentals that are applied consistently for various right-of-way purposes. The notice of intent also suggested that the comments should reflect the legislative requirements established by the Federal Land Policy and Management Act and the Mineral Leasing Act, so as to reasonably estimate fair market rental value and result in cost effective implementation. The Forest Service requested similar information in a notice of intent to propose policy published in the **Federal Register** on April 20, 1984 (49 FR 16823).

A total of 26 comments were received in response to the notice of intent issued by the Bureau of Land Management and the Forest Service; 10 from companies related to oil and gas transportation, 6 from industry associations, 6 from electric utilities, 3 from State and other public agencies, and 1 from an individual.

In response to these comments, the Bureau of Land Management and the Forest Service cooperated on a second notice of intent to propose rulemaking which was published in the **Federal Register** on January 18, 1985 (50 FR 2697).

The second notice of intent described a proposed method for determining rental payments which would: (1) Use actual prices paid for similar right-of-way uses on private lands; (2) contain a reasonable adjustment to reflect differences in terms of conditions of "private" right-of-way easements and Federal right-of-way grants; (3) convert the adjusted right-of-way value to an annual rental by use of a readily obtainable market interest rate; and (4) provide a means for easily updating the information to maintain a current and usable schedule.

To gather and establish actual price data, the Bureau of Land Management and the Forest Service proposed to use market data surveys to establish right-of-way values by right-of-way type and geographic areas. To establish differences in value between the purchase of easements and a right-of-way grant across Federal lands, the Bureau of Land Management and the Forest Service indicated that they had considered three elements: (1) Annual vs. one-time payments; (2) periodic adjustment of the annual payment; and (3) other terms and conditions.

The Bureau of Land Management and the Forest Service sought to determine if paying annual rentals reduced the value of the right-of-way grant when compared to the value of an easement purchased by paying a one-time price. Also considered was whether the annual payment should be adjusted to offset any loss in value.

Data are limited for comparing similar rights-of-way that were obtained by annual payments and a one-time purchase of the easement. However, analysis of the data available found that the method of payment did not affect the value of the easement to the purchaser.

Next, the Bureau of Land Management and the Forest Service looked at the effect of periodic adjustments in the annual payments for right-of-way grants on Federal lands and whether these adjustments argue for an adjustment in the annual payment. As a result of the analysis, the Bureau of Land Management and the Forest Service, using real estate financing techniques, proposed a downward adjustment of 20 percent in market value of a right-of-way grant on Federal lands to offset the effect of periodic adjustment of the annual payments.

Finally, the Bureau of Land Management and the Forest Service compared the restrictions and constraints of terms and conditions in right-of-way grants on Federal lands to those in easements purchased outright to determine the extent of adjustment in value of the Federal grant. The adjustment for the more restrictive conditions found in Federal grants was proposed as a 10 percent downward adjustment for those right-of-way grants made under the Federal Land Policy and Management Act and 15 percent for grants made under the Mineral Leasing Act.

The Bureau of Land Management and the Forest Service proposed the use of the 30-year Federal bond rate as of October 1 each year as the rate for converting the right-of-way value to an annual rental. Finally, the Bureau of Land Management and the Forest Service proposed updating the payment schedule by one of two alternatives: (1) Resampling the market data at least every five years; or (2) adjusting the schedule annually by the fluctuation in the 30-year bond rate and the Consumer Price Index.

The following illustrates how rental payments would be calculated by using this proposed method:

Formula: Annual rental payment = market value of the rights and privileges x factor for periodic adjustment of the annual payment x factor for terms and conditions x 30-year Federal bond rate.

Factors: Market value = $100; Periodic adjustment factor = 0.80 (20 percent discount); Terms and conditions factor = 0.90 (10 percent discount for Federal Land Policy and Management Act grants); 30-year Federal Bond rate = 10.85 percent.

Calculation: $100 × 0.80 × 0.90 × 0.1085 = $7.81 annual rental payment.

Analysis of Public Comments

In response to 13 requests for an extension of the comment period on the second notice of intent to propose rulemaking, the comment period was extended by publication of a notice of extension in the **Federal Register** on April 18, 1985 (50 FR 10998). A total of 37 comments were generated by the second notice of intent to propose rulemaking, with 19 from the oil and gas industry, 9 from the electric and phone utility industry, 4 from trade associations or ad hoc organizations, 2 from Federal sources, 2 from individuals and 1 from State or local governments.

The comments were very specific and contained recommendations applicable

to the payment calculation process proposed by the Bureau of Land Management and the Forest Service. Analysis of the comments pointed out the need for some modification of the first proposal. In developing this proposed rulemaking, both the Bureau of Land Management and the Forest Service gave careful consideration to all of the comments.

In addition, both the Department of the Interior and the Forest Service held meetings and discussions with holder and permittee representatives in and effort to seek an equitable resolution of holder's/permittee's concerns about the issues raised in the second notice of intent to propose rulemaking.

The following is a summary of the proposal contained in the second notice of intent to propose rulemaking, a summary of the comments on that notice, a summary of representative discussions, and, where applicable, a discussion of changes in the proposal set forth in the second notice of intent that resulted from consideration of the comments.

Right-of-Way Zone Determinations

The Bureau of Land Management and the Forest Service had proposed to complete a market survey to identify, if possible, zones of reasonably common purchase prices of easements. Upon determining common price zones, it was proposed to use that information to administratively select a single value for the zone by type of right-of-way and purchase price.

This proposal was discussed in most of the comments on the notice of intent to propose rulemaking. Industry comments suggested that land values be established locally by appraisers and that these values be restricted to the uses described in the Forest or Resource Management Plans, that these values then be adjusted to reflect the percentage of rights conveyed, and then that the values be reduced further by 40 to 90 percent to reflect the differences between a public grant and a private easement. This value amount then would be multiplied by 4 to 8 percent to reflect a rate of return for the lands, i.e., using a Resource Management Plan value of $100 per acre, adjusted downward by 50 percent to reflect rights conveyed, a further downward adjustment of 65 percent for the differences between a public grant and private easement, and applying a rate of return of 5 percent, the annual rental would be $0.88 an acre ($100×0.50×0.35× 0.05=$0.88).

The comments on the establishment of zones were mixed. Some of the comments preferred a "mean" price for a single zone, while other comments felt the establishment of "typical values" for specific areas would be more appropriate. The comments also were varied on the size of a zone. Many of the comments preferred large geographical zones, while other comments preferred small areas. A few of the comments recommended continuing with individual appraisals for each right-of-way grant. Most of the comments suggested that the zone values be based on land values rather than on one-time payment for purchases in the private market.

Based on these recommendations, the Department of the Interior has determined that rentals for linear right-of-way grants made by the Bureau of Land Management are to be based on the fair market value of the lands and will disregard those instances where private easements were acquired in the market in amounts exceeding the underlying land values. The Department believes the use of land values will provide a more consistent and equitable method for determining rental rates by eliminating the wide fluctuations which tend to occur with the acquisition of private easements.

Right-of-way zones presented in this proposed rulemaking are areas based on typical raw land values for the type of lands the Bureau of Land Management and Forest Service have in the past allowed and plan in the future to be occupied by linear rights-of-way. A corridor or window identified in the Management Plans, through which such uses must pass would be typical of the lands represented by the value zones.

The value of standing timber is not included in the value assigned to the zones because the timber is usually paid for separately and removed when the right-of-way grant is cleared.

A market survey was conducted by the Bureau of Land Management's State Office Chief Appraisers and their Forest Service Regional Office counterparts for the purpose of collecting data on what industry was paying for an easement. Part of the survey included estimating the land values for the lands covered by the easement. It is this information, together with additional information provided by the holder/permittee representatives that is used as a basis for establishing the right-of-way zones.

These right-of-way zones are not based on the values for urban or suburban residential areas, industrial parks, farms or orchards, recreation properties or other such types of lands. Also excluded from the zones are attractive public use areas such as lake frontage, stream frontage, scenic vista and scenic highway frontage areas because these areas are usually avoided when granting linear rights-of-way. No representation is made in this proposed rulemaking that the zones reflect the value of private lands or other ownership unless those lands are comparable with the lands typically occupied by a right-of-way grant or permit from the Bureau of Land Management or the Forest Service. Specific sites within the value zones may have actual values higher or lower than the value of the assigned zone.

The zones are established by State and County jurisdiction for administrative convenience.

The payment schedule that would be used by the proposed rulemaking is designed for use in calculating the annual rental for the majority of linear right-of-way grants made by the Bureau of Land Management and the Forest Service. However, the Agencies reserve the right to use individual appraisals or other valuation procedures to calculate rentals for those grants that have unique characteristics. As an example, right-of-way grants involving highly productive timber lands, industrial or residential development areas, developed recreational areas, lakeshore and streamside areas and areas with atypically high value (generally above $4,000 to $5,000 per acre) may be determined by the authorized officer to have unique characteristics.

Differential Adjustment

Annual vs. One-time Payment

Generally, all of the comments stated a preference for acquiring a perpetual grant by paying a one-time, lump sum payment at the time of acquisition. In support of this preference, the industry comments asserted that the cost of billing on an individual basis instead of a company basis often exceeds the amount of rental. The comments also expressed the view that the law and regulations should be changed to allow the issuance of a perpetual easement for a lump sum payment. Many of the comments requested that a discount be applied to any lump sum payment.

Existing regulations provide that when the annual rental is less than $100, the agency may require that the payment be made for a five-year or longer period. In addition, the existing regulations allow prepayment for any number of years, regardless of the amount of the annual rental, subject to the Bureau of Land Management's being able to periodically adjust the rental (generally, at five-year intervals) and collect or refund any difference in the rental. The proposed rulemaking would

continue the authority of the authorized officer to require payment of rentals of less than $100 per year in five-year increments. The proposed rulemaking also would permit a holder/permittee to pay rental up to five years in advance, with the annual rental set for that five-year period, but at the end of the five-year term, the then current rental set for use of a grant/permit in that zone would be applicable.

To assist in reducing the administrative costs of the holder's/permittee's and the United States, the Bureau of Land Management would, once the payment system contained in this proposed rulemaking is in place, provide holders/permittees of multiple right-of-way grants with a single annual billing for all such right-of-way grants within the jurisdiction of a Bureau State office.

Annual Payment Schedule Adjustment

Two methods for maintaining an updated rental payment schedule were originally proposed in the second notice of intent to propose rulemaking. One method was to resample the market data at least every five years and the other was to adjust the schedule annually by the degree of fluctuation in the 30-year bond rate and the Consumer Price Index.

A majority of the comments on the two methods expressed the view that use of the Consumer Price Index would not accurately reflect changes in the market value of land. Some of the comments suggested that a new market analysis of land values in each zone was needed every five to ten years to properly update the payment schedule. In addition, several of the comments suggested the use of the Department of Agriculture's Farm Real Estate Market Developments annual report as an alternative basis for updating the payment schedule.

A number of the comments favored periodic adjustment of rental payments, with a recommendation that the update be made at five-year or less intervals. Based on past experience with reappraisals on five-year intervals, an annual adjustment was selected in order to better maintain a payment schedule which would reflect current values and reduce administrative costs of making appraisals.

After careful review of several indexes, the proposed rulemaking would provide that the per acre rental payments in the schedule, which are a function of both land values and interest rates, will be adjusted annually by multiplying the current year per acre rental by the annual change, third quarter to third quarter, in the Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis. This index provides users protection from rising prices and eliminates wide swings in rates which often result in appeals.

To assure that the rentals accurately reflect the rental value of the lands, the basis for each of the elements used in the original formula to calculate the per acre rental values shall be reviewed when the cumulative change in the Implicit Price Deflator Index exceeds plus or minus 30 percent, or a cumulative change in the one-year Treasury securities "Constant Maturity" rate exceeds plus or minus 50 percent. This review is for the purpose of determining whether market conditions and business practices have varied sufficiently from the index to warrant a revision in the elements or the complete formula.

Under this system, the rental for the ensuing calendar year for any single right-of-way grant or temporary use permit will be the rental per acre from the payment schedule times the number of acres embraced in right-of-way rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in section 2803.1–2 of this proposed rulemaking.

Imposition of New Rates

The new rental payments provided in this proposed rulemaking would be effective for grants and permits issued subsequent to the effective date of the final rulemaking. These new rental payments would become effective for existing grants or permits when they are scheduled for review and possible payment adjustment. In the past, this generally has been on a five-year rotation. The proposed rulemaking would provide for advance notification of adjustment before any conversion to this schedule is made.

In those situations where grants or permits were issued with the annual rental subject to future determinations (section 2803.1–2(b)), the new payment schedule would be applied with an appropriate adjustment back to the date of issuance of the grant by using the index discussed earlier in this preamble. Where a previous increase in the annual rental was appealed by the holder/permittee, the application of the new rental rate would be in accordance with the final decision on the appeal.

For existing right-of-way grants, where the increase in the annual rental would exceed $100 and the increase in rental would be in excess of 100 percent, the amount of the new rental in excess of the 100 percent increase would be phased in by equal increments, plus an annual adjustment, over a three-year period. As an example of how this process would work, assume a current rental of $100 per year, a new rental of $500 per year, and an annual adjustment of plus 2 percent, then the payments would be as follows:

Year	Last year fee		First 100% increase		⅓ of increase balance		Annual adjustment		Current fee
1	$100	+	$100	+	$100	+	$0	=	$300
2	300	+	0	+	100	+	10	=	410
3	410	+	0	+	100	+	10	=	520

Other Terms and Conditions

To provide for the differences between a Federal and private right-of-way grant, the January 1985 notice of intent to propose rulemaking used a 15 percent adjustment for right-of-way grants made under the Mineral Leasing Act, and 10 percent adjustment for grants made under the Federal Land Policy and Management Act. The Mineral Leasing Act adjustment was greater than that for right-of-way grants made under the Federal Land Policy and Management Act due to additional statutory requirements, for example the common carrier provision and relocation requirements, that are not required for grants under the Federal Land Policy and Management Act. This adjustment was the greatest point of concern in the comments on the notice of intent. Some of the comments provided data based on cost of acquisition or construction by which they measured the differences between a Federal and private right-of-way grant. Most of the comments indicated that the adjustment for a Federal right-of-way grant should be not less than 40 percent; with some of the comments recommending adjustments ranging up to 100 percent for certain categories of right-of-way grants. Other comments expressed the view that there should be no adjustment made for the difference between Federal and private right-of-way grants.

Some of the comments recommended changes in the grant made by the United States in order to eliminate the perceived differences between Federal

and private right-of-way grants. The changes proposed in the comments included allowing perpetual easements, developing master permits common to both the Bureau of Land Management and the Forest Service, deletion of the requirement that a holder/permittee must relocate facilities at its expense as a result of a management decision by the agency, and permitting reassignment of permits without the Bureau of Land Management or the Forest Service being able to include new requirements.

After reviewing the comments and the Mineral Leasing Act and the Federal Land Policy and Management Act, the proposed rulemaking would make changes in the existing requirements for relocation cost to the holder/permittee and assignability of a grant or permit. Under this proposed rulemaking, the requirement for relocation at the holder's/permittee's expense would be removed and the assignment provisions would be amended to allow existing grants or permits to be assigned to qualified parties without change in terms and conditions of the grant or permit other than bonding requirements. These two changes would not be applicable to grants or permits that are exempt from the payment of fair market value rental, such as Rural Electrification Act financed facilities.

A number of comments suggested that additional requirements imposed on right-of-way grants on public lands, such as archeological studies, painting structures and seeding, are costly, unreasonable and, therefore, should be modified. Many of the requirements discussed in the comments are statutory requirements that cannot be changed through the rulemaking process and the proposed rulemaking takes no action on them.

Conclusion

The comments addressed above were primarily directed at the use of the market survey data base. The decision to change from a market survey data base to a land value base in this proposed rulemaking meets the objections raised in a majority of the comments on the intent to propose rulemaking.

The right-of-way grant and temporary use granted by the United States are not in fee ownership and the real estate market shows that, in most instances, the acquisition of a grant that is less than a fee grant make it less valuable than the granting of a fee. The real estate market is not sufficiently refined that it can accurately measure in exact dollars or percentages the value of a grant or permit that is for less than full fee. In arriving at the adjustment concept used in this proposed rulemaking, professional judgment and all available data, including comments received on the notices of intent to propose rulemaking, discussions with permittee representatives and the impact of a grant or permit on the lands and their resources.

For right-of-way grants and temporary use permits for electric transmission and distribution lines, telephone lines and similar uses, a 30 percent adjustment has been proposed. The impact on the lands and their management made by energy pipelines, ditches, canals and roads, as a whole, is more severe than it is for electrical, telephone and other similar right-of-way grants. For this latter type of right-of-way grant, a 20 percent adjustment has been proposed.

For these reasons, the Department of the Interior proposes to charge 80 percent of the zone right-of-way grants for energy pipelines, ditches, canals and roads and 70 percent for electrical transmission, electrical distribution, telephone and other similar linear right-of-way grants.

Calculation of Annual Rental from Adjusted Right-of-Way Zone Value

The January 1985 notice of intent to proposed rulemaking recommended using the 30-year Federal Bond rate as of October 1 of each year as the applicable rate for converting the right-of-way zone value to an annual rental. The comments on this proposal were varied in their view as to what rate should be used, with most of the comments opposing the use of long-term financial rates on the basis that they do not reflect periodic adjustment in rentals. Some of the comments felt a Federal bond rate would be appropriate for use if it coincided with the payment term. Other comments expressed the view that the rate of return must be drawn from the land market relevant to the right-of-way, a view that has been accepted by the proposed rulemaking. Almost all of the comments supported a range of from 4 to 8 percent as the rate that should be used.

The proposed rulemaking would use the current one-year Treasury Securities "Constant Maturity" rate as published by the Federal Reserve in the statistical release report H. 15 (519) as the basis for calculating the annual rental for a right-of-way grant. Thereafter, annual adjustments in the rental would be made using the Implicit Price Deflator Index effective at the end of the third quarter of each year.

Other Issues Raised in the Comments

Should All Utilities Be Exempt for Rentals

Several of the comments suggested that private investor owned utilities should be exempt from paying rental for right-of-way grants on Federal lands. The Federal Land Policy and Management Act provides authority for waiver of rental fees, when equitable and in the public interest, for right-of-way grants to: Federal, State or local governments or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by a profit making corporation or business entity; to holders who provide, without charge, or at a reduced charge, a valuable benefit to the public or to the programs of the Secretary of the Interior or of Agriculture; or to a holder in connection with the authorized use or occupancy of Federal lands for which the United States is already receiving compensation, including free use.

Numerous administrative appeal decisions have affirmed the position that no reduction of waiver of payments is appropriate for organizations whose principal source of revenue is customer charges. The legislative history of section 504(g) of the Federal Land Policy and Management Act reveals that the Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Several of the comments pointed out the decisions of the United States Court of Appeals for the Tenth Circuit in *Beaver, Bountiful, Enterprise* v. *Andrus*, 637 F. 2nd 749 (1980), and expressed the view that the decision exempted all municipalities and other entities, including private investor utilities, from the payment of rental because the lands and resources utilized would continue to serve the general public. This view is incorrect in that the Court ruled that the plaintiffs, as local governmental entities were exempt from paying application processing costs under the Bureau of Land Management regulations in effect at that time. The Court did not rule on the question of whether private investor utilities should be exempt from the payment of annual rental.

Several of the comments expressed the view that the Act of May 25, 1984 (98 Stat 215), which amended the Federal Land Policy and Management Act to exempt electric and telephone facilities financed under the Rural Electrification Act from the payment of rental right-of-way grants on Federal lands, also

exempted public utilities from the payment of rental. This view is not supported by the provisions of that Act which specifically provides an exemption from rental only for facilities financed under the Rural Electrification Act or extensions of those facilities. Therefore, public utilities not financed under the Rural Electrification Act are not exempt from the requirement for the payment of an annual rental.

Unauthorized Double Charge

Some of the comments expressed the view that the requirement to pay both an annual rental and the costs of processing and monitoring the right-of-way grant or temporary use permit is an unauthorized double charge on an applicant/holder and suggested that this situation should be resolved by providing for an offset in one area for payments made in the other area. Both the Mineral Leasing Act and the Federal Land Policy and Management Act provide for the collection of both the costs connected with the processing and monitoring of grants or permits and the annual rental that reflects fair market value for the use of the Federal lands covered by a grant or permit.

Cooperative Relations

The holder/permittee representatives requested that the proposed rulemaking contain a provision requiring the Bureau of Land Management and the Forest Service to maintain cooperative relations with user groups. The Bureau of Land Management agrees that it is important to maintain a cooperative relationship with users of linear right-of-way grants across Federal lands and will continue to work closely with various user groups to resolve long standing issues, reduce administrative costs and improve the efficiency of the Federal right-of-way system. However, the proposed rulemaking does not contain such a requirement.

Summary of Proposed Rental Payment Procedure

Using data from the market survey and information obtained from holders, a right-of-way value zone map has been prepared. The right-of-way zone value was adjusted downward by 20 percent for energy pipelines, ditches, canals and roads and 30 percent for all other linear right-of-way uses. This adjusted value was then multiplied by the 1-year Treasury Securities "Constant Maturity" rate to arrive at the annual per acre rental payment for each value zone. A 7.07 percent rate has been used as the interest rate. The final rulemaking will be based on the rate at the time of finalization. The following sets out the process used in calculating the rental fees used in this proposed rulemaking:

Formula: Rental payment/acre=Right-of-way zone value×differential adjustment×1-year Treasury Security rate.

Factors: Zone value=$100/acre; differential adjustment of 20 percent for energy pipelines, etc., and of 30 percent for others; 1-year Treasury Securities rate=7.07 percent (as of March 7, 1986).

Calculation.

Energy pipelines, etc.: $100/acre×0.80×.0707=$5.66/acre rental payment.

Other right-of-way grants: $100/acre×0.70×.0707=$4.95/acre rental payment.

The proposed payment schedule by State, county and type of linear right-of-way use resulting from the above formula as it applies to right-of-way zone values is shown on tables that can be obtained from the "Address section" shown at the beginning of the preamble to this proposed rulemaking.

Competitive Bidding

In considering fair market rental value, it is recognized that competitive interest may exist for such uses as communications sites, wind farms and similar type site uses where the number of potential sites is limited. The existing regulations do not contain competitive bidding procedures. This proposed rulemaking contains provisions that would develop a specific process for issuing right-of-way grants on a competitive basis. Where a competitive interest is identified through the Bureau of Land Management's land use planning system or through indications of public interest, the authorized officer would be authorized to issue a notice indicatng the availability of the lands and the proposed use, and offer a right-of-way under terms and conditions specified in the notice.

The principal author of this proposed rulemaking is Theodore Bingham, Division of Rights-of-Way, assisted by the staff of the Assistant Director, Land and Renewable Resources and the staff of the Division of Legislation and Regulatory Management, all part of the Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes that would be made by this proposed rulemaking will not, when the rental payments for all right-of-way grants and temporary use permits are considered, substantially increase the payments made by holders/permittees.

The changes that would be made by this proposed rulemaking should make the rental procedures used by the Bureau of Land Management more efficient and equitable, while more accurately assuring receipt of fair market value. The changes made by this proposed rulemaking will be equally applicable to all entities that receive right-of-way or permit grants from the Bureau of Land Management for use of the Federal lands for such right-of-way purposes.

There are no additional information collection requirements in this proposed rulemaking requiring approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Pubic lands—rights-of-way.

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771) and section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), it is proposed to amend Parts 2800 and 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2800—[AMENDED]

1. The authority citation for Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

2. Section 2803.1–2 is revised to read:

§ 2803.1–2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. Annual rent billing periods

shall be set or adjusted to coincide with the calendar year by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; provided, however, that the minimum rental under paragaph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further, that in those instances where the annual payment if $100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b) The following officer may reduce or waive the rental payment under the following circumstances:

(1) The holder is a Federal, State or local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principle source of revenue is customer charges;

(2) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(3) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(4) The facilities constructed on the right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities;

(5) The right-of-way was or is issued pursuant to a statute that did or does not require the payment of rental;

(6) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

(i) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(ii) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(7) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(8) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines to have unique characteristics, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

Zone	Rental per acre	
	Energy pipelines, roads, ditches & canals	All others
I	$2.83	$2.47
II	5.66	4.95
III	11.31	9.90
IV	16.97	14.85
V	22.62	19.80
VI	28.28	24.75
VII	33.94	29.69
VIII	56.56	49.49

A listing of rental per acre, by State and County, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street, NW., Washington, D.C. 20240.

(ii) The schedule will be adjusted annually by multiplying the current year's rental per acre by the annual change, from the last Friday in September to the last Friday in the following September, in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in subparagraph (ii) of this paragraph exceeds 30 percent or the change in the interest rate exceeds plus or minus 50 percent, the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures.

(iv) Rental for the ensuring calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre times the number of acres embraced in the grant or permit, rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in paragraph (b) of this section.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder.

(ii) Where the increase in annual rental exceeds $100 and is more than a 100 percent increase over the current rental, the new annual rental in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3-year period.

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the schedule set out above in this paragraph, including those the authorized officer determines under paragraph (c)(1) of this section to have unique characteristics, and for non-linear-right-of-way grants and temporary use permits (e.g., communications sites, reservoir sites, plant sites and storage sites) shall be determined by the authorized officer and paid annually in advance. Said rental shall be based on either a market survey of comparable rentals, or on an application of the rental from the schedule provided in this paragraph where appropriate, or on a value determination for specific parcels or groups of parcels unless such rental is reduced or waived as provided in paragraph (b) of this section. Where the authorized officer determines that a competitive interest exists for right-of-way grants such as wind farms, communications sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3 of this title.

(ii) To expedite the processing of any grant or permit coverd by paragraph (c)(3) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination.

(4) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(5) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(d) If the rental required by this section is not paid when due, and such default continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use

permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

3. Sections 2803.1–3 and 2803.1–4 are renumbered §§ 2803.1–4 and 2803.1–5, respectively.

4. A new § 2803.1–3 is added to read:

§ 2803.1–3 Competitive bidding.

(a) Where, as a result of the land use planning process or indications of public interest, the desirability of allowing use of the public lands for right-of-way purposes or providing increased service to the public from such use of the public lands is demonstrated to the satisfaction of the authorized officer and no equities, such as prior use of the lands, warrant noncompetitive land use authorization, the authorized officer may identify a right-of-way use for the public lands and notify the public through publication of a notice of realty action as required by paragraph (b)(1) of this section that proposals for utilizing the public lands through a right-of-way will be considered. A right-of-way grant shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(b) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the **Federal Register** and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), the minimum acceptable bid for rental and/or royalty rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the sale or at such other time stated in the notice of realty action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited.

§ 2803.6–3 [Amended]

5. Section 2803.6–3 is amended by removing from where it appears in the next to last sentence the phrase "plus any additional terms and conditions and any special stipulations that the authorized officer may impose" and adding at the end of the section a new sentence "The authorized officer may, at the time of approval of the assignment, modify or add bonding requirements."

6. Section 2803.6–4 is revised to read:

§ 2803.6–4 Reimbursement of costs for assignments.

(a) All filings for assignments, except as provided in paragraph (b) of this section, made pursuant to this section shall be accompanied by a non-refundable payment of $50 from the assignor. Exceptions for a nonrefundable payment for an assignment are the same as in § 2803.1 of this title.

(b) Where a holder assigns more than 1 right-of-way grant as a single action, the authorized officer may, due to economies of scale, set a nonrefundable fee of less than $50 per assignment.

PART 2880—[AMENDED]

7. The authority citation for part 2880 continues to read:

Authority: 30 U.S.C. 185, unless otherwise noted.

§ 2881.1–1 [Amended]

8. Section 2881.1–1(g) is amended by removing the period at the end of the last sentence thereof and adding the phrase ", except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than $50 per assignment."

§ 2881.2 [Amended]

9. Section 2881.2 is amended by removing paragraph (a)(2) in its entirety and redesignating the existing paragraphs (a) (3), (4), and (5) as paragraphs (a) (2), (3), and (4), respectively.

§ 2883.1–2 [Amended]

10. Section 2883.1–2 is amended by removing from where it appears the citation "§ 2803.1–2(c)" and replacing it with the citation "§ 2803.1–2(b)".

August 18, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

Note: The following will not appear in the Code of Federal Regulations.

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Alabama: All counties	$22.62	$19.80
Arizona:		
Apache	5.66	4.95
Coconino, north of the Colorado River		
Cochise		
Gila		
Graham		
La Paz		
Mohave		
Navajo		
Pima		
Yavapai		
Yuma		
Coconino, south of the Colorado River	22.62	19.80
Greenlee		
Maricopa		
Pinal		
Santa Cruz		
Arkansas: All counties	16.97	14.85
California:		
Imperial	11.31	9.90
Inyo		
Lassen		
Modoc		
Riverside		
San Bernardino		
Siskiyou	16.97	14.85
Alameda	28.28	24.75
Alpine		
Amador		
Butte		
Calaveras		
Colusa		
Contra Costa		
Del Norte		
El Dorado		
Fresno		
Glenn		
Humbolt		
Kern		
Kings		
Lake		
Madera		
Mariposa		
Mendicino		
Merced		
Mono		
Napa		
Nevada		
Placer		
Plumas		
Sacramento		
San Benito		
San Joaquin		
Santa Clara		
Shasta		
Sierra		
Solano		
Sonoma		
Stanislaus		
Sutter		
Tehama		
Toulumne		
Trinty		
Tulare		
Yolo		
Yuba		
Los Angeles	33.94	29.69
Marin		
Monterey		
Orange		
San Diego		
San Francisco		
San Luis Obispo		
San Mateo		
Santa Barbara		
Santa Cruz		
Ventura		
Colorado:		
Adams	5.66	4.95
Arapahoe		
Bent		
Cheyenne		
Crowley		
Elbert		
El Paso		
Huerfano		
Kiowa		
Kit Carson		
Lincoln		
Logan		
Moffat		
Montezuma		
Morgan		
Pueblo		
Sedgewick		
Washington		
Weld		
Yuma		
Baca	11.31	9.90
Dolores		
Garfield		
Las Animas		
Mesa		
Montrose		
Otero		
Prowers		
Rio Blanco		
Routt		
San Miguel		
Alamosa	22.62	19.80
Archuleta		
Boulder		
Chaffee		
Clear Creek		
Conejos		
Costilla		
Custer		
Delta		
Denver		
Douglas		
Eagle		
Fremont		
Gilpin		
Grand		
Gunnison		
Hinsdale		
Jackson		
Jefferson		
Lake		
La Plata		
Larimer		
Mineral		
Ouray		
Park		
Pitkin		
Rio Grande		
Saguache		
San Juan		
Summit		
Teller		
Connecticut: All counties	5.66	4.95
Delaware: All counties	5.66	4.95
Florida:		
Baker	33.94	29.69
Bay		
Bradford		
Calhoun		
Clay		
Columbia		
Dixie		
Duval		
Escambia		
Franklin		
Gadsden		
Gilchrist		
Gulf		
Hamilton		
Holmes		
Jackson		
Jefferson		
Lafayette		
Leon		
Liberty		
Madison		
Nassau		
Okaloosa		
Santa Rosa		
Suwannee		
Taylor		
Union		
Wakulla		
Walton		
Washington		
All other counties	56.56	49.49
Georgia:		
All counties	33.94	29.69
Idaho:		
Cassia	5.66	4.95
Gooding		
Jerome		
Lincoln		
Minidoka		
Oneida		
Owyhee		
Power		
Twin Falls		
Ada	16.97	14.85
Adams		
Bannock		
Bear Lake		
Benewah		
Bingham		
Blaine		
Boise		
Bonner		
Bonneville		
Boundary		
Butte		
Camas		
Canyon		
Caribou		
Clark		
Clearwater		
Custer		
Elmore		
Franklin		
Fremont		
Gem		
Idaho		
Jefferson		
Kootenai		
Latah		
Lemhi		
Lewis		
Madison		
Nez Perce		
Payette		
Shoshone		
Teton		
Valley		
Washington		
Illinois: All counties	16.97	14.85
Indiana: All counties	28.28	24.75
Iowa: All counties	16.97	14.85
Kansas:		
Morton	11.31	9.90
All other counties	5.66	4.95
Kentucky: All counties	16.97	14.85
Louisiana: All counties	33.94	29.69
Maine: All counties	16.97	14.85
Maryland: All counties	5.66	4.95
Massachusetts: All counties	5.66	4.95
Michigan:		
Alger	16.97	14.85
Barga		
Chippewa		
Delta		
Dickinson		
Gogebic		
Houghton		
Iron		
Keweenaw		
Luce		
Mackinac		
Marquette		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Menominee		
Ontonagon		
Schoolcraft		
All other counties	22.62	19.80
Minnesota: All counties	16.97	14.85
Mississippi: All counties	22.62	19.80
Missouri: All counties	16.97	14.85
Montana:		
Big Horn	5.66	4.95
Blaine		
Carter		
Cascade		
Chouteau		
Custer		
Daniels		
Dawson		
Fallon		
Fergus		
Garfield		
Glacier		
Golden Valley		
Hill		
Judith Basin		
Liberty		
McCone		
Meagher		
Musselshell		
Petroleum		
Phillips		
Pondera		
Powder River		
Prairie		
Richland		
Roosevelt		
Rosebud		
Sheridan		
Teton		
Toole		
Treasure		
Valley		
Wheatland		
Wibaux		
Yellowstone		
Beaverland	16.97	14.85
Broadwater		
Carbon		
Deer Lodge		
Flathead		
Gallatin		
Granite		
Jefferson		
Lake		
Lewis and Clark		
Lincoln		
Madison		
Mineral		
Missoula		
Park		
Powell		
Ravalli		
Sanders		
Silver Bow		
Stillwater		
Sweet Grass		
Nebraska: All counties	5.66	4.95
Nevada:		
Churchill	2.83	2.47
Elko		
Esmeralda		
Eureka		
Humboldt		
Lander		
Lincoln		
Lyon		
Mineral		
Nye		
Pershing		
Washoe		
White Pine		
Clark	11.31	9.90
Carson City	28.28	24.75
Douglas		
Story		
New Hampshire: All counties	16.97	14.85
New Jersey: All counties	5.66	4.95
New Mexico:		
Chaves	5.66	4.95
Curry		
De Baca		
Dona Ana		
Eddy		
Grant		
Guadalupe		
Harding		
Hidalgo		
Lea		
Luna		
McKinley		
Otero		
Quay		
Rossevelt		
San Juan		
Socorro		
Torrence		
Rio Arriba	11.31	9.90
San Doval		
Union		
Bernalillo	22.62	19.80
Catron		
Cibola		
Colfax		
Lincoln		
Los Alamos		
San Miguel		
Santa Fe		
Sierra		
Taos		
Valencia		
New York: All counties	22.62	19.80
North Carolina: All counties	33.94	29.69
North Dakota: All counties	5.66	4.95
Ohio: All counties	22.62	19.80
Oklahoma:		
Beaver	11.31	9.90
Cimmaron		
Roger Mills		
Texas		
Le Flore	16.97	14.85
McCurtain		
All other counties	5.66	4.95
Oregon:		
Harney	5.66	4.95
Lake		
Malheur		
Baker	11.31	9.90
Crook		
Deschutes		
Gilliam		
Grant		
Jefferson		
Klamath		
Morrow		
Sherman		
Umatilla		
Union		
Wallowa		
Wasco		
Wheeler		
Coos	16.97	14.85
Curry		
Douglas		
Jackson		
Josephine		
Benton	22.62	19.80
Clackamas		
Clatsop		
Columbia		
Hood River		
Lane		
Lincoln		
Linn		
Marion		
Multnomah		
Polk		
Tillamook		
Washington		
Yamhill		
Pennsylvania: All counties	22.62	19.80
Puerto Rico: All	33.94	29.69
Rhode Island: All counties	5.66	4.95
South Carolina: All counties	33.94	29.69
South Dakota:		
Butte	16.95	14.85
Custer		
Fall River		
Lawrence		
Meade		
Pennington		
All other counties	5.66	4.95
Tennessee: All counties	22.62	19.80
Texas:		
Culberson	5.66	4.95
El Paso		
Hudspeth		
All other counties	33.94	29.69
Utah:		
Beaver	5.66	4.95
Box Elder		
Carbon		
Duchesne		
Emery		
Garfield		
Grand		
Iron		
Jaub		
Kane		
Millard		
San Juan		
Tooele		
Unitah		
Wayne		
Washington	11.31	9.90
Cache	16.97	14.85
Daggett		
Davis		
Morgan		
Piute		
Rich		
Salt Lake		
Sanpete		
Sevier		
Summit		
Utah		
Wasatch		
Weber		
Vermont: All counties	22.62	19.80
Virginia: All counties	22.62	19.80
Washington:		
Adams	11.31	9.90
Asotin		
Benton		
Chelan		
Columbia		
Douglas		
Franklin		
Garfield		
Grant		
Kittitas		
Klickitat		
Lincoln		
Okanagan		
Spokane		
Walla Walla		
Whitman		
Yakima		
Ferry	16.97	14.85
Pend Oreille		
Stevens		
Clallam	22.62	19.80
Clark		
Cowlitz		
Grays Harbor		
Island		
Jefferson		
King		
Kitsap		

LINEAR RIGHTS-OF-WAY RENTAL SCHEDULE—Continued

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Lewis		
Mason		
Pacific		
Pierce		
San Juan		
Skagit		
Skamania		
Snohomish		
Thurston		
Wahkiakum		
Whatcom		
West Virginia: All counties	22.62	19.80
Wisconsin: All counties	16.97	14.85
Wyoming:		
Albany	5.66	4.95
Campbell		
Carbon		
Converse		
Fremont		
Goshen		
Johnson		
Laramie		
Lincoln		
Natrona		
Niobrara		
Platte		
Sheridan		
Sublette		
Sweetwater		
Uinta		
Big Horn	16.97	14.85
Crook		
Hot Springs		
Park		
Washakie		
Weston		
Teton		

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Friday
September 5, 1986

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Pork Promotion, Research, and Consumer Information Act of 1985, approved December 23, 1985 (7 U.S.C. 4801–4819), authorizes the establishment of a national, industry-funded and operated pork promotion, research, and consumer information program. On February 14, 1986, the Agricultural Marketing Service (AMS) published an invitation to submit proposals for a pork promotion, research, and consumer information order. AMS received an industry proposal which was published for public comment in the March 19, 1986, issue of the **Federal Register.** Additionally, a public meeting was held April 21, 1986, to facilitate a better understanding of the proposed order and to solicit comments on the proposal.

After evaluation of the comments, the transcript of the public meeting, and other available material, it has been determined that, with minor modifications, the proposed order and all terms and conditions thereof will assist in carrying out the Act. Accordingly, the proposed order, with minor modifications, has been adopted as a final rule.

DATES: This final rule is effective September 5, 1986, except that § 1230.71, which provides for the collection of assessments, will be effective November 1, 1986, and the collection of assessments shall begin on that date.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals, published February 14, 1986, (51 FR 5542).

Proposed Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, published February 21, 1986, (51 FR 6255).

Final Rule—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body, published April 4, 1986, (51 FR 11553).

Proposed Rule—Pork Promotion, Research, and Consumer Information Order, published March 19, 1986, (51 FR 9602).

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1, and is hereby classified as a nonmajor rule because the annual economic impact will be less than $100 million. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for pork and pork products. This program will be financed by assessments on domestic and imported porcine animals (swine) and on imported pork and pork products. The initial assessment rate will be 0.25 percent of the value of porcine animals or the equivalent thereof in the case of imported pork and pork products. For imported porcine animals, pork and pork products, the assessment will be collected at the time of importation. For porcine animals sold in the United States, the assessment will be collected the first time an animal is sold in each of the categories established by the Act and the order. The categories are feeder pigs, market hogs, and breeding stock. For example, a feeder pig sold by the original owner will be subject to an assessment, and the same animal will be subject to an assessment when sold for slaughter. However, if that animal were sold twice as a feeder pig, it would not be subject to an assessment for the second sale as a feeder pig. The Act also provides authority to require certain records and reports which are necessary to administer the program.

The Act specifies in detail required terms which must be included in the order. It also authorizes the Secretary to include such terms and conditions, not inconsistent with the provisions of the Act, as are necessary to effectuate the other provisions of the order. The Act is very specific in certain areas, such as the procedure for issuing an order, composition of the Delegate Body and the Board, powers and duties of the Delegate Body and the Board, source and collection of funds, level of assessment, and referendum requirements.

The Act provides that after notice and opportunity for public comment, the Secretary shall issue a pork promotion, research, and consumer information order, if the Secretary finds that the order and all terms and conditions thereof will assist in carrying out the Act.

The Act also requires the Secretary to conduct a referendum among producers and importers not earlier than 24 nor later than 30 months after the issuance of the order to determine whether a majority of those voting favor continuation of the program under the order. Prior to the approval of the continuation of the order, any person who pays an assessment and who does not support the program established under the Act may receive a full refund by making a written request to the Board within 30 days from the end of the month in which the assessment was paid. The Secretary is also authorized to conduct periodic referenda to determine whether a termination or suspension of the order is warranted.

Information available to the Department indicates that nearly all pork producers can be classified as small businesses. Additionally, a substantial number of the auction markets, dealers, order buyers, packers, and importers are considered small businesses under the RFA.

The funding of pork promotion, research, and consumer information programs by assessments is not a new concept. Thirty-eight States already have organizations conducting pork promotion, research, and consumer information programs funded by collections from producers, and the enabling legislation for a national program was initiated by the pork industry. The Act provides that this national promotion, research, and consumer information program be conducted in conjunction with existing programs, and encourages cooperation and coordination between State and national pork promotion, research, and consumer information programs and the National Pork Board established under this order. Although the Act precludes States from collecting funds from pork producers for promotion and consumer education programs while the order is in force, the Act provides that the existing

State programs shall receive a share of the assessments collected under the order.

The total estimated market value of porcine animals marketed in the United States or imported into the United States and the equivalent market value of the live animals from which imported pork and pork products were produced is about $10 billion per year. It is estimated that the promotion, research, and consumer information program will raise approximately $21 million per year, which is about two-tenths of one percent of the annual market value described above. The net impact of the national program would actually be considerably less because about $10 million is already being collected under existing State programs.

The reporting and recordkeeping requirements will not necessitate any significant additional cost or effort. Persons who collect or remit assessments are required to submit reports showing the number and value of the porcine animals subject to assessments, the amount of assessments collected, the month when collected, and the State in which the porcine animals were produced. Assessments on porcine animals sold through livestock markets will be collected and remitted by the market; for private sales, assessments will be collected and remitted by the buyer for feeder pigs and slaughter hogs, and will be remitted by the seller for breeding stock. Assessments on porcine animals slaughtered for sale by the producer will be remitted by the producer. The ordinary business records kept by these persons for other purposes will virtually always contain the required information.

Very little additional recordkeeping or reporting will be required of importers. The U.S. Customs Service will serve as the collecting agent for importer assessments. It is anticipated that an existing reporting form and procedure will be utilized to provide a one or two line entry for recording such assessments.

In determining that the research and promotion program under the order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions were closely reviewed, and every effort was made to minimize any unnecessary costs or duplicative requirements. Although the promotion, research, and consumer information program will impose some additional costs on producers and importers, it is anticipated that the program will strengthen the position of the pork industry in the marketplace and will expand domestic and foreign markets. Therefore, the additional costs, particularly when viewed in light of the annual market value of porcine animals, pork, and pork products, should be more than offset by the benefits derived from expanded markets and sales.

Paperwork Reduction

The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In accordance with the procedures contained in Title 5 of the Code of Federal Regulations, Part 1320, the information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0581–0151.

Background

The Pork Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 4801 *et seq.*) approved December 23, 1985, provides for the establishment of a national pork promotion, research, and consumer information program. The Agricultural Marketing Service issued an invitation to submit proposals for an initial order in the February 14, 1986, issue of the **Federal Register.** In response to the invitation to submit proposals, one proposed order was received from the National Pork Producers Council. As provided in the Act, the Agricultural Marketing Service published this proposed order for comment on March 19, 1986. Additionally, a public meeting was held on April 21, 1986, to provide an opportunity for a full discussion on the proposal and to facilitate a better understanding of the proposed rule and to solicit comments.

The Department of Agriculture received 30 comments related to the proposed Pork Promotion, Research, and Consumer Information Order from individuals, pork producer associations, general farm organizations, importers, and other industry organizations. The commenters generally supported the proposed order with certain qualifications. No comments were received which opposed the issuance of a Pork Promotion, Research, and Consumer Information Order.

After review of the proposed order and the comments and testimony, a number of technical changes of a non-substantive nature were made in this final rule, primarily in style, format, and organization. The substantive changes suggested by commenters are discussed below, together with changes made upon review of the proposed order by the Agency. For the reader's convenience, the discussion is organized by the topic headings of the proposed order.

Definitions

Most of the definitions in this final rule were adopted from the proposed rule without change. Most of the changes which were made result from a change in the method of calculating assessments on imported pork and pork products. The term "market value" has been expanded, and the term "equivalent value" has been deleted; two new terms, "Customs Service" and "imported pork and pork products" have been added. These changes as they relate to imported pork and pork products are discussed below, under *Expenses and Assessments.*

The term "market value" was also modified in order to provide methods for calculating assessments on porcine animals slaughtered for sale by the producer and on imported porcine animals. The methods are, respectively, the most recent annual seven-market average for barrows and gilts, and the declared value. These provisions were added because otherwise the collection of assessments could not begin until additional regulations establishing some method for determining the market value of such animals had been prescribed by the Board and approved by the Secretary. The methods set forth in the definition in this final rule are based upon the best information presently available to the Agency. If experience should demonstrate that these methods are unsatisfactory, the order may be amended to establish other methods.

The term "to market" has been replaced by "market," and the definition has been clarified. The term is used in the order only in reference to actions by domestic producers. The definition should not refer to the sale or other disposition of pork or pork products but rather, to the sale, slaughter for sale, or other disposition of porcine animals, because assessments on producers do not apply to pork or pork products. The definition has been modified accordingly.

Several commenters, including the proponents of the proposed order, suggested that the definition of "producer" should be clarified as to who may vote in elections to nominate members of the Delegate Body. The terms "producer" and "person" are defined in the proposed order just as they are in the Act. The Act defines a

"producer" as a person who produces porcine animals in the United States for sale in commerce. The Act further defines a "person" as an individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity. No further clarification of these terms is necessary at this time for the efficient operation of the order. If clarification is desirable with respect to elections for nominations to the Delegate Body or for the referendum, this may be accomplished through regulations prescribed by the Board and approved by the Secretary. This procedure would allow the Board to consider the matter, and would provide producers, importers, and other interested persons notice and opportunity to comment on any proposed clarification. Accordingly, this suggestion is not adopted in this final rule.

The proponents of the proposed order suggested that the term "imported pork and pork products" should be defined and that the definition specifically identify, by Tariff Schedule of the United States numbers, those imported pork and pork products which would be subject to assessment under the order. This suggestion has substantial merit. Accordingly, a definition and associated list of Tariff Schedule numbers has been included in this final rule. This list may be revised from time to time by regulations prescribed by the Board and approved by the Secretary.

National Pork Producers Delegate Body

Section 1230.30 "Establishment and Membership" of the proposed order has been modified in several respects in this final rule. The section began with a general description of the method of determining the number of producer members from each State and the number of importer members. This general provision is unnecessary in view of the detailed provisions specifying the manner of determining the number of producer members from each State, and importers, and the number of votes which may be cast by each member. Accordingly, it has been deleted in this final rule. Also, this section of the proposed order has been clarified by removing the phrase "aggregate amount of assessments." The reasons for this clarification are discussed below under *Expenses and Assessments.*

Section 1230.31 "Nominations for Producer Members" of the proposed order provided that in cases where there is no State association, or the State association does not submit nominations, the Secretary may appoint producer members from that state after consulting with representatives of the pork industry in that State. The proposed order did not specifically provide for cases where a State association does not submit the necessary number of nominations, or does not submit them in a valid manner. This section has been modified in this final rule to allow the Secretary to obtain additional nominees by consulting with representatives of the pork industry in any such State. This modification is necessary to assure that in accordance with the Act each State will receive the appropriate number of members. The section has also been renamed "Nomination and Appointment of Producer Members" and has been modifed to include appointment of producer members.

One of the methods authorized by the Act for selecting nominees for appointment to the Delegate Body is by election in each State. The proposed order contained detailed provisions for conducting such elections. The precise manner in which such elections are conducted would more appropriately be contained in implementing regulations rather than in the order itself. Further, since the proposed order was submitted, elections have been conducted in the States to select nominees. It would be appropriate for the Board to consider regulations for conducting any future elections in light of the experience of producers in the elections held for the initial Delegate Body. Accordingly, such detailed provisions for conducting elections contained in §§ 1230.33 through 1230.39 and § 1230.41 of the proposed order have been deleted in this final rule, and the final rule sets forth only the requirements established by the Act. The requirements of the order pertaining to the conduct of elections to select nominees to the Delegate Body are set forth in § 1230.32 of the final rule.

Several State pork producer associations suggested that the Board should be responsible for paying the expenses of any elections to nominate pork producers to the Delegate Body after the initial Delegate Body has been appointed. After the establishment of the initial Delegate Body, elections are not required for the selection of nominees for subsequent Delegate Bodies; other procedures authorized by the Act may be approved by the Secretary. If elections are to be held, the possible reimbursement or sharing of expenses is a matter which would be appropriate for consideration at that time. Accordingly, this suggestion is not adopted in the final rule.

Several comments were received from producer associations and individuals suggesting that the order provide for alternate members of the Delegate Body. However, the Act does not provide for the appointment of alternate members of the Delegate Body. Further, the size of the Delegate Body makes the appointment of alternate members impractical. Accordingly, this suggestion is not adopted in this final rule.

National Pork Board

No substantial changes have been made in the sections of the proposed order dealing with the National Pork Board.

Importer representatives suggested in testimony at the public meeting that the order should guarantee importers one or more seats on the Board. Numerous comments were received from producer associations arguing that neither importers nor any particular State or segment of the industry should be guaranteed a seat on the Board. The Act provides that the Delegate Body shall nominate not less than 23 persons for appointment to the Board, and it does not provide for any specific State or segment of the pork industry to be represented on the Board. Accordingly, the suggestion that importers should be guaranteed a seat on the Board is not adopted in this final rule.

A change has been made in § 1230.55 "Vacancies" in order to clarify the procedures for removal, and to clarify that the Secretary may remove employees of the Board if it is determined that their continued service would be detrimental to the purposes of the Act.

Promotion, Research, and Consumer Information

Many comments were received from individuals and producer associations favoring the authorization of brand advertising. However, these commenters suggested that the prior approval of the Secretary should not be required because it could delay promotional programs. Section 1619(b)(3) of the Act provides that no plan, project, or budget, including those for which State associations receive funds from the Board, may become effective unless approved by the Secretary; this provision also applies to brand advertising. The statutory requirement is implemented by paragraph (e) of § 1230.58 "Powers and Duties of the Board." Therefore, the suggestion that paragraph (d) of § 1230.60 "Promotion, Research, and Consumer Information" be deleted is not adopted in this final rule.

An individual commenter suggested that the reference in this section to

projects to maintain, develop, or expand markets for pork and pork products should include both domestic and foreign markets. It is clear that this is the intent of the Act; accordingly, the suggested change has been made in this final rule.

One comment was received from a public interest group suggesting that the order contain specific provisions for the content of promotional materials, in addition to the general prohibition of false, deceptive, misleading, or unfair advertising. No convincing case has been made that any such additional restrictions are necessary. Accordingly, the suggestion is not adopted in this final rule.

Expenses and Assessments

A general farm organization suggested that the administrative expenses of the Board, the National Pork Producers Council, and the State associations be limited to no more than five percent of their respective share of the projected revenue for a fiscal period. The Act does not provide for a specific administrative expense ceiling. Rather, the Act and the order authorize the efficient use of assessments through the fullest utilization of resources, staff, and facilities available to the Board through the use of contracts or agreements with existing organizations. These provisions, together with the Secretary's authority to review the Board's budgets, will ensure appropriate restraint on administrative expenses.

Section 1230.71 "Assessments" has been modified in several respects in this final rule. Persons who sell porcine animals directly to consumers as a part of a custom slaughter operation are made responsible for remitting assessments on such animals. This situation is very similar to slaughter for sale by the producer, and the purposes of the Act would not be furthered by requiring ordinary consumers to remit assessments.

The proponents of the proposed order and several importer representatives suggested that the U.S. Customs Service would be the most appropriate entity to provide cost effective and efficient collection of assessments due on imported porcine animals, pork, and pork products. The U.S. Customs Service has agreed in principle to serve as the collecting mechanism for importer assessments due under the Act and § 1230.71 "Assessments" has been revised to provide that importers shall remit assessments to the Customs Service, unless a different manner is established by regulations. The provision of the proposed order concerning the manner of remittance has been placed with the provisions concerning who must collect and remit assessments on domestic porcine animals. Also, the term "Customs Service" has been added to the definitions in this final rule.

The proposed order also provided that assessments would be remitted to the Secretary until the Board is established. This provision is not necessary, because the Board will be established before assessments begin. This is possible because elections have already been conducted to select nominees for the Delegate Body, which will nominate the members of the Board. Accordingly, references to the remittance of assessments to the Secretary and distribution by the Secretary have been eliminated in this final rule.

One individual commenter suggested that there be a common collection point for importer assessments, a common remittance date, and a single late payment penalty for assessments due under both the Pork Promotion, Research, and Consumer Information Act of 1985 and the Beef Promotion and Research Act of 1985. The Acts require the issuance of separate orders and the establishment of separate governing bodies which are responsible for the collection of assessments under each order's enabling legislation. The authorized programs while similar are not identical, and although coordination between the two may be desirable, such coordination can only be achieved through coordination between the officials of the two programs. It would be inappropriate to establish the requirements proposed by the commenter in either order.

The proposed order provided that the assessment rate would be 0.25 percent of market value, or a lesser percentage established by the Secretary upon the recommendation of the Delegate Body. In order to avoid uncertainty, this final rule provides that the initial rate of assessment shall be 0.25 percent. This modification does not diminish the authority of the Delegate Body to recommend a lower rate. If such a recommendation were made, it would be reviewed promptly and, if appropriate, the initial rate would be lowered.

The rate of assessment for imported pork and pork products was the subject of much concern at the public meeting and in the comments submitted to the Department.

The proposed order provided that assessments on imported pork and pork products be determined by applying the assessment rate to 70 percent of the value of the pork and pork products. Importer representatives suggested that one uniform assessment rate be established for all imported pork and pork products for ease of calculating such assessments. These methods do not meet the requirements set forth in the Act. A set percentage of the value of imported pork and pork products does not represent the equivalent value of the live porcine animals from which such pork and pork products were produced. Additionally, a single assessment rate, as proposed by the importers, could be unfair to importers dealing primarily in products which should be assessed at a lower rate.

Accordingly, the Agency has determined that assessments on imported pork and pork products shall be expressed in an amount per pound for each type of product subject to assessment. These amounts will be based upon the equivalent value of the live porcine animal from which such pork and pork products were produced. This shall be accomplished by first converting the weight of imported pork or pork products to a carcass weight equivalent utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the non-pork components of pork products. Second, the carcass weight equivalent will be converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of hogs in the United States. Third, the equivalent value of the live porcine animal will be determined by multiplying the live animal equivalent weight by an annual average seven-market price for barrows and gilts as reported by the USDA Agricultural Marketing Service's Livestock and Grain Market News Branch. This average price is published on a yearly basis during the month of January in the Livestock and Grain Market News' "Livestock, Meat, and Wool Weekly Summary and Statistics" publication. Finally, the equivalent value would be multiplied by the applicable assessment rate to determine the assessment amount due on imported pork or pork products. The end result would be expressed in an amount per pound for each type of pork or pork product.

The § 1230.72 "Distribution of Assessments" has been modified in several respects in this final rule. This section of the proposed order provided that State associations would receive a percentage determined by the Delegate Body of the aggregate assessments

attributable to porcine animals produced in that State, but that this amount would be reduced by the same percentage of the amount of refunds paid to producers in that State. Several individuals and State producer associations suggested that the phrase "aggregate assessments" was confusing and should be defined. The suggestion that the section be clarified has merit. The section has been modified in this final rule by eliminating the references to "aggregate assessments" and paragraph (f), concerning shares of refunds, and using instead the term "net assessments attributable to that State." The meaning of the section is not affected by these modifications.

This section of the proposed order also provided that State associations which have been conducting pork promotion programs would receive amounts in addition to the percentage set by the Delegate Body so that the total amount received under the order would not be less than the amount they would have received and retained under the preexisting programs. The determination of this amount requires the exercise of judgment and discretion by the Board, and it cannot easily be reduced to a formula, as the proposed order attempted. Accordingly, this section has been modified in this final rule by eliminating the formula and providing instead that a State association which was conducting a pork promotion, research, and consumer information program from July 1, 1984 to June 30, 1985, shall receive on an annual basis the amount that would have been collected and retained in that State under that program.

As previously discussed, the provisions for distribution of assessments by the Secretary prior to the establishment of the Board have been eliminated as unnecessary. In connection with this change, the section has been reorganized for clarity. In the proposed order, the provisions for distribution of assessments were organized by the time period in which they would be distributed, that is, before the establishment of the Board, and before and after the referendum. In this final rule, the provisions governing distribution of assessments are set forth in separate paragraphs for State associations and the Council.

An importer organization suggested that the order should provide that no funds collected from importers be used in any manner to restrict or limit the importation of pork or pork products. It is assumed that the commenter was concerned about the use of assessments collected from importers to influence governmental action to limit importations. The suggestion that funds collected under the order should not be used for such purposes has merit. Section 1230.74 "Prohibited Use of Distributed Assessments" has been modified in this final rule to reflect the long-standing policy of the Department that funds collected under research and promotion programs may not be used to influence governmental action, except to recommend to the Secretary amendments to the order and associated regulations. Also, a new paragraph has been added to clarify that the Board and the Secretary may require reports to verify that distributed assessments have not been used for prohibited purposes.

The proponents of the order suggested that the order should provide that the refund application form should show the name, address, and telephone number of the person requesting a refund. The refund application form must, in any event, include the information necessary for processing, and it is not necessary that the order contain such details. Accordingly, this suggestion is not adopted in this final rule.

An importer suggested that a provision should be included in the order to refund any assessments collected on product returns (products which are refused entry into the U.S. after customs duties have been paid). This suggestion has merit; however, such a situation should be treated as an adjustment of accounts rather than as a refund. Section 1230.75 "Adjustment of Accounts" has been modified slightly in this final rule to provide for payment when the matter cannot be handled by a credit to an account.

Reports, Books, and Records

The proponents of the proposed order suggested that the § 1230.80 "Reports" should be modified so that the reports required to be submitted with remittance of assessments "may" rather than "will" include the information set forth in that section. The proponents stated that the purpose of the suggested change would be to avoid the required collection of unnecessary information. This suggestion has merit. The section has been revised in this final rule so as to require only the information which is essential to the administration of the order. The section also provides for the issuance of regulations to require other information, if that should prove necessary for the efficient administration of the order. If the submission of essential information were not required by the order, the collection of assessments could be delayed until implementing regulations were issued.

Miscellaneous

Section 1230.88 "Patents, Copyrights, Inventions, and Publications" has been modified upon review by the Agency to remove the mandatory provision for payment of royalties to persons who patent inventions using funds collected under the order. No convincing case has been made that the payment of a royalty would be appropriate in every such instance. The manner of compensation for employees and agents of the Board should be left to the discretion of the Board subject to the approval of the Secretary.

Rules of Practice

No comments were received concerning the proposed Rules of Practice Governing Proceedings on Petitions to Modify or Be Exempted From an Order. These provisions, with minor modifications, are included in this final rule. They are not, however, part of the order, but are a separate subpart which implements the order.

Other Comments

One individual commenter suggested that the order should ensure minimum funding to the National Livestock and Meat Board (NLSMB) and the National Pork Producers Council (NPPC) so that both organizations may continue their efforts to promote pork and pork products and to respond to important issues concerning the pork industry. The Act does not provide for funding of the NLSMB but it does provide funding for the NPPC until 12 months after the initial referendum. The order does, however, allow contractual relationships between the Board and the NLSMB, the NPPC and other organizations for promotion, research, and consumer information projects by submitting the plans for such projects. Accordingly, this suggestion has not been adopted in this final rule.

A general farm organization suggested that provisions for the suspension or termination of the orders should be included in the order. However, the Act contains specific procedures for suspending or terminating the order, and it is not necessary that the provisions be incorporated into the order. Accordingly, this suggestion is not adopted in this final rule.

Several individual producers and general farm organizations suggested that procedures for the referendum should be included in the order. While the procedures for the referendum must be established before the referendum is held, it is not necessary that they be established at this time. No comments suggested what the procedures should

be, and therefore, the Board should consider the matter before the procedures are established. Accordingly, this suggestion is not adopted in this final rule.

Two general farm organizations and several individuals suggested that periodic referenda should be mandatory, for example, every 5 years. The Act provides that, after the initial referendum, the Secretary may conduct a referendum on the request of a representative group comprising 15 per centum or more of the total number of pork producers and importers. This provision in the statute provides adequate authority for periodic referenda, and it is unnecessary to include any further provision in the order. Accordingly, the suggestion is not adopted in this final rule.

It is hereby determined that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of this final rule for 30 days after its publication in the Federal Register. In order to carry out the statutory timetable for the implementation of the Act, it is necessary that this final rule become effective on September 1, 1986, except that § 1230.71, which provides for the collection of assessments, will be effective November 1, 1986, and the collection of assessments will begin on that date.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Pork and pork products.

7 CFR is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Subpart A is redesignated as Subpart D.

3. New Subparts A and B are added to read as follows:

Subpart A—Pork Promotion, Research, and Consumer Information Order

Definitions

Subpart B—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Research, and Consumer Information Order

Subpart A—Pork Promotion, Research, and Consumer Information Order

Definitions

§ 1230.1 Act.

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.2 Department.

"Department" means the United States Department of Agriculture.

§ 1230.3 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

§ 1230.4 Board.

"Board" means the National Pork Board established pursuant to § 1230.50.

§ 1230.5 Consumer information.

"Consumer information" means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

§ 1230.6 Council.

"Council" means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

§ 1230.7 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of Treasury.

§ 1230.8 Delegate Body.

"Delegate Body" means the National Pork Producers Delegate Body established pursuant to § 1230.30.

§ 1230.9 Fiscal period.

"Fiscal period" means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

§ 1230.10 Imported.

"Imported" means entered, or withdrawn from a warehouse for

consumption, in the customs territory of the United States.

§ 1230.11 Imported pork and pork products.

"Imported pork and pork products" means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

§ 1230.12 Importer.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.13 Market.

"Market" means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

§ 1230.14 Market value.

"Market value" means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals, the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

§ 1230.15 Part and subpart.

"Part" means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "subpart" of such part.

§ 1230.16 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

§ 1230.17 Plans and projects.

"Plans and projects" means promotion, research, and consumer information plans, studies, or projects.

§ 1230.18 Porcine animal.

"Porcine animal" means a swine, that is raised as (a) a feeder pig, that is, a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.19 Pork.

"Pork" means the flesh of a porcine animal.

§ 1230.20 Pork product.

"Pork product" means an edible product produced or processed in whole or in part from pork.

§ 1230.21 Producer.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.22 Promotion.

"Promotion" means any action, including but not limited to paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

§ 1230.23 Research.

"Research" means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

§ 1230.24 State.

"State" means each of the 50 States.

§ 1230.25 State association.

"State association" means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

§ 1230.26 State where produced.

"State where produced" means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

National Pork Producers Delegate Body

§ 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to each State on the basis of one share for each $400,000 of market value (rounded to the nearest $400,000) attributable to porcine animals produced in such State (as determined by the Secretary based on the annual average of market value in the most recent three years for which data are available).

(3) In each fiscal period thereafter, shares shall be assigned to each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) For the initial Delegate Body, shares shall be assigned to importers on the basis of one share for each $575,000 (rounded to the nearest $575,000) of the market value of imported porcine animals, pork, or pork products (as determined by the Secretary, based on the three most recent years for which data is available).

(3) In each fiscal period thereafter, shares shall be assigned to importers on

the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to importers.

§ 1230.31 Nomination and appointment of producer members.

(a) For the initial Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary pursuant to Subpart D.

(b) For each subsequent Delegate Body, nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with § 1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public-notice at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

§ 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) By written petition signed by 100 producers in that State or by 5 percent of the producers in that State, whichever number is less.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agricultural trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

§ 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

§ 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

§ 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

§ 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

§ 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

§ 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this Subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with § 1230.36.

National Pork Board

§ 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to § 1230.39(d). The Board shall be deemed to be constituted

once the Secretary makes the appointments to the Board.

§ 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to § 1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

§ 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with § 1230.39(d).

§ 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) if an officer or member of the executive committee of such entity.

§ 1230.54 Appointment.

From the nominations submitted pursuant to § 1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

§ 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this Part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1230.57 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.58 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented: (1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and (2) The budget, plans, or projects for which State associations are to receive funds under § 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ such persons as staff as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State

associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

Promotion, Research, and Consumer Information

§ 1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

Expenses and Assessments

§ 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

§ 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid by a person on that animal as breeding stock.

(5) Each importer importing a porcine animal, pork, or pork product into the United States shall pay an assessment on that porcine animal, pork, or pork product, unless such importer demonstrates to the Board by appropriate documentation that an assessment was previously paid for that porcine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine animal raised by a producer as a feeder pig or market hog shall collect an assessment on such porcine animal if an assessment is due pursuant to paragraph (a) of this section, and shall remit that assessment to the Board. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of

receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

(2) Each producer of porcine animals slaughtered for sale by the producer or sold directly to a consumer in connection with a custom slaughter operation shall remit an assessment to the Board if an assessment is due pursuant to paragraph (a) of this section.

(3) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the "National Pork Board" and shall be sent to the address designated by the Board not later than the tenth day of the month following the month in which the animals were marketed and shall be accompanied by the reports required by § 1230.80.

(4) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment. The initial amounts shall be as follows:

Pork and pork products (U.S. tariff schedule No.)	Assessment (cents per pound)
106.4020	0.0016
106.4040	.0016
106.8000	.0016
106.8500	.0016
107.1000	.0022
107.1500	.0022
107.3020	.0016
107.3040	.0016
107.3060	.0018
107.3515	.0024
107.3525	.0024
107.3540	.0016
107.3560	.0022

§ 1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5 percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of assessments received from producers in a State less the amount of refunds paid to producers in that State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment and to which no refund was received, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

§ 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for:

(1) Financing plans and projects;

(2) The Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

§ 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with an annual report prepared by a certified public accountant of all funds distributed to such organization pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

§ 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the

Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

§ 1230.77 Refunds.

(a) Any producer or importer who is responsible for and pays an assessment under the authority of this subpart and does not support the pork promotion, research, and consumer information program established by this subpart shall have the right, prior to the approval of the continuation of this subpart pursuant to the referendum, to demand and receive from the Board a refund of such an assessment upon submission of proof satisfactory to the Board, that the producer or importer paid the assessment for which refund is sought and did not collect such assessment from another person.

(b) The producer or importer's demand shall be signed, if the producer or importer is an individual, by that producer or importer and, if other than an individual, by a person who is duly authorized, be mailed within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid, on a Board-approved refund application form.

(c) Refunds properly demanded in accordance with paragraphs (a) and (b) of this section shall be made by the Board to the producer or importer not later than 30 days after demand is received by the Board.

(d) The name of any producer or importer demanding a refund shall be kept confidential by all persons, except that the Board may utilize such information in determining who is entitled to vote in elections for Delegate Body that are administered by the Board.

Reports, Books, and Records

§ 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under § 1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

§ 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§ 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1230.85 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

§ 1230.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1230.87 Personal liability.

No member or employee of the Board shall be held personally liable, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1230.88 Patents, copyrights, inventions, and publications.

Any patents, copyrights, trademarks, inventions, or publications developed

through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1230.85 shall apply to determine disposition of all such property.

§ 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1230.91 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this Subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851–0151.

Subpart B—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Pork Promotion, Reaearch, and Consumer Information Order

§ 1230.100 Words in singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1230.101 Definitions.

As used in this Subpart, the terms as defined in subpart A of this Part shall apply with equal force and effect. In addition, under the context otherwise requires:

(a) The terms "Administrative Law Judge" or "judge" mean any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(b) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead;

(c) The term "**Federal Register**" means the publication provided for by the Federal Register Act (44 U.S.C. 1501–1511), and acts supplementary thereto and amendatory thereof;

(d) The term "order" means subpart A of this Part and any regulation which may be issued pursuant thereto or to the Act;

(e) The term "proceeding" means a proceeding before the Secretary arising under section 1625 of the Act (7 U.S.C. 4815);

(f) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(g) The term "party" includes the Department;

(h) The term "hearing clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250;

(i) The term "decision" means the judge's initial decision in any proceeding and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law, or discretion as well as the reasons or basis therefor; (2) order; and (3) rulings on findings, conclusions and proposed orders submitted by the parties; and

(j) The term "petition" includes an amended petition.

§ 1230.102 Institution of proceeding.

(a) *Filing and Service of Petition.* Any person subject to the order desiring to complain that the order or any provision of thereof or any obligation imposed in connection therewith is not in accordance with law, shall file with the Hearing Clerk five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the Hearing Clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of Petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Request for the specific relief which the petitioner desires the Secretary to grant.

(c) *Motion to Dismiss Petition-Filing, Contents, and Responses Thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply in form or content with the Act or with the requirements of paragraph (b) of this section, or is not filed in good faith or is filed for the purpose of delay, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk, not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice or upon receipt of such papers from the petitioner, the Hearing Clerk shall transmit all papers which have been filed in connection with the motion to the Judge for consideration.

(d) *Further Proceeding.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through

900.71 of this title (Rules of Practice Governing Proceeding on Petitions To Modify or To Be Exempted From Marketing Orders), except that each reference to "marketing order" in those sections shall mean "order."

Subpart C—[Added and Reserved]

4. Subpart C is added and reserved.

Done at Washington, DC, on: September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–20073 Filed 9–4–86; 8:45 am]

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Part IV

Department of Agriculture

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1987; Solicitation of Applications for the Competitive Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1987; Solicitation of Applications for the Competitive Research Grants Program

Applications are invited for competitive grant awards under the Competitive Research Grants Program administered by the Office of Grants and Program Systems, Cooperative State Research Service, for fiscal year 1987.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015.

Specific Research Areas To Be Supported in Fiscal Year 1987

Standard project grants and a small number of continuation grants will be awarded to support basic research in selected areas of the biological sciences related to agriculture and human nutrition.

The Competitive Research Grants Program covers the following areas:

Plant Science
Human Nutrition
Animal Science
Biotechnology
Pest Science

The research areas of plant and animal science and human nutrition have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on high-priority food and nutrition problems.

The major initiative in biotechnology research that began in fiscal year 1985 will continue for fiscal year 1987. It is designed to provide opportunities to address research problems in all areas of agricultural science including plants, animals, forestry, and microorangisms associated with these biota. It is anticipated that this research will advance broadly the nation's competitive advantages in the food, feed, fiber and natural resource processes. Consideration will be given to research proposals that address fundamental questions in the areas noted below and that are consistent with the long-range agricultural needs of the nation.

Several of the research program areas have been rearranged this year, based upon the past two years' experience in administering the biotechnology research initiative. Some of the program areas have been combined to streamline the review process and to use available scientific expertise more effectively. For example, proposals covering the molecular biology of photosynthetic genes and apparatus should be submitted to the Photosynthesis program area. Similarly, proposals covering the molecular biology of nitrogen fixation will be reviewed by the Biological Nitrogen Fixation peer panel. The areas of molecular and cellular mechanisms of animal stress responses have been incorporated into the Animal Molecular Biology program and the Animal Growth and Development program.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential applicants. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those that may have a more certain payoff potential. In all instances, innovative research will be given high priority.

Agriculturally important organism(s) should be used to accomplish the research objectives. The use of other organisms as experimental model systems must be justified relative to the goals of the appropriate research program area and to the long-term objectives of USDA.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants solicitation will be considered for partial or, if modest, complete support.

The following specific research areas (program areas) and guidelines are provided as a base from which proposals may be developed:

1.0 *Plant Biological Stress Including Molecular Plant Pathology, Entomology and Nematology.* Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This program area will support research on stresses on plants arising from their interactions with other plants or other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the research supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. This program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents; (b) how plants react to stresses generated by interactions with biological agents; and (c) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels (i.e., population, organismal, cellular, and (molecular) and by various approaches including genetics, molecular biology, and biochemistry.

Within this context, one of the goals of this program area is to understand the molecular basis for the organism's response to these stresses and to identify which of the genetic systems involved in these responses can be manipulated by techniques in biotechnology. Research on plants, plant-associated insects or microorganisms should emphasize: (a) Identification, isolation, transfer, regulation, and expression of genes involved in biological stresses; (b) physiological/biochemical-genetic analysis of identified genes or gene products involved in biological stress; and (c) fundamental or molecular mechanisms underlying stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal levels.

Proposals may include studies on plants separated from stress-causing

organisms or on stress-causing organisms separated from their target plants. However, proposals should indicate how the anticipated information will be relevant to an understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

To expedite processing and review of the large number of proposals submitted in the broad subject area of Plant Biological Stress, proposals will be evaluated under two subprogram areas:

1.1 *Plant Pathology/Weed Science* and

1.2 *Entomology/Nematology*, each of which will have a separate deadline date for submission of proposals.

Within the guidelines described above, the Plant Pathology/Weed Science subprogram area will consider all proposals for research addressing plant pathogens or weeds affecting plant stress. The Entomology/Nematology subprogram area will consider all proposals for research addressing arthropods or nematodes stressing the plant.

2.0 *Plant Genetic Mechanisms and Plant Molecular Biology*. The goal of this program area is to encourage new approaches for the development of genetically superior varieties of agricultural crops. Proposals should be directed toward obtaining novel combinations or gene modifications that cannot be achieved by using conventional plant breeding techniques. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic cellular, molecular, and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This research should increase our understanding of the structure, function, regulation, and expression of genes. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) Identification, isolation, and characterization of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal replication; (g) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular processes involved in regenerating whole plants from single cells; (h) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (i) development of molecular and cellular methods for crop improvement using gene transfer or genetic engineering technology; (j) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (k) basic genetic studies on the alteration and utilization of unadapted and wild germplasm.

3.0 *Biological Nitrogen Fixation and Metabolism*. The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation, or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen-fixing mechanisms and related nitrogen metabolism in both symbiotic and free-living organisms as well as the fate of fixed nitrogen in the plant is of high priority.

In general, the objectives of this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen-fixing associations, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification, the assimilation and utilization of ammonia and nitrate, and denitrification all play important roles in plant growth.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action of nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen-fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by *Rhizobium* and conditions for effective nodulation; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) nitrogen-fixing capabilities of *Actinomycetes*, *Azospirillum* spp., Cyanobacteria, and other organisms potentially important in supplying nitrogen needs of plants; (e) relation between the fixation process and the processes of assimilation, nitrification, and denitrification; (f) development of methods for the *in situ* measurement of nitrification and denitrification and determination of the actual extent of these processes in nature; (g) analysis of the distribution of denitrifying and nitrifying bacteria and elucidation of control mechanisms operating on nitrogen transformations in the major species; (h) metabolism of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants and the partitioning of fixed nitrogen into various gene products or plant organs; and (i) efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a more thorough understanding of nitrogen cycling encompassing biochemistry, molecular biology, cellular and developmental biology, genetics and genetic manipulation, and other relevant life science disciplines including suitable techniques of biotechnology. An understanding of these processes is essential to the development of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers, and optimize their utilization in agriculture.

4.0 *Photosynthesis*. Photosynthetic efficiency is an important factor in crop productivity. Basic research which provides information on limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors which affect the ability of the plant to produce a usable product.

Research is needed in the following major subareas: (a) Genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast and nuclear genomes, analyses of regulatory steps controlling both nuclear and extra-nuclear photosynthetic gene expression and their interactions; (b) aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions; (c) photosynthetic carbon assimilation including mechanisms of CO_2 fixation, biochemistry and

molecular biology of photosynthetic and related biosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions; (d) control of photosynthate partitioning, translocation, and utilization; (e) factors controlling development and senescence of the photosynthetic apparatus; and (f) photosynthetic process in leaves, whole plants, and canopies including, but not limited to, involvement of the stomatal apparatus.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes also may be considered a part of this program.

5.0 *Molecular and Cellular Mechanisms of Plant Growth and Development.* Suboptimal growth and development are limiting factors in plant productivity. A basic understanding of the developmental processes in agriculturally important plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to encourage the use of emerging techniques for the investigation of the developmental processes.

This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence; and (b) metabolic processes related to growth and development. Projects designed to identify molecular, cellular, and organismal targets for genome manipulation also are encouraged.

6.0 *Genetic and Molecular Mechanisms Controlling Plant Responses to Physical and Environmental Stresses.* Physical stresses prevent the expression of the full genetic potential of an organism's productivity and set limits on where and when it thrives. A major goal of this program area is to understand the molecular and cellular bases for the organism's responses to these stresses and to identify which of the genetic systems involved in these responses can be manipulated. Research on plants should emphasize: (a) Identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal levels; and (e) laboratory and field investigations on the physiology of the organism that contribute to an understanding of the causes, consequences, and avoidance of stresses, rather than simply describing the effects of stress.

7.0 *Human Nutrition.* Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research, demonstration or action projects, nor for surveys of the nutritional status of population groups.

Research in this program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutrient condition of healthy individuals, as all of these relate to human nutrient requirements. Special attention will be given to applications involving innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of data concerned with the quantitative evaluation of nutrient requirements and nutrient condition. The use of animals as model systems should be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative, fundamental research.

8.0 *Animal Science (Reproductive Physiology).* Suboptimal reproductive performance in domestic farm animals is the major factor limiting more efficient production of animal food products. This failure to achieve maximal reproductive efficiency is due to problems related to puberty, ovulation, corpus luteum formation and function, insemination, fertilization, prenatal death, and poor survival of offspring.

The economic loss to the producer and increased costs of animal food products to the consumer due to inefficient reproductive performance makes the requirement for new knowledge in this area a high priority. Although the exact needs may vary from species to species and region to region, there are areas where additional fundamental research is crucial.

This program area will support innovative research in the following categories: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryomaternal interactions, and embryo implantation; (b) gamete physiology, primarily gametogenesis including maturation processes, follicle growth, ovulation, corpus luteum formation and function, and superovulation; fundamental processes of fertilization, mechanisms regulating gamete survival *in vitro*, and basic questions regarding gamete transport; and (c) parturition, postpartum interval to conception, and neonatal survival.

Emphasis will be on innovative approaches which may contribute to a thorough understanding of the reproductive processes in agriculturally important food and fiber-producing animals. The use of experimental model systems should be justified relative to the objectives of this research.

Proposals on the development of methods for *in vitro* manipulation and preservation of animal gametes and embryos will be considered, but overall objectives of such studies should be related to the development of fundamental knowledge.

9.0 *Animal Molecular Biology and Brucellosis.* One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. The primary objective of this program area is to increase our understanding of the structure, organization, function, regulation, and expression of genes in animals and their associated infectious agents and microorganisms.

This program area will emphasize the following categories of research: (a) Identification, isolation, characterization, and expression of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal replication; and (g) mechanisms of interaction with beneficial or deleterious microorganisms or infectious agents.

This program area also will support research at the molecular, cellular, and genetic levels that will (a) define the mechanisms by which *Brucella abortus* induces disease in cattle and persists as an infectious agent and (b) define the basis of the bovine immune response with *B. abortus* that results in protective

immunity; proposals also are encouraged which, through molecular biological techniques, identify and produce (c) antigens to differentiate among non-infected, vaccinated, and the *B. abortus*-infected cattle and (d) immunogens to stimulate long-lived protective immunity in cattle.

The program encourages additional basic research directed toward understanding the genetic and molecular mechanisms controlling animal responses to physical and biological stresses. Topics include the organism's interaction with the stresses and identification of the genetic systems involved in the interaction that can be manipulated through molecular genetic techniques. Research may emphasize (a) identification, isolation, transfer, and expression of genes or gene systems that are regulated by, or involved in, stress; (b) biochemical genetic analysis of genome segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; and (d) fundamental mechanisms of stress responses at the molecular level.

10.0 *Molecular and Cellular Mechanisms of Animal Growth and Development.* Suboptimal growth and development are limiting factors in animal productivity. Yet, a basic understanding of the developmental processes in agriculturally important animals is largely lacking. New experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is a basic understanding of the developmental processes in agriculturally important animals. This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence; (b) molecular and cellular biological studies of metabolic processes related to growth and development; and (c) identification of molecular, cellular, and organismal targets for genome manipulation.

This program area also encourages basic research in *Genetic, Molecular, and Cellular Mechanisms Controlling Animal Responses to Physical and Biological Stresses* that impinge upon growth and development. Research should address the molecular basis for the organism's interaction with these stresses and the identification of genetic systems causing these responses which can be manipulated. Research may emphasize (a) identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular and cellular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the cellular and molecular levels; and (e) cellular physiology of the organism that contributes to an understanding of the causes, consequences, and avoidance of stress, rather than simply describing the physiological effects of stress. Proposals addressing research on infectious agents should be sent to the Animal Molecular Biology panel.

11.0 *Insect Pest Science.* Uncontrolled insect pests are a major factor in reducing crop and forest productivity. Before successful strategies for managing insect pests can be developed, a strong basic insect biology research effort is needed. This program area, restricted to the insect pests listed below, will support research on behavioral physiology; chemical ecology; insect-host interaction; endocrinology; population dynamics; behavioral ecology; insect pathogens, parasites and predators; and epidemiology of beetle-borne pathogens. Proposals bringing a blend of approaches to a specific problem are encouraged.

The Insect Pest Science program area will support studies on:

11.1 boll weevil/bollworm;
11.2 pine bark beetle; and
11.3 gypsy moth.

12.0 *Alcohol Fuels Research.* Proposals will be considered for research relating to the physiological, microbiological, biochemical, and genetic processes controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. The scope of this program area includes studies on factors that limit efficiency of biological production of alcohol fuels and the means for overcoming these limitations.

Soybean Research. Proposals on soybeans should emphasize research objectives that fit the scientific disciplines of the appropriate program areas noted above. Within those areas, physiological, biochemical, genetic, and interdisciplinary approaches are encouraged.

Soybean proposals will not be evaluated by a special soybean peer review panel. They will be reviewed and evaluated by the peer panel whose collective expertise is most appropriate to the scientific content of the proposals. For example, proposals concerning the genetics of soybean plants will be reviewed by the Plant Genetic Mechanisms and Plant Molecular Biology panel. The most meritorious soybean proposals submitted under the appropriate program areas outlined in this solicitation will be selected for funding to fulfill the anticipated appropriation to soybean research. Submission deadlines for these program areas (and their corresponding peer review panels) are listed below.

How to Obtain Application Materials

Please note that potential applicants who were on the Competitive Research Grants mailing list for fiscal year 1986, or who recently requested placement on the list for fiscal year 1987, will automatically receive copies of this solicitation, the Grant Application Kit, and the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended). All others may request copies from: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th & Independence Avenue SW., Washington, DC 20251; telephone: (202) 475–5049.

What to Submit

An original and 14 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form S&E–661, "Grant Application," which is included in the Grant Application Kit. Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Each project description is expected by the the members of review committees and the staff to be complete in itself. It should be noted that reviewers are not required to read beyond 15 pages of the project description to evaluate the proposal. Proposals beyond this limit are therefore subject to non-review and return. It would be helpful for reviewers if the vitae of key project personnel were limited to three (3) or four (4) pages.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the *proposal contains all pertinent information when initially submitted.* Prior to mailing, compare your proposal with the "Application Requirements" checklist contained in the Grant Application Kit and instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200.

Applicants must not submit the same research proposal in the same fiscal year to different research program areas within the Competitive Research Grants Program. Duplicate proposals, essentially duplicate proposals, or predominantly overlapping proposals will be returned without review.

Submission of more than one proposal from the same principal investigator in the same fiscal year is discouraged.

Excessive numbers of co-principal investigators and collaborators create conflicts of interest problems during the review and award processes. Multiple co-principal investigators and collaborators, beyond those required for genuine multi-disciplinary studies, are strongly discouraged.

Where and When to Submit Grant Applications

Proposals submitted to the research program areas in this notice (e.g., 2.0 Plant Genetic Mechanisms and Plant Molecular Biology) will be assigned by the staff of the Competitive Research Grants office to the most appropriate peer review panel. If necessary, further information may be obtained from the responsible Associate Program Manager at the telephone numbers given below. Each research grant application must be submitted to: Competitive Research Grants Program, c/o Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th and Indpendence Avenue, SW., Washington, DC 20251. To be considered for funding during fiscal year 1987, proposals *must be postmarked* by the following dates and received in time to permit adequate peer panel review:

Postmark dates	Peer review panels/program areas	Contacts
Nov. 3, 1986	7.0 Human Requirements for Nutrients.	475-5034
	10.0 Molecular and Cellular Mechanisms of Animal Growth and Development.	475-3399
Nov. 10, 1986	4.0 Photosynthesis	475-5030
	1.2 Entomology/Nematology	475-5046
	2.0 Plant Genetic Mechanisms and Plant Molecular Biology.	475-5042
	1.1 Plant Pathology/Weed Science.	475-5027
Jan. 19, 1987	5.0 Molecular and Cellular Mechanisms of Plant Growth and Development.	475-5042
	6.0 Genetic and Molecular Mechanisms Controlling Plant Responses to Physical and Environmental Stresses.	475-5038
Jan. 26, 1987	8.0 Animal Science (Reproductive Physiology).	475-5034
	12.0 Alcohol Fuels Research.	475-5042
Feb. 9, 1987	3.0 Biological Nitrogen Fixation and Metabolism.	475-5030
	9.0 Animal Molecular Biology and Brucellosis.	475-3399
Feb. 23, 1987	11.0 Insect Pest Science	475-5046

Special Instructions

The Competitive Research Grants Program should be indicated in Block 7 and the applicable program area should be indicated in Block 8 of Form S&E-661 provided in the Grant Application Kit. *Select one program area only.* The *number* assigned to the applicable program area also must be cited in Block 8 of Form S&E-661. A final determination of the program area will be made by the program staff and/or appropriate peer panel.

Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document Nos. 0524-0022 or 0525-0001.

The award of any grants under the Competitive Research Grants Program during FY 1987 is subject to the availability of funds. One copy of each proposal that is *not* selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Done at Washington, D.C., this 1st day of September 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86-20068 Filed 9-4-86; 8:45 am]

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federal register

Friday
September 5, 1986

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Program of Financial Assistance for Disadvantaged Health Professions Students

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Program of Financial Assistance for Disadvantaged Health Professions Students

AGENCY: Public Health Service, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This rule proposes regulations for the program of Financial Assistance for Disadvantaged Health Professions Students, authorized by section 787 of the Public Health Service (PHS) Act, as amended by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received by October 6, 1986.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: The Health Professions Training Assistance Act of 1985, Pub. L. 99–129, amended section 787 of the PHS Act to include a new paragraph (a)(2)(F) which authorizes the Secretary to make grants to public or nonprofit private health or educational entities to pay stipends to disadvantaged students of medicine, osteopathic medicine, or dentistry. Pub. L. 99–129 also amended section 787(b) to require that, of the funds appropriated to carry out section 787 for any fiscal year, 20 percent must be obligated for stipends under paragraph (a)(2)(F) to individuals of exceptional financial need, as defined by regulations promulgated by the Secretary under section 758 of the PHS Act (the Scholarship Program for First-Year Students of Exceptional Financial Need).

The statement of consensus of the House Subcommittee on Health and Environment and the Senate Committee on Labor and Human Resources on the provisions of Pub. L. 99–129 further explains that Congress intends that the 20 percent of section 787 funds designated for stipends to eligible students be used to assist students in all years of attendance to help pay the costs of their tuition, books and equipment, and living expenses, at amounts not to exceed $10,000 per student per year (*Congressional Record* for October 3, 1985, pages H8113–H8114, and *Congressional Record* for October 4, 1985, page S12668).

Based on the statutory authority and Congressional intent cited above, this notice is proposing the program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS). The term "stipend" is not being used in the proposed regulations since the intended purposes of these funds are broader in scope than would be covered by the Department's traditional definition of stipend.

Since section 220 of Pub. L. 99–129 repealed the authority for making grants for training United States citizens foreign medical students (section 782 of the PHS Act), the Secretary is proposing to delete 42 CFR Part 57, Subpart DD, entitled "Grants for Training United States Citizen Foreign Medical Students," and substitute in its place a new proposed Subpart DD, entitled "Financial Assistance for Disadvantaged Health Professions Students." The major provisions of these proposed regulations are described below.

Institutional eligibility: Section 787 authorizes the Secretary to make grants to schools of medicine, ostepathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatry, public and nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities. For purposes of the FADHPS program, this NPRM would limit institutional eligibility to schools of medicine, osteopathic medicine, and dentistry, as defined in section 701(4) of the PHS Act, which enroll students who are from disadvantaged backgrounds and who are of exceptional financial need.

Because of the way section 787 is written, the Department could, in theory, award grants to (for example) schools of podiatry or rural health clinics to enable them to run programs of financial assistance for students attending schools of medicine, osteopathic medicine, and dentistry. However, the Department is proposing to limit institutional eligibility for receiving funding to schools of medicine, osteopathic medicine, and dentistry because the Secretary believes this approach is consistent with section 787(a)(2)(F), which limits student eligibility for stipends to students at schools of medicine, osteopathic medicine, and dentistry. In addition, the Department believes that the expertise to administer this program does not exist in entities other than schools, although they are legally eligible as grantees under section 787. To determine whether a student is of exceptional financial need will require knowledge of the need analysis process for Federal need-based financial aid programs. This type of expertise exists primarily in school financial aid offices. The Department also believes it would be difficult for a school other than the medical or dental student's own school to assure that *both* the disadvantaged and the exceptional financial need criteria are met. It is the admissions office of the student's own school that will usually have the information necessary to determine whether a student is from a disadvantaged background for purposes of this program.

In addition to concern that eligibility in assuring proper coordination of this program with other types of student financial aid. Coordination of these funds with other aid will best meet the needs of eligible students, and will help to avoid awards in excess of a student's need, which might more likely occur if an outside organization were to administer these funds separately from the financial aid award process at the student's own school. For this additional reason, the Department believes that it is desirable to limit institutional eligibility for these funds to schools at which eligible students are enrolled.

Student eligibility: In accordance with statutory requirements, this NPRM would require that the student be from a disadvantaged background, as defined in 42 CFR 57.1804, and of exceptional financial need, as defined in 42 CFR 57.2804. Although section 787, as amended, also authorizes stipend support for disadvantaged health professions students who are not of exceptional financial need, the Secretary believes that proper management of scarce Federal resources requires that these funds be limited to students of exceptional financial need.

The definition of an "individual from a disadvantaged background" provides that the student must: (a) Come from an

environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of medicine, osteopathic medicine, or dentistry, or (b) come from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary will periodically publish these income levels in the **Federal Register.** The following income figures determine what constitutes a low income family for this purpose for calendar year 1985:

Size of parents' family:[1]	*Income level*[2]
1	7,200
2	9,400
3	11,100
4	14,300
5	16,800
6 or more	18,900

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1985 rounded to $100.

Schools which have established programs to assist disadvantaged students under section 787 generally determine whether students meet part (a) of the disadvantaged background definition by looking at factors that are considered in the admissions process (e.g., national test scores and/or grade point averages that are below the standard admission requirements and result in a student being admitted as "marginal" or "academically at risk").

The definition of a student of "exceptional financial need" provides that the student's resources available for educational costs may not exceed the lesser of $5,000 or one-half the cost of attendance at the school, as determined by the school.

Institutional award process: This proposed rule also sets forth procedures for making awards to schools. Under these procedures, the Secretary would compare the total funds requested by applicant schools with the total of the funds available for the award period, and would award each school the total amount of its request if adequate funds are available. If the total funds requested exceeds the funds available, the Secretary would allocate funds to each school based on a ratio which compares the number of eligible students at the school with the total number of eligible students at all applicant schools, except that no school's award would exceed the amount of funds requested (i.e., the total funds available would be divided by the total number of eligible students; each school would receive an award equal to the dollar amount available per eligible student times its number of eligible students). The Secretary has proposed these funding procedures to assure that the amount of funds a school receives is directly proportionate to the number of eligible students enrolled in the school.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed new requirements in these regulations are minimal in comparison to the overall resources of the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these proposed regulations will not have a significant impact on a substantial number of schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

This proposed rule contains the following information collection requirements: § 57.2904, recordkeeping; § 57.2909, reporting and recordkeeping. The Department has submitted an information collection request to the Office of Management and Budget (OMB) for approval of these requirements under section 3504(h) of the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to comment on the information collection requirements should send their comments to the Director, Bureau of Health Professions at the address listed earlier in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services proposes to delete 42 CFR Part 57, Subpart DD, entitled "Grants for Training United States Citizen Foreign Medical Students" and add a new subpart DD, as set forth below, entitled "Financial Assistance for Disadvantaged Health Professions Students."

Dated: June 12, 1986.

Donald Ian Macdonald,

Assistant Secretary for Health.

Approved: August 12, 1986.

Otis R. Bowen,

Secretary.

PART 57—[AMENDED]

1. 42 CFR Part 57 would be amended by removing Subpart DD, entitled "Grants for Training United States Citizen Foreign Medical Students" and adding a new Subpart DD, entitled "Financial Assistance for Disadvantaged Health Professions Students" to read as follows:

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

Sec.

Subpart DD—Financial Assistance for Disadvantaged Health Professions Students

Authority: Sec. 215 of the Public Health Service Act, 58 stat. 690, as amended by 63 stat. 35 (42 U.S.C. 216); sec. 787 of the Public Health Service Act, 90 stat. 2309, as amended by 95 stat. 923, 99 stat. 541 (42 U.S.C. 295g–7).

§ 57.2901 To what program do these regulations apply?

These regulations apply to grants to eligible schools under section 787(a)(2)(F) and (b) of the Public Health Service Act for financial assistance for disadvantaged health professions students of exceptional financial need.

§ 57.2902 Definitions.

"Act" means the Public Health Service Act, as amended.

"Full-time student" means a student enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined

by the school, leading to a degree from a school of medicine, school of osteopathic medicine, or school of dentistry, as specified in section 701(4) of the Act.

"National of the United States" means—

(1) A citizen of the United States, or

(2) A person who, though not a citizen of the United States, owes permanent allegiance to the United States, as defined in the Immigration and Nationality Act, at 8 U.S.C. 1101(a)(22).

"School" means a public or private nonprofit school of medicine, osteopathic medicine, or dentistry, as defined in section 701(4) of the Act.

"School year" means the traditional approximately 9-month September to June annual session. For the purpose of computing school year equivalents for students who, during a 12-month period, attend for a longer period than the traditional school year, the school year will be considered to be 9 months in length.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department to whom the authority involved has been delegated.

"State" means in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 57.2903 How to apply for a grant.

(a) Any school located in a State may apply for a grant. Each school seeking a grant must submit an application at the time and in the form and manner that the Secretary may require. The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

§ 57.2904 Eligibility and selection of aid recipients.

(a) *Determination of eligibility.* An individual is eligible for consideration for financial assistance under this program if he or she:

(1) Is a national of the United States, a permanent resident of the Trust Territory of the Pacific Islands or the Commonwealth of the Northern Mariana Islands, or a lawful permanent resident of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam;

(2) Is enrolled or has been accepted for enrollment as a full-time student at a school;

(3) Comes from a disadvantaged background. For purposes of this program, an individual from a disadvantaged background is one who—

(i) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school; or

(ii) Comes from a family with an annual income below a level based on low income thresholds according to family size published by the the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs.

The Secretary will periodically publish these income levels in the **Federal Register**; and

(4) Has exceptional financial need. For purposes of this program, a student will have exceptional financial need if the school determines that the student's resources, as described in paragraph (b)(1) of this section, do not exceed the lesser of $5,000 or one-half of the cost of attendance at the school. Student summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will not be considered resources for purposes of determining whether a student has exceptional financial need.

(b) *Selection of aid recipients.* The school will select qualified recipients and determine the amount of aid to be awarded.

(1) In determining the amount of aid an eligible student needs to pursue a full-time course of study at the school, the school will take into consideration:

(i) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, self, or (as appropriate) other family members. In making this determination, the school must consider copies of the parent's, student's, and spouse's most recent income tax forms certified as having been received by the Internal Revenue Service; and

(ii) The costs reasonably necessary for the student's attendance at the school. The school must document the criteria used for determining these costs.

(2) The school must select aid recipients in order of greatest need, as determined by the school.

§ 57.2905 Amount of student award.

(a) A school may not award a student more than the school determines that the student needs to meet the costs of education (i.e., tuition, fees, books, equipment, other expenses required by the school, and reasonable living expenses) for the period covered by the award.

(b) The total award made under this program to any student for a school year may not exceed $10,000. The maximum amount awarded during a 12-month period to any student enrolled in a school which provides a course of study longer than the traditional 9-month school year may be proportionately increased.

(c) The school must disburse this award to the student in payments based on the student's need during each academic period (e.g. semester, quarter, trimester) of a school year.

§ 57.2906 How is the amount of the grant award determined?

(a) The amount of the grant to each eligible school will be the amount requested in its application, except that if the total of the amounts requested for any fiscal year by all schools for these funds exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the grant to each school will be reduced to whichever is smaller:

(1) The amount requested in the application; or

(2) An amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of grant award to be available for that fiscal year for this program as the number of eligible students at the school bears to the total number of eligible students at all participating schools during that year.

(b) Amounts remaining after the calculation described in paragraph (a) will be distributed in accordance with paragraph (a)(2) of this section among schools whose applications requested more than the amount paid to them, but with whatever adjustments may be necessary to prevent the total grant to any school from exceeding the amount requested by it.

§ 57.2907 For what purposes may grant funds be spent?

(a) A school shall only spend funds it receives under this subpart in accordance with the approved

application, the authorizing legislation, terms and conditions of the grant award, and these regulations.

(b) The school must discontinue all payments to a recipient in the event that the recipient ceases to be a full-time student at the school, and must remit any unused balance of funds to the Federal Government in the event it is unable to make full use of its grant award during the award period.

§ 57.2908 What additional Department regulations apply to grants?

Several other regulations apply to these grants. They include, but are not limited to, the following:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Section 704 of the Public Health Service Act
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.2909 What other records, audit, and inspection requirements apply to schools?

(a) Each school must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act concerning recordkeeping, audit, and inspection.

(b) The school must also maintain the following:

(1) A record of all applications for aid under this program and the basis for approving or disapproving each application, including a copy of the total need analysis and determination of resources for each applicant, documentation for any changes made to the need analysis report used by the school, and documentation which indicates for each applicant whether he or she met the eligibility requirements; and

(2) A record of the amount of funds awarded to each recipient.

§ 57.2910 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

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Federal Register

Vol. 51, No. 172

Friday, September 5, 1986

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
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Corrections	523-5237
Document drafting information	523-5237
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Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

31089-31308.....2
31309-31604.....3
31605-31756.....4
31757-31924.....5

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5519.....31309
5520.....31311

7 CFR

2.....31757
226.....31313
301.....31605
908.....31758
1136.....31759
1230.....31898
1475.....31316

Proposed Rules:
1065.....31133
1068.....31133
1079.....31133
1137.....31340

8 CFR

Proposed Rules:
214.....31637

9 CFR

Proposed Rules:
92.....31637

10 CFR

477.....31316

Proposed Rules:
2.....31340
50.....31341

14 CFR

21.....31317
39.....31089, 31090, 31607, 31608
71.....31097
75.....31097
91.....31098
95.....31319
97.....31322

Proposed Rules:
21.....31644
23.....31644
39.....31133-31137, 31342, 31343, 31647, 31779
71.....31138, 31648

17 CFR

Proposed Rules:
150.....31648

18 CFR

Proposed Rules:
37.....31651, 31781

19 CFR

111.....31760
171.....31760
178.....31760

21 CFR

81.....31323
175.....31098
178.....31099, 31760
193.....31324
357.....31763
369.....31763
510.....31100
558.....31763

24 CFR

511.....31764

26 CFR

1.....31610, 31613
602.....31610, 31613

28 CFR

Proposed Rules:
16.....31781

30 CFR

Proposed Rules:
733.....31139

32 CFR

199.....31100
205.....31325
286g.....31103
706.....31103-31112

Proposed Rules:
40.....31651

33 CFR

117.....31112, 31113
165.....31113, 31114

34 CFR

Proposed Rules:
614.....31754

36 CFR

13.....31619
800.....31115
1254.....31617

38 CFR

Proposed Rules:
21.....31782

39 CFR

10.....31325
233.....31328

Proposed Rules:
111.....31673

40 CFR

52.....31125, 31127, 31129, 31328
261.....31330
271.....31618

Proposed Rules:
86.....31783
260.....31783
261.....31140, 31783
262.....31783
264.....31783
265.....31783
268.....31783
270.....31783
271.....31783

41 CFR

Proposed Rules:
201-33.....31674

42 CFR

405.....31454
412.....31454
Proposed Rules:
57.....31920

43 CFR

36.....31619
2880.....31764
Proposed Rules:
2800.....31886
2880.....31886

44 CFR

64.....31330
65.....31635
Proposed Rules:
10.....31788
67.....31675, 31678

47 CFR

0.....31303
1.....31303
2.....31303
13.....31303
21.....31303
22.....31335
63.....31303
80.....31206
81.....31206
83.....31206
87.....31303
90.....31303
94.....31303
Proposed Rules:
15.....31147
67.....31149
68.....31149
76.....31147
80.....31306

48 CFR

5.....31424
7.....31424
13.....31424
16.....31424
19.....31424
24.....31424
31.....31424
47.....31424
50.....31424
52.....31424
223.....31765
228.....31765
242.....31765
252.....31765
914.....31335
933.....31335
952.....31335
970.....31335

Proposed Rules:
32.....31194
45.....31196
48.....31197
52.....31194, 31197
515.....31344
538.....31344
552.....31344
1317.....31687
1352.....31687

49 CFR

571.....31765
Proposed Rules
391.....31150

50 CFR

17.....31412
20.....31430
23.....31130
36.....31619
655.....31774, 31775
663.....31776
Proposed Rules
630.....31151

LIST OF PUBLIC LAWS

Last List August 27, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.R. 1343/Pub. L. 99-395

To authorize the use of funds from rental of floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, California, and for other purposes. (Aug. 27, 1986; 100 Stat. 836; 1 page) Price: $1.00

H.R. 2478/Pub. L. 99-396

To amend the Revised Organic Act of the Virgin Islands, to amend the Covenant to Establish a Commonwealth of the Northern Mariana Islands, to amend the Organic Act of Guam, to provide for the governance of the insular areas of the United States, and for other purposes. (Aug. 27, 1986; 100 Stat. 837; 11 pages) Price: $1.00

H.R. 3108/Pub. L. 99-397

To amend title 17, United States Code, to clarify the definition of the local service area of a primary transmitter in the case of a low power television station. (Aug. 27, 1986; 100 Stat. 848; 1 page) Price: $1.00

H.R. 3554/Pub. L. 99-398

Klamath Indian Tribe Restoration Act. (Aug. 27, 1986; 100 Stat. 849; 4 pages) Price: $1.00

H.R. 4151/Pub. L. 99-399

Omnibus Diplomatic Security and Antiterrorism Act of 1986. (Aug. 27, 1986; 100 Stat. 853; 49 pages) Price: $1.50

H.R. 5371/Pub. L. 99-400

To extend until September 15, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982. (Aug. 27, 1986; 100 Stat. 902; 1 page) Price: $1.00

S. 140/Pub. L. 99-401

Children's Justice and Assistance Act of 1986. (Aug. 27, 1986; 100 Stat. 903; 7 pages) Price: $1.00

S. 1888/Pub. L. 99-402

Federal Lands Cleanup Act of 1985. (Aug. 27, 1986; 100 Stat. 910; 3 pages) Price: $1.00

S.J. Res. 249/Pub. L. 99-403

To proclaim October 23, 1986, as "A Time of Remembrance" for all victims of terrorism throughout the world. (Aug. 27, 1986; 100 Stat. 913; 1 page) Price: $1.00

S.J. Res. 298/Pub. L. 99-404

To designate the week of October 5, 1986, through October 11, 1986, as "Mental Illness Awareness Week." (Aug. 27, 1986; 100 Stat. 914; 2 pages) Price: $1.00

S.J. Res. 338/Pub. L. 99-405

To designate November 18, 1986, as "National Community Education Day." (Aug. 27, 1986; 100 Stat. 916; 1 page) Price: $1.00

S.J. Res. 358/Pub. L. 99-406

To designate the month of September 1986 as "Adult Literacy Awareness Month." (Aug. 27, 1986; 100 Stat. 917; 2 pages) Price: $1.00

S.J. Res. 386/Pub. L. 99-407

To designate October 6, 1986, as "National Drug Abuse Education Day." (Aug. 27, 1986; 100 Stat. 919; 1 page) Price: $1.00

H.R. 3132/Pub. L. 99-408

To amend chapter 44, of title 18, United States Code, to regulate the manufacture, importation, and sale of armor piercing ammunition, and for other purposes. (Aug. 28, 1986; 100 Stat. 920; 3 pages) Price: $1.00

H.R. 4331/Pub. L. 99-409

Rural Industrial Assistance Act of 1986. (Aug. 28, 1986; 100 Stat. 923; 1 page) Price: $1.00

H.R. 4393/Pub. L. 99-410

Uniformed and Overseas Citizens Absentee Voting Act. (Aug. 28, 1986; 100 Stat. 924; 7 pages) Price: $1.00

H.J. Res. 713/Pub. L. 99-411

Making a repayable advance to the Hazardous Substance Response Trust Fund. (Aug. 28, 1986; 100 Stat. 931; 1 page) Price: $1.00

S. 410/Pub. L. 99-412

Conservation Service Reform Act of 1986. (Aug. 28, 1986; 100 Stat. 932; 12 pages) Price: $1.00

H.R. 4843/Pub. L. 99-413

To provide for a minimum price and an alternate production rate for petroleum produced from the naval petroleum reserves, and for other purposes. (Aug. 29, 1986; 100 Stat. 944; 2 pages)