AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-15-87
Vol. 52 No. 72
Pages 12129-12362

federal register

Wednesday
April 15, 1987

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

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

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Presidential Documents

Title 3—

The President

Proclamation 5630 of April 10, 1987

Arizona Diamond Jubilee Year, 1987

By the President of the United States of America

A Proclamation

In 1912, the Territory of Arizona became the forty-eighth State to join the Union. The formation of the continental United States, "the lower forty-eight," was now complete. At the time, the long trail of American pioneering across the continent seemed complete as well. But in the three-quarters of a century since then, the people of Arizona have shown again and again that they have never lost the tenacity and pioneer spirit that gained them statehood. Our Nation is much the better thereby.

Arizona has always presented challenges and frontiers to those who would settle there—Indians, missionaries, colonists, and pioneers alike. Today's Arizonans pioneer in high technology, medical research, space programs, astronomy, and many more fields of endeavor, and Americans continue to find opportunity in this beautiful State.

That beauty, from the Grand Canyon in the north to the Saguaro National Monument in the south, will forever epitomize the scenic majesty of the American West. Because the pioneer spirit of the people of Arizona continues to epitomize the American spirit, it is most fitting that every American celebrate the 75th anniversary of Arizona statehood.

The Congress, by Public Law 100–10, has designated 1987 as "Arizona Diamond Jubilee Year" and authorized and requested the President to issue a proclamation in observance of the 75th anniversary of Arizona statehood.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1987 as Arizona Diamond Jubilee Year and call upon the people of the United States and the Federal, State, and local governments to commemorate the jubilee with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 87–8605
Filed 4–13–87; 4:05 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowances and Post Differentials; Non-Foreign Areas

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is modifying its cost-of-living allowance and post differential regulations to include the new Commonwealth of the Northern Mariana Islands as a non-foreign area and to authorize a 25 percent post differential for eligible Federal employees stationed there. This action is being taken to provide a pay differential for employees in the Northern Mariana Islands because they are no longer covered by the foreign area differential program administered by the Department of State.

DATES: Comments must be received on or before June 15, 1987. This interim rule is effective the first pay period beginning on or after December 21, 1986.

ADDRESS: Comments should be sent to the U.S. Office of Personnel Management, Allowances and Special Rates Division, Room 3353, 1900 E Street, NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barry E. Shapiro, (202) 632–7471.

SUPPLEMENTARY INFORMATION: On November 3, 1986, the President of the United States issued a proclamation bringing into full force and effect the Covenant with the Commonwealth of the Northern Mariana Islands. This covenant had already been approved by the Congress of the United States on March 24, 1976 (Pub. L. 94–241). Prior to November 3, 1986, the Northern Mariana Islands were part of the Trust Territory of the Pacific. Allowances and differentials for Federal employees stationed there were administered by the Department of State under 5 U.S.C. Subchapter III (Overseas Differentials and Allowances). Because the new commonwealth is no longer a foreign area and because the Trust Territory of the Pacific no longer exists, we are modifying our regulations to include the new commonwealth as a nonforeign area covered under 5 U.S.C. Subchapter IV, Section 5941 (Allowances based on living costs and conditions of environment; employees stationed outside the continental United States or in Alaska). The differential is set at the 25 percent maximum to be consistent with that authorized for other small isolated Pacific islands.

Waiver of Notice of Proposed Rulemaking and 30-day Delay in the Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. This rule is being published as an interim rule to coincide with the Department of State's decision to end coverage under its programs for Federal employees stationed in the commonwealth. The effective date of December 21, 1986, is based on State's decision to eliminate its programs in the location as of that date.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal employees and agencies.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 591—[AMENDED]

Accordingly, OPM is amending 5 CFR Part 591 as follows:

1. The authority citation for Subpart B of Part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR 1943–1948 Comp., p. 792.

§ 591.202 [Amended]

2. Section 591.202 is amended to alphabetically add "Commonwealth of the Northern Mariana Islands" to the listing of areas covered.

3. Appendix B of Subpart B is amended to alphabetically add the entry set forth below:

Geographic coverage	Percentage differential rate	Effective date
• • • • •		
Commonwealth of the Northern Mariana Islands.	25	Dec. 21, 1986.
• • • • •		

[FR Doc. 87–8469 Filed 4–14–87; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 841

Federal Employees Retirement System—General Administration; Computation of Interest

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on these rules to implement provisions of the Federal Employees Retirement System (FERS) Act of 1986 that provide that interest be included in amounts paid as FERS basic benefits or in amounts collected by FERS. These rules describe the methodology for computing interest when interest must be paid or collected in connection with FERS basic benefits.

DATES: Interim rules effective May 15, 1987; comments must be received on or before June 15, 1987.

ADDRESSES: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created a new retirement system for many

Federal employees. Employees who are covered by FERS will be covered by the basic retirement benefit, social security, and the thrift plan. OPM is responsible for administration of the basic retirement benefits. Social security benefits are administered by the Social Security Administration. The savings plan is administered by the Federal Retirement Thrift Investment Board.

These regulations provide the methodology for the computation of interest in the situations when the FERS law requires OPM to pay or charge interest. In most cases, FERS uses a variable interest rate based on the average rate of interest earned by the Fund in the preceding fiscal year. Section 841.603 provides that OPM will give notice of the applicable rate by publishing it in the **Federal Register**. The rates for previous years are—

1984	11 percent.
1985	13 percent.
1986	11.125 percent.
1987	9 percent.

Section 841.604 concerns interest that must be paid by employees or survivors on deposits to receive service credit. The methodology for computing this type of interest is contained in §§ 842.304 and 842.306 of this chapter. These sections are in the subpart on service credit.

Section 841.605 provides the methodology for computing interest that is included in the "unexpended balance," which is the same as the "lump-sum credit," as defined in section 8401(19) of title 5, United States Code. To the extent practical, this section uses the rule of averages (as it applies in similar cases under the Civil Service Retirement System (CSRS) by § 831.105(a) of this chapter).

FERS (unlike CSRS) provides that interest on the remaining contributions continues to accrue after retirement. Section 841.605(c) provides for computation and monthly accrual of interest (similar to the method used for CSRS survivor reduction deposits under § 841.105(h)).

Section 841.606 uses this same annual compounding and monthly accrual methodology to compute interest on survivor reduction deposits. However, the annual rate of interest in survivor reduction deposits is fixed by statute at 6 percent.

Under § 841.607, the methodology for computing overpayment interest is computed under § 845.205(b) of this chapter. That section is contained in the part on debt collection.

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Delaying implementation of a methodology for interest computation during proposed rulemaking could adversely affect claimants with statutory entitlement to benefits. Such a delay would be contrary to the public interest.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 841 to add Subpart F to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

* * * * *

Subpart F—Computation of Interest

Sec.

841.601 Purpose.
841.602 Definitions.
841.603 Rate of interest.
841.604 Interest on service credit deposits.
841.605 Interest included in the unexpended balance.
841.606 Interest on survivor reduction deposits.
841.607 Interest on overpayment debts.

Subpart F—Computation of Interest

Authority: 5 U.S.C. 8461.

§ 841.601 Purpose.

This subpart regulates the computation of interest under the Federal Employees Retirement System (FERS).

§ 841.602 Definitions.

"Contributions" or "deductions" means the amounts deducted from an employee's pay or deposited as the employee's share of the cost of FERS.

"Individual Retirement Record" means the record of individual retirement deductions required by § 841.504.

"Last year of service" means the calendar year in which deductions stop on the Individual Retirement Record under consideration.

"Unexpended balance" means the unrefunded amount consisting of—

(a) Retirement deductions made from the basic pay of an employee under Subpart E of Part 841 of this chapter;

(b) Amounts deposited by an employee for periods of service (including military service) for which—

(1) No retirement deductions were made; or

(2) Deductions were refunded to the employee; and

(c) Interest compounded annually on the deductions and deposits at a rate which, for any calendar year, will be equal to the overall average yield to the Civil Service Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during that fiscal year under section 8348(c), (d), and (e) of title 5, United States Code, as determined by the Secretary of the Treasury. Interest on deductions and deposits does not include interest—

(1) If the service covered by the deductions totals 1 year or less; or

(2) For a fractional part of a month in the total service.

"Year of the computation" means the calendar year when the unexpended balance is being computed.

§ 841.603 Rate of interest.

For calendar year 1985 and for each subsequent calendar year, OPM will publish a notice in the **Federal Register** to notify the public of the interest rate that will be in effect during that calendar year.

§ 841.604 Interest on service credit deposits.

(a) Interest on civilian service credit deposits is computed under § 842.304 of this chapter.

(b) Interest on military service credit deposits is computed under § 842.306 of this chapter.

§ 841.605 Interest included in the unexpended balance.

(a) Interest on each Individual Retirement Record is computed separately.

(b) For determining the amount of interest in the unexpended balance when none of the employee deductions have been returned (e.g., employee

refunds or at the time of retirement), the amount of interest in the unexpended balance equals the sum of the amounts of interest applicable to each calendar year's deductions. The amount of interest on each calendar year's deductions equals the sum of—

(1) For the calendar year in which the deductions were taken—

(i) Except during the last year of service, the amount of the employee's deductions for that calendar year times the rate of interest set under § 841.603 for that calendar year times the fraction whose numerator is the number of full months when deductions were withheld and whose denominator is 24;

(ii) During the last year of service, the amount of the employee's deductions for that year times the rate of interest set under § 841.603 for that year times the fraction—

(A) Whose numerator equals the sum of—

(1) One half times the number of months (fractional months rounded up) of that year during which the employee was employed;

(2) One for each full month of that year after the employee's service terminated; and

(B) Whose denominator is 12.

(2) For each calendar year after the year when the deductions were withheld but before the calendar year of the computation, the amount of the employee's deductions plus interest for prior years, times the rate of interest set under § 841.603 for that year; and

(3) For the year of the computation—

(i) If it is not the same calendar year that the deductions were withheld, the amount of the employee's deductions plus interest for prior years, times the rate of interest set under § 841.603 for that year times the fraction whose numerator is the number of full months that have been completed in the year of the computation and whose denominator is 12; or

(ii) If it is the same calendar year that the deductions were withheld, the amount of the employee's deductions for that year times the rate of interest set under § 841.603 for that year times the fraction—

(A) Whose numerator equals the sum of—

(1) One half times the number of months (fractional months rounded up) of that year during which the employee was employed;

(2) One for each full month of that year after the employee's service terminated; and

(B) Whose denominator is 12.

(c)(1) For adding interest to the unexpended balance after retirement, the unexpended balance including interest computed under paragraph (b) of this section is computed as of the time of retirement.

(2) Each month after retirement, the unexpended balance is reduced by the amount of annuity paid and interest is added to the remaining portion at the rate computed as follows:

(i) Add one to the interest rate under § 841.603 for the current year.

(ii) Raise the sum produced under paragraph (c)(2)(i) of this section to the $\frac{1}{12}$ power.

(iii) Subtract one from the result of paragraph (c)(2)(ii) of this section to produce the interest rate for the month.

(d)(1) Interest on payments of the unexpended balance will be paid for the month unless the payment has been authorized before the 5th workday before the end of the month (excluding the 31st day of 31-day months).

(2) For the purposes of paragraph (d)(1) of this section, payment is authorized when the person with authority to approve the claim approves payment.

§ 841.606 Interest on survivor reduction deposits.

Interest on deposits under Subpart F of Part 842 of this chapter is compounded annually and accrued monthly.

(a) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between—

(1) One and six tenths raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and

(2) One.

(b) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (a) of this section.

(c) Additional interest on any uncollected balance will be compounded annually and accrued monthly. The additional interest due each month equals the remaining balance due times the difference between—

(1) One and six tenths raised to the $\frac{1}{12}$ power; and

(2) One.

§ 841.607 Interest on overpayment debts.

Interest on overpayment debts is computed under § 845.205(b).

[FR Doc. 87-8470 Filed 4-14-87; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 870

Federal Employees' Group Life Insurance Program; Continuation of Coverage During Military Service

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations under the Federal Employees' Group Life Insurance (FEGLI) Program to reflect a statutory change included in the Federal Employees' Retirement System Act of 1986. This change will allow an employee who enters the military on active duty or active duty for training to continue FEGLI coverage for up to 12 months.

DATES: Interim regulations effective January 1, 1987. Comments must be received on or before May 15, 1987.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director of Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E. Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632-4634.

SUPPLEMENTARY INFORMATION: Pub. L. 99-335, enacted on June 6, 1986, and entitled the Federal Employees' Retirement System Act of 1986, amended the FEGLI law in several areas. One area requiring regulatory revision provides that the FEGLI coverage of an employee who enters the military on active duty or active duty for training may be continued for up to 12 months in the same way coverage is continued for employees in other types of nonpay status.

The FEGLI law has historically provided for termination of group insurance coverage during absences from civilian employment for active military duty, unless such absence was covered by military leave with pay, in order to avoid unreasonable duplication of benefits under similar Government programs for civilian and military personnel. However, as a result of the Federal Employees' Group Life Insurance Act of 1980 (Pub L. 96-427), civilian employees became eligible for improved regular group life insurance and the opportunity to individually

purchase significant amounts of optional insurance. Accordingly, requiring termination of FEGLI coverage when an employee accepts active military duty for a time period exceeding that covered by paid military leave could result in a substantial loss of insurance protection for dependents. Thus, the FEGLI law has been amended to allow employees who enter the military to maintain the same level of coverage that they had as civilian employees.

Waiver of Notice of Proposed Rulemaking and 30-day Delay in Effective Date

Under sections 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective retroactively. These regulations were effective January 1, 1987, because the provisions of Pub. L. 99–335 necessitating the changes became effective on that date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 870 as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

§ 870.501 [Amended]

2. In §870.501, paragraph (d) is removed and paragraphs (e) and (f) are redesignated as paragraphs (d) and (e), respectively.

[FR Doc. 87–8468 Filed 4–14–87; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Olives Grown in California; Redistricting and Reapportionment of Producer Member Positions on the California Olive Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will redistrict and reapportion the eight producer member positions and alternates on the California Olive Committee (COC). The changes reflect the current acreage, production, and number of growers within the producer representation districts and are intended to provide equitable representation throughout the production area.

EFFECTIVE DATE: April 15, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400; 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 (AMS) 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 businesses 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 of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Currently, there are only seven handlers of California olives subject to regulation under the marketing order for olives grown in California. Handlers are considered small entities if gross annual revenues are less than $3,500,000. The majority of the handlers may be classified as small entities. In addition, there are approximately 1,500 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000. The majority of California olive producers may also be classified as small entities.

The Administrator of AMS has considered the impact of this regulatory action on small entities. The regulatory action in this instance is a final rule that will redistrict and reapportion the producer member positions and alternates on the California Olive Committee (COC) to foster more equitable producer representation that more accurately reflects the current olive acreage within the producer districts, the number of growers in the districts, and the tonnage produced in the districts. Furthermore, this final rule is primarily of an administrative nature and, as such, does not impose any additional costs on handlers or producers.

This rule is issued under the Marketing Agreement and Order No. 932 (7 CFR Part 932), both as amended, regulating the handling of olives grown in California. The agreement and order are effective under the Act. This action was recommended by the COC at its meeting of December 2, 1986. The COC works with the USDA in administering the marketing agreement and order program.

Notice of the proposed rulemaking was published in the **Federal Register** on March 2, 1987 (52 FR 6166). The comment period ended on March 12, 1987; no comments were received. The final rule is the same as the proposed rule.

The order provides for a committee consisting of 16 members (and alternates); eight members represent producers, and eight members represent handlers. The order further provides that the committee, with the approval of the Secretary, may redefine the districts into which the area has been divided (for purposes of producer representation) and may reapportion the membership to reflect insofar as practicable shifts in olive acreage within the districts and area, the numbers of growers in the districts, and the tonnage produced, if such changes are equitable as to producers.

The committee believes that redistricting and reapportioning the eight producer member positions and alternates will provide more equitable representation throughout the producting area. The committee based this recommendation on the current production, number of producers, and acreage as required under the marketing

order. For example, the committee noted that District 2 currently represents about 65 percent of the average production, number of producers, and acreage. The committee believes that the formation of a new producer district to represent Tulare County (currently part of District 2) will provide equitable representation throughut the production area because that county represents over 45 percent of the average production, number of producers, and acreage. District 3, representing less than 10 percent of the production, producers, and acreage, is disproportionately represented with two members.

In recognition of these shifts and to foster more equitable producer representation, the following representation and district changes will be established: In District 2, the number of producer members and alternates will be reduced from from four to one and Tulare County will be excluded from the district boundaries; in District 3, the number of producer members and alternates will be reduced from two to one with no change in the boundaries; and a new District 4 will be created comprised of Tulare County and represented by four producer members and alternates. No change will be made in representation (two members) or boundaries for District 1.

After consideration of all relevant information presented, including the proposal set forth in the notice, it is hereby found that this action will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) for the following reasons: (1) This action redistricts and reapportions the producer membership on the committee; (2) pursuant to § 932.29 of the order, the names of the nominees to fill the positions on the committee must be submitted to the Secretary prior to April 16; and (3) this action must be effective promptly for the committee to complete the nomination process and meet the deadline.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

For the reasons set forth in the preamble, 7 CFR Part 932 is amended as follows:

1. The authority citation for 7 CFR Part 932 will continue to read as follows:

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

2. A new § 932.121 will be added to read as follows:

§ 932.121 Producer districts.

Pursuant to the authority in § 932.35(k), commencing with the term of office beginning June 1, 1987, "district" means any of the following geographical areas of the State of California:

(a) "District 1" shall include the counties of Glenn, Tehama, and Shasta.

(b) "District 2" shall include the counties of Mono, Mariposa, Merced, San Benito, Monterey, and all counties south thereof excluding Tulare County.

(c) "District 3" shall include all the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof except those in District 1.

(d) "District 4" shall include the county of Tulare.

3. A new § 932.125 will be added to read as follows:

§ 932.125 Producer representation on the committee.

Pursuant to the authority in §§ 932.25 and 932.35(k), commencing with the term of office beginning June 1, 1987, representation shall be apportioned as follows:

(a) District 1 shall be represented by two producer members and alternates.

(b) District 2 shall be represented by one producer member and alternate.

(c) District 3 shall be represented by one producer member and alternate.

(d) District 4 shall be represented by four producer members and alternates.

Dated: April 10, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87–8450 Filed 4–14–87; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System Capital Corporation; Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) promulgated final regulations 12 CFR 611.1140–611.1142 (51 FR 8665, March 13, 1986) applicable to the Farm Credit System Capital Corporation (Capital Corporation or Corporation). The Capital Corporation, established under the Farm Credit Amendments Act of 1985 (1985 Amendments) was chartered by the FCA on February 24, 1986, pursuant to section 4.28A of the Farm Credit Act of 1971, as amended (Act). At the time of the publication of the final regulation, the FCA gave the public an opportunity to comment for 30 days, which period was extended until August 18, 1986 (51 FR 21331, June 12, 1986). At regular meetings, held on March 3 and April 7, 1987, the FCA Board carefully considered the public comments and adopted amendments to the regulations.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD Number 883–4444.

SUPPLEMENTARY INFORMATION: The FCA issued the regulations as final rules in order for the Capital Corporation to organize and exercise the powers conferred on the Corporation by Congress to address the financial difficulties experienced by Farm Credit System (System) institutions. Nevertheless, the FCA provided the public with the opportunity to comment and received comments from two Farm Credit districts, four agricultural cooperative borrowers, one Federal land bank association (FLBA), an organization of FLBA borrowers, the Capital Corporation, the Farm Credit Corporation of America (FCCA), one U.S. Congressman, and one U.S. Senator. The FCCA stated that its comments were made on behalf of all System institutions.

The comments, and staff's recommended revisions to the regulation in response to these comments, were considered at two meetings of the FCA Board. At its March 3, 1987 meeting, Board members considered staff's recommended revisions and identified four issues upon which they desired further discussion: the accounting procedures for the exchange of stock from the Predecessor Capital Corporation to the newly chartered Capital Corporation; the prohibition against the use of "joint employees"; the prohibition against receipt of both loss-sharing assistance and Corporation financial assistance; and the requirement for FCA "review and direction" on financial assistance. The Board revisited these issues at its April 7, 1987, meeting. At that time, the Board considered and adopted revisions to the regulation, as described below.

One commenter suggested that 12 CFR 611.1140 be amended to state expressly that the Capital Corporation may be

appointed receiver of any liquidating System institution. The FCA Board does not consider such amendment necessary. The FCA may appoint any individual or entity as a receiver or conservator of any liquidating System institution meeting the qualifications to exercise duties and responsibilities of a receiver or a conservator. If the Capital Corporation meets the qualifications at the time FCA declares a System institution insolvent and appoints a receiver, the Capital Corporation may be considered for appointment along with other qualified candidates. A specific statement in the regulations is unnecessary.

Several parties commented that the expansion of the Capital Corporation board in 12 CFR 611.1140(b) when public funds are made available is vague and should be limited to when the Capital Corporation actually receives Federal funds. The FCA Board agrees with this suggestion and has amended the regulation to state that the Corporation board will be expanded should the Secretary of the Treasury purchase any Capital Corporation obligation.

Three parties stated that the FCA-appointed directors to the Capital Corporation should not serve at the pleasure of the FCA Board Chairman but that they should only be removable for cause as are other Corporation directors. They stated that Congress intended the Corporation to be an independent part of the System and that making the FCA-appointed directors subject to removal at any time is an attempt to make the Corporation an extension of the FCA. The FCA Board disagrees with the comments. The two FCA-appointed directors on the Corporation board are intended to be representatives of the Federal Government to ensure that the Corporation carries out its very important public function. The important role of these directors is underlined by the fact that Congress increased the number of FCA-appointed directors from one to two during Senate floor action on the 1985 Amendments. The FCA cannot ensure that the directors properly serve as Federal Government representatives unless they serve at the pleasure of the FCA Board Chairman. In addition, given the fact that the System-elected directors constitute a quorum and majority of the Corporation board, the FCA cannot control or make the Corporation an extension of the FCA. Accordingly, the FCA Board declined the proposed change.

One commenter stated that in the event the FCA retains the provision on service of FCA appointed directors, then System-elected directors should serve at the pleasure of System institutions. The FCA Board has determined that the removal for cause provisions are adequate to ensure that the directors responsibly represent the respective contributing and recipient bank interests.

A Farm Credit district commented that the director appointed by the Secretary of Agriculture in the event of Treasury purchase of Corporation obligations should not serve at the pleasure of the Secretary but should be removable only for cause. The comment also stated that the regulation implied that the director could serve longer than 2 years. The FCA Board has determined that the director appointed by the Secretary should be treated similarly to the FCA-appointed directors. Congress provided for expansion of the Corporation board at the time of Treasury purchase of obligations in order to have greater Federal Government representation. The FCA Board believes that Federal Government representation can only be fully ensured by having the FCA- and Secretary-appointed directors serve at their pleasure. Therefore, the regulation remains unchanged on this issue. The FCA Board does agree, however, that the regulation should be revised to clarify that those board members appointed after Treasury Department purchase of Corporation obligations shall serve 2-year terms.

One commenter asserted that there is no statutory basis for the qualifications restricting persons serving with the FCA or any System institution within the past 5 years from also serving as FCA-appointed directors of the Capital Corporation. The commenter also stated that the prohibition on any FCA-appointed director's service as a director, officer, employee, or agent of any System institution for 2 years may be difficult to monitor or enforce. The FCA Board disagrees with both contentions. Congress intended that the FCA-appointed directors not be connected with the System and expressly prohibited "borrowers from, shareholders in, or employees or agents of any institution of the Farm Credit System" from being FCA-appointed directors in section 4.28C(a)(2)(A). Congress also directed the FCA Board in section 4.28C(a)(4) to issue regulations providing for fair and equitable representation of all public and private interests on the Corporation board. The FCA-appointed director qualifications ensure that those individuals serve the important public interest in having a sound agricultural credit system, are neither recently affiliated with the System nor the FCA, and have no intentions in doing so following service on the Corporation board.

One commenter stated that the pool of qualified candidates was unnecessarily restricted by prohibiting such affiliations 5 years before and 2 years after and suggested that the regulation be amended to 2 years before and 1 year after. The FCA Board rejected the suggestion as the FCA Board has not had difficulty in finding qualified board members based on the restrictions and deemed the restrictions otherwise appropriate.

One commenter stated that 12 CFR 611.1140(b)(2)(i) should be amended to make clear that only voting stockholders meet to conduct elections of directors rather than including preferred and nonvoting common stockholders. The FCA Board declined to adopt the suggestion. The regulation merely states that the Nominating Committee must meet prior to each election of directors at an annual or special meeting of the stockholders. Issues involving which stockholders may attend or must receive notice of the meeting are a matter for the articles of incorporation or the bylaws.

Another commenter stated that the rules governing the nomination process in 12 CFR 611.1140(b)(2)(ii) do not adequately guarantee representation of all types of System institutions and should specifically require nominations from each of the three bank systems. The FCA Board disagrees with the suggestion. Because there are five types of System lending institutions and many different service organizations and only three director positions available for election, the FCA could not ensure that all System institutional interests are represented on the Corporation board. The FCA Board believes that the categories required by the Act and incorporated in the regulation are adequate and additional restrictions may unfairly discriminate against some System institutions.

One commenter stated that the regulation should be amended to clarify that a district director is considered to represent all of the banks in a district for nomination purposes. This is incorrect. A district director is considered to be from the banking group that nominated and elected him or her. To adopt the commenter's suggestion would needlessly disenfranchise some districts where the district banks were not all recipients or contributors. This is consistent with the way the district directors refer to themselves as representing the institutions that elected them, notwithstanding the fact that they

assume a position as director of each of the three System banks.

The FCCA commented that there is no statutory basis to preclude the FCCA directors, officers, and employees from eligibility to serve on the Corporation board as provided in 12 CFR 611.1140(b)(2)(i). The FCCA further commented that even if individuals from the FCCA held all three positions that the FCCA would not have control of the Corporation. The FCA Board disagrees with these comments. The legislative history of the 1985 Amendments makes it clear that it was not intended that the Corporation become a central entity or holding company. The FCCA is a service corporation chartered by the FCA at the request of System banks to perform certain functions for those banks on a "centralized basis." Its centralization role and functions are not consistent with the intended role of the Corporation. The FCCA has been, and continues to be a source of controversy within the System. System banks chartered the FCCA to serve as a vehicle for bringing about consensus decisions and actions among its bank stockholders on issues having impact on virtually all System institutions and their stockholders, yet the FCCA does not in fact represent, nor is it supported by, all Farm Credit districts or institutions. Further, the FCCA is neither owned by, nor does it represent the interest of, PCAs or FLBAs. The FCA believes that it would not be consistent with the intended character and role of the Corporation to have that entity become entangled with controversial System agendas and issues through one or more common directorships with the FCCA. The FCA notes that the System has arranged for the FCCA and the Farm Credit Council, which is the national political lobbying arm of the System, to have a common board of directors. This is an example of how common directorships are used by the System to bring about common control of System institutions and to integrate their agendas. The FCA believes that such a result would be inappropriate in the case of the Corporation.

Another commenter stated that a new 12-month projection of net contributors and recipients as established in 12 CFR 611.1140(b)(2)(iii) should be made for each election of Corporation board directors. The FCA Board disagrees. One of the director positions is filled irrespective of whether a candidate may be from a net recipient or net contributor institution or district, thus making a new projection unnecessary. In other cases, the regulation provides that if the institution actually changes status before a new projection is made, that institution will be considered as changed.

One commenter stated that directors should not be allowed to succeed themselves but should be limited to one term. The FCA Board does not agree with the comment. Successive terms could provide continuity of leadership that may be particularly beneficial to a newly established organization such as the Capital Corporation. This is especially true with a limited duration corporation with as complex purposes to accomplish as the Capital Corporation. One comment correctly pointed out that Articles of Incorporation do not provide for removal of directors as provided in 12 CFR 611.1140(b)(2)(v) but permit the bylaws to have such provisions. The regulations at 12 CFR 611.1140(b)(2) (v) and (vi)(H) have been amended to state that the articles or bylaws may provide for removal of directors for cause.

The FCCA stated that the FCA does not have statutory authority to promulgate regulations requiring the automatic removal of directors in the instances set forth in 12 CFR 611.1140(b)(2)(vi) and that such removal is an improper matter for the Corporation bylaws. The FCA Board rejects these contentions. Section 4.28C(a) of the Act provides that the Capital Corporation has a number of corporate powers subject to the regulation of the FCA, including the power to prescribe bylaws by its board of directors. The FCA Board believes that the financial integrity of members of the Corporation board must be above reproach and, therefore, has promulgated regulations making the director positions vacant automatically if one of the enumerated events occurs.

One commenter stated that the elected director vacancy provision in 12 CFR 611.1140(b)(2)(vi)(B) unfairly removes directors that have been wrongly placed into involuntary bankruptcy and suggested that the regulation be amended to indicate that it is cause for removal if the proceeding is not dismissed within 90 days of filing. The FCA Board recognizes that directors may be subject to wrongful bankruptcy proceedings but considers 30 days ample time to have such frivolous suits dismissed. One comment stated that the causes for removal by the board of directors under paragraph (b)(2)(vi)(H) of section 611.1140 should also be specifically enumerated. The FCA Board does not consider it necessary or appropriate to state causes for removal as it would be difficult to anticipate all circumstances justifying removal and there is already a considerable body of law on removal of directors for cause.

The organization states that requiring directors to automatically vacate their positions where they have a loan with a non-System financial institution in nonaccrual or nonperforming loan status is impracticable because the Corporation is not likely to learn when a loan is in such status and such classifications require subjective judgments that may unfairly prejudice the director beyond his control. The Corporation reiterated these concerns. The organization suggests that the regulation be amended to cause the vacancy to occur when a director's loan is in default and the default is not cured within 30 days. In response to the comment, the FCA Board has amended the regulation to trigger the automatic vacancy provisions when a loan with a System institution is in nonaccrual status or a loan with a non-System institution is in default, which default is not cured within 30 days. Directors shall be under an obligation to inform the Corporation of any defaults on loans, and System institutions will be required to inform the Corporation whenever any Corporation director's loan has been placed in nonaccrual status.

The FCCA contended that a plurality interest in a corporation may not indicate control or a major influence over the affairs of the corporation and that it is inappropriate to impute the financial problems of a corporation to a shareholder. The FCCA recommended amending 12 CFR 611.1140(b)(2)(vi)(F), replacing the term "plurality" with the term "majority or controlling" interest. The FCA Board agrees that having a plurality of interest in a corporation in bankruptcy does not necessarily mean control of the corporation such that it warrants the automatic removal as a director. Therefore, the FCA Board has adopted the proposed amendment.

One agricultural cooperative trade organization stated that the grounds for automatic vacancy on the board of directors should apply equally to both elected and appointed directors. The FCA Board agrees with the comment because all Corporation directors' financial integrity should be above reproach whether they are System representatives, FCA appointees or appointees of the Secretary of Agriculture. The FCA Board amended the regulation to apply the automatic vacancy provisions to all Corporation directors (with the exception of the provision contained in the automatic vacancy provisions for removal of a director for cause by the vote of the other directors).

The FCCA commented that the 1985 Amendments do not authorize the FCA to set compensation for Corporation directors but only to set maximum levels of compensation. The FCCA further stated that the limitations in 12 CFR 611.1140(b)(5) on the compensation to directors who also serve as directors, officers, and employees of System institutions are unsound and should be eliminated or modified. The commenter suggested that the compensation of Corporation directors also serving as directors of another System institution should not be reduced by the amount received for service on other System boards. The commenter also suggested that the regulation provide for compensation of Corporation directors who are also System officers or employees and that such compensation be paid to their employers. The Corporation disagreed with this last suggestion. The Corporation also stated that Corporation directors should receive the same amount of compensation unless the director also serves as an officer or director of another System institution or service organization.

The FCA Board considers compensation of Corporation directors must be sufficient to attract qualified persons to serve and perform the very serious and complex work associated with providing financial assistance to needing System institutions and therefore deemed it necessary to set a maximum and minimum level of compensation as the same. However, Corporation directors who are officers and employees of System institutions serve, and are compensated by, their institutions on a full-time basis. Since those full-time responsibilities should naturally include representing their institution on the Corporation's board at the direction of their respective district boards, providing these individuals with additional compensation for their activities as Corporation directors was not deemed justified. This same rationale applies to Government employees who are appointed to the Corporation board by the Secretary of Agriculture. Additional compensation, up to $25,000, was deemed necessary in order to attract other qualified persons to serve on the board, in that their duties as board members are performed on a part-time basis, in addition to those of their regular occupations.

The FCCA commented that 12 CFR 611.1140(c) should provide for prompt FCA approval or disapproval of the Corporation board selection of a chief executive officer and suggested that the regulation should state that the chief executive officer should serve at the pleasure of the board. The FCA Board does not consider either of these amendments necessary. The FCA gave immediate consideration to the Corporation board proposed chief executive officer once an individual was finally selected. The 1985 Amendments clearly state that the Corporation's chief executive officer serves at the pleasure of the board and thus, repeating this in the regulation is unnecessary.

One trade organization and the FCCA commented that the regulation should expressly state that the initial capitalization of the Corporation will be done in consultation with the System. The FCA Board does not consider it necessary to repeat the language of section 4.28K of the Act in the regulations and therefore rejected this suggestion. The FCCA further commented that the FCA has no authority to require additional contributions as provided in 12 CFR 611.1141(a) in the event that the Corporation does not meet the capital levels set by the FCA. However, under section 4.3 of the Act, the FCA may establish the minimum level of capital for a System institution, including the Corporation, as the FCA, in its discretion, deems necessary or appropriate. 12 CFR 611.1141(a) merely recognizes this authority and provides that, if the FCA deems the Corporation's capital level too low, it may require additional capital, which will be obtained as with other capital in accordance with section 4.28G. The FCA has ample authority under section 4.3 and other provisions of the Act to enforce the minimum capital levels set. Accordingly, the FCA Board has rejected the suggested amendment.

Several institutions made comments regarding the various classes of stock that the Corporation is authorized to issue setting forth some of the terms and conditions of such stock. One Farm Credit district requested that the purposes of the various classes of stock be clarified. The FCCA stated that the different classes would place a substantial accounting burden on the Corporation and contended that the Corporation should be given flexibility to decide how the proceeds of preferred stock issued to System institutions should be used. 12 CFR 611.1141(b) provides the Corporation with flexibility to capitalize the Corporation in a manner that will optimize the effective use of capital and safeguard that the proceeds will be used for proper purposes. The FCA Board has determined that the System banks that are required to purchase capital stock in the Corporation are entitled to have the funds used for the limited purposes of the Corporation and to receive the benefits of earnings or recoveries that directly relate to their capital. The FCA Board does not believe that the accounting burden for such classes is significant. Finally, the FCA Board notes that the Corporation may, but is not required to, issue all classes of stock and may issue a different class if approved by the FCA.

One Farm Credit district stated that it did not understand the purpose of permitting the supervising bank to hold Class B nonvoting stock for associations as provided in 12 CFR 611.1141(b)(2). Allowing the supervising bank to hold Corporation stock on behalf of the associations reduces the stock accounting records that the Corporation must have. The requirement is not mandatory and gives the Corporation flexibility in establishing its stock registry. The FCA Board believes this flexibility should be maintained and has declined to alter the regulation.

The FCCA commented that because the 37-System banks own an identical amount of stock in the Predecessor Corporation, it may simplify accounting of the transfer of the assets to the Corporation by exchanging stock of the Predecessor Corporation on an equal par value with the Corporation and permitting any remaining value in the Predecessor Corporation in excess of par value to be treated as each bank's contribution to the capitalization of the Corporation. The FCA Board has revisited this issue and decided not to revise the regulation. Section 4.28H of the Act mandates the distribution of surplus funds of the Predecessor Capital Corporation among the System institutions that contributed funds to the Predecessor Corporation, to the extent that surplus funds remain after the extinguishing of its liabilities and the disposition of its contractual obligations. An exchange of stock at "equal par value," as suggested by the comments, would require that the surplus funds be transferred to the newly chartered Capital Corporation in some form of permanent stock, rather than surplus which would be readily available for distribution to the Predecessor Corporation's stockholders in the form of liquidating dividends. If the exchange of stock is made at "equal value," as currently required by the regulation, the remaining surplus is transferred to the newly chartered Corporation as allocated surplus (allocated to the Predecessor's stockholders). Accordingly, this surplus will be available for distribution if the surplus

remains after final liquidation of the Predecessor Corporation's assets and liabilities.

The FCCA commented that the regulations should provide that the Corporation may issue a variety of debt and security instruments to the Secretary of the Treasury in addition to Class E nonvoting preferred stock set forth in 12 CFR 611.1141(b)(5). Section 4.28G(a)(9) of the Act authorizes the Corporation to issue a variety of obligations to the Secretary of the Treasury and the FCA, including notes, bonds, debentures, capital notes, and voting and nonvoting securities. The FCA Board has determined it unnecessary to repeat this authority in the regulations but has regulated the issuance of securities by specifying the authority to issue Class E stock. This in no way limits the Corporation authority to issue notes, bonds, debentures, or capital notes.

The FCCA also commented that stock retirement issues are best left to the Corporation's board through the bylaws. The FCA Board disagrees. The 1985 Amendments make clear that the Corporation is to obtain funds for providing financial assistance through the use of transactions that require the Corporation to repay the capital funds through accumulated surpluses in accordance with FCA regulations. The FCA Board has determined that use of accumulated surplus for stock retirement must be closely related to the specific type of capital used to generate those surpluses. This gives the contributing institutions comfort that their funds will be used appropriately and returned to them as surplus funds are accumulated for their use.

The FCCA, the Corporation, and one agricultural cooperative trade organization challenged the FCA's authority to approve the Corporation's bylaws as provided in 12 CFR 611.1142(a). The FCA Board acknowledges the very important governmental and public purposes of the Corporation. These are evidenced by the detailed statutory scheme creating the Corporation, the existence of FCA-appointed representatives on the Corporation board, and the potential for direct Federal assistance to the Corporation. Greater governmental influence and control require that the operational rules of the Corporation be approved by the FCA as part of the chartering and establishment of the Corporation. Thus, the Corporation's bylaws and revisions thereto remain subject to FCA approval.

The FCCA and the Corporation commented that the statement regarding the potential sovereign immunity of the Corporation should not be attempted by regulation. The Corporation further suggested that the Corporation directors, officers, employees, and agents enjoy the same privileges and immunities as the FCA in suits arising from or related to the Corporation acting as receiver or conservator, and that the Corporation should be permitted to invoke the jurisdictional provisions of section 5.17(a)(17) of the Act. The FCA Board disagrees with both comments. 12 CFR 611.1142(b) does not attempt to confer or take away sovereign immunity of the Corporation. Such immunity can only be granted by an Act of Congress and not by regulation. The regulation merely sets forth the FCA's interpretation of the law that the Corporation is not an agency of the United States entitled to sovereign immunity and that the United States is not liable for claims against the Corporation just as the United States is not liable for claims against the System banks. Similarly, the FCA cannot by regulation give the Corporation any coverage under the jurisdictional provisions of section 5.17(a)(17) and 28 U.S.C. 2408 other than that, if any, which is already present in such provisions.

These commenters also objected to the regulatory requirement of 12 CFR 611.1142(b) that the Corporation obtain insurance to protect itself from such claims, stating the FCA had no authority to make such requirement. The FCA Board has determined that sections 4.28G(a) and 5.17(a)(14) of the Act provide the agency with ample authority to require the Corporation to obtain insurance to protect itself from claims and thus protect the assets of the Corporation. The FCCA commented that the requirement in the regulation that the Corporation board meeting be held at the principal offices of the Corporation unnecessarily restricted the Corporation from meeting at other locations and was an improper subject for regulation. On May 2, 1986, the FCA amended the Articles of Incorporation of the Corporation to enable the Corporation board to conduct meetings unrestricted by the regulation and also deleted the meeting requirement from 12 CFR 611.1142(c) (51 FR 16291).

The FCCA contends that the regulatory limits on affiliations between the directors, officers, employees, and agents of System institutions and System service organizations and those of the Corporation are too restrictive and should be deleted. A Farm Credit district stated that the Corporation should be able to contract with the System banks for accounting, legal, and funds management services. The FCCA commented that the restrictions on the ability of the Corporation to contract with other System institutions are too severe and will interfere with the Corporation's ability to operate efficiently. The organization suggested that the FCA amend the regulation to focus on the type of conflict considered impermissible and leave the Corporation free to choose those individuals or organizations that may be able to perform given tasks.

The FCA Board has determined that the restrictions on affiliation, employment, and contracting with System institutions and System directors, officers, employees, and agents are crucial to assure that Corporation policies and operations are independent, autonomous, and free from undue influence from the various System interest groups. The FCA is aware of the conflicts of interest which may arise in administering financial assistance packages. These concerns justify a prohibition against allowing any group or individual to implement the work of the Corporation that has a separate interest in seeing the work accomplished in a partisan manner for the benefit of one or more other System institutions. In order to ensure that all groups are treated fairly, the FCA Board has concluded that no one System group or individual should be in a position to influence the Corporation's activities unduly, particularly with respect to the specific areas enumerated. The FCA Board notes that the Corporation did not object to the restrictions. Therefore, the FCA Board has decided not to alter the previously imposed restrictions. With respect to persons employed by the Capital Corporation, the Board has revised the regulations to define the term "joint capacity" to clarify that individuals cannot be accountable to both the Corporation and a System institution or service organization.

The FCCA commented that the automatic approval of Corporation commercial borrowing on terms not otherwise available through loans from System institutions or through the issuance of Systemwide obligations is too restrictive and that the Corporation should be given greater flexibility to decide as a management matter the method of financing based on its own consideration of applicable factors. Alternatively, the commenter states that the regulation should provide a procedural mechanism for FCA approval of commercial borrowings not meeting the automatic appraisal provision. Congress expressly stated in section 4.28G(a)(12) that the FCA should approve the terms and conditions of the Corporation's commercial borrowings. The FCA Board has provided that such

approval is automatically granted in the regulation for borrowings on terms and conditions not otherwise available from System institutions or through issuance of Systemwide obligations. This grant of authority provides a great deal of flexibility. Commercial borrowings at more expensive rates, or on terms and conditions more restrictive than those available through System sources, are so extraordinary that they should be approved by the FCA on a case-by-case basis. The FCA Board does not consider additional approval procedures necessary.

An agricultural cooperative trade organization commented that the required FCA approval of the Corporation's debt policy in 12 CFR 611.1142(9) should be deleted, as the FCA has sufficient control of the Corporation through the board of directors. The FCA Board has determined that FCA approval of the Corporation's debt policy is necessary in view of the impact such policy may have on the ability of the Corporation to marshal System resources efficiently and thereby reduce its costs to the System and to the Federal Government.

The trade organization, the Corporation, a Congressman, the FCCA and a Senator commented that limiting eligibility for financial assistance to those System institutions that are or will become impaired within 90 days in 12 CFR 611.1142(i) is too restrictive and inconsistent with the intent of Congress, which contemplated a more liberal standard for assistance. The FCCA stated that under the regulation standards neither of the System's previously approved financial assistance packages to two of the Federal intermediate credit banks (FICBs), which were developed prior to the 1985 Amendments, would have been permissible. The Corporation contended that an institution's continued operation may be jeopardized well before its stock is impaired.

In drafting regulations relating to funding and providing financial assistance, the FCA Board has carefully considered the competing purposes of the Corporation. The Corporation must obtain funds from contributing institutions only when necessary and in a manner that least affects the contributing institutions and equitably spreads the financial burden. At the same time, it must provide assistance to institutions that have deteriorated to the point of need. The FCA Board reaffirms the determination that continued operations are jeopardized and continued agricultural credit service to creditworthy borrowers in the institution's territory is threatened when the institution's stock is impaired. At this point, section 4.28G(a)(15) requires that the institution be deemed eligible to receive financial assistance. The regulation further permits institutions to apply for assistance in the event that its stock will be impaired within 90 days. The FCA Board has concluded that any lesser standard would permit financial assistance to institutions not truly in need while taking funds from contributing institutions when not truly necessary.

An agricultural cooperative commented that 12 CFR 611.1142(i)(1)(i) should specifically enumerate the types of efforts that must be undertaken by an institution requesting financial assistance before it may apply for assistance. The FCCA states that 12 CFR 611.1142(i)(1) (ii) and (iii) imply that the Corporation cannot provide a requesting institution with financial assistance until other options have been exhausted and states that the regulation should be amended to make clear that these are not prerequisites. The purpose of these provisions is not to require that certain efforts or options must be undertaken before an institution is deemed eligible for assistance. Rather, it is to give the Corporation necessary information to evaluate the attempts made by the institution and district in order to control financial deterioration and to determine what terms and conditions may be appropriate as a part of the financial assistance package to the institution. The requesting institution must provide the information before an application is complete and the institution may be considered for financial assistance. However, there is no requirement that all other options must be attempted first.

The same commenter also stated that the regulation should detail the types of assistance a strong institution must provide to the financially impaired institution and the circumstances under which the healthy institution could refuse to assist a troubled institution. Healthy System institutions do not provide financial assistance to needing institutions directly. Under the Act and FCA regulations, the Corporation is created as the mechanism to provide financial assistance to needing System institutions. The Corporation shall require the healthy institutions to purchase stock as necessary through a formula established by section 4.28G(a)(15) of the Act and implemented by 12 CFR 611.1142(h) which considers the relative financial strength of the contributing institutions and equitably spreads the financial burden. The Corporation provides financial assistance to needing institutions under terms and conditions agreed upon by the Corporation with the institution. 12 CFR 611.1142(i)(4) states that the Corporation must require the recipient institution to make such modifications in operations as are necessary before receiving assistance. These requirements ensure that any operational practices that may have contributed to the financial deterioration are corrected. This approach helps to prevent financial assistance from maturing into additional losses and to protect the investment of the healthy institutions in the Corporation.

The commenter also questioned the role of the Farm Credit district board of directors when one district institution turns to another for assistance as implied by 12 CFR 611.1142(i)(3). Another agricultural cooperative and an agricultural cooperative trade organization contended that a needing institution should not look to other district institutions first but to institutions organized under the same title of the Act and suggested the regulation be amended to direct the Corporation to consider the financial condition of "sister" institutions. They stated that the district-first policy is not mandated by the 1985 Amendments but intended that institutions organized under the same title should be the primary source of financial assistance. Alternatively, they argued that the resources of the banks for cooperatives (BCs) should not be made part of a district-first policy because they are substantially different in membership, purpose, and market from the other district institutions. Another cooperative added that a bank from one system should not be held liable for the failures of a bank from another system merely because they are coincidentally located in the same district. Another cooperative stated that a district-first policy promoted an inefficient mobilization of resources and constituted an improper departure from section 4.4 of the Act establishing tiered liability. The FCCA supported the concept of a district-first policy.

The Farm Credit district board acts as the board of directors of each of the three district banks and is responsible for providing direction to the management of each bank. The board of directors would find itself in a conflicting position when healthy banks within its district provide financial assistance to a troubled bank in the same district. However, the Act provides the banks, including the BCs, with ample authority to share losses and

provide loan and other financial assistance to other banks, but the directors must carefully ensure that operational practices that may have contributed to the financial deterioration are corrected prior to committing the financial assistance. The BCs have the same joint and several liability on Systemwide obligations and the same financial interrelationships with the other System banks. The other banks are not merely geographically located together but are directed by the same board of directors and, in all cases but the Texas Farm Credit District, managed and operated by the same joint officers and employees.

It is appropriate that a bank or association needing financial assistance look to other institutions in its district. This approach was adopted by the System in developing previous financial assistance packages. The approach gives a Farm Credit district having financial problems within the district an opportunity to attempt district solutions prior to having the Corporation require changes in the bank as a condition of assistance. In addition, the district-first policy promotes efficiency and equity among contributing institutions. The banks within a district are more likely to know the operational problems that contributed to the financial deterioration. Finally, it is fairer to other contributing districts to require a financially able district to take care of its own problems before tapping the resources of others, particularly when the directors are responsible for directing the operations of both healthy and troubled banks. Other "sister" institutions have authority to provide assistance to each other, but the FCA Board does not agree that such assistance should be required prior to Corporation assistance. Finally, the FCA Board notes that the Corporation would only look to the other district institutions to aid the troubled institution first if the district as a whole had sufficient resources to correct the deficiency. In several cases, there may be healthy banks within a district but without the resources to assist the troubled institution. In those cases, the Corporation will consider the application for direct assistance without any intra-district bank aid.

A cooperative commented that there should be a forum for resolving disputes regarding the Corporation's rejection of a financial assistance request based on a district's having sufficient resources. The regulation clearly gives the Corporation the discretion to decide whether a Farm Credit district has sufficient resources to correct stock impairments.

The FCCA commented that the prohibition on an institution's receiving both loss-sharing assistance and Corporation assistance should be deleted pending further study. The FCA Board has reconsidered this issue in light of current conditions and determined that some institutions may need both types of financial assistance. The Board has revised the regulation to permit receipt of both loss-sharing assistance and Corporation assistance, as long as the total amount of assistance is no greater than the amount needed to cure stock impairment. The Corporation may grant financial assistance greater than that total amount only with the approval of the FCA. The Board reiterates that the limited resources of the Capital Corporation dictate its optimum use of those resources. Thus, the Board expects a limited number of requests for Board approval of Corporation assistance in amounts which, when added to loss-sharing assistance, will be greater than that necessary to cure stock impairment.

The FCCA questioned the reference in 12 CFR 611.1142(i)(3) to the "eligibility" requirements of paragraph (i)(1) of that section but not the criteria of paragraph (i)(2) of that section. The FCA Board has amended the regulation to clarify that the requirements of the former are "application" requirements and to insert the "eligibility" requirements of the latter into this paragraph.

A cooperative trade organization, the FCCA, the Corporation, and a cooperative stated that the regulatory statement in 12 CFR 611.1142(i) that any request for direct financial assistance be subject to the review and direction of the FCA should be deleted. They stated that the FCA should not grant prior approval to every financial assistance request and that the 1985 Amendments do not give the FCA such authority. The FCCA argues that this provision places the FCA in a position of directing the day-to-day operations of the Corporation. The FCA Board reviewed the comments and has revised the regulation to require that the Capital Corporation provide the FCA with periodic reports regarding financial assistance. This will enable the FCA to monitor the administration of financial assistance without requiring prior approval of assistance requests.

An organization of FLBA borrowers commented that regulatory guidelines should be established detailing how the Corporation shall restructure, refinance, reamortize, or compromise indebtedness as provided in section 4.28G(a) (11) and (20) of the Act. The FCA Board believes that the statutory provisions are clear and give the Corporation maximum flexibility and that further regulation at this time is unwarranted.

The FCCA stated that the Corporation should not attempt to acquire nonaccrual assets from healthy institutions because this will hasten the day the System must seek Federal financial assistance. The commenter contended that the sale of these loans would merely increase System costs and create another unnecessary level of loan administration without holding the originating loan officers and institutions accountable. Section 4.28G(a)(16) of the Act expressly provides that the Corporation may purchase nonaccrual assets from any System institution, making no distinction between healthy or troubled. Because the Act and FCA regulations require such assets be purchased at fair market value, the FCA Board fails to see how such purchases would necessarily increase System costs or hasten a request for direct Federal assistance. Furthermore, sale of an asset does not affect the issue of accountability of originating loan officers and institutions.

The FCCA stated that the regulatory definition of fair market value in 12 CFR 611.1142(l)(4) concentrates on certain factors, such as the knowledge that the assets conveyed will be converted to cash over some period of time, to the exclusion of other important factors which the FCCA did not mention. The FCCA suggests adopting the definition employed in the Federal income tax regulations. The FCA Board rejects the suggestion that the FCA adopt verbatim the tax definition because that definition does not provide enough assistance in valuing assets where, as here, no active market exists. The definition in the regulations is based on the tax definition and the generally accepted accounting principles relating to the absence of a market price suggesting that cash-flow estimates properly discounted for risk may aid in assigning value. The usual expenses associated with the administration of the asset during the carrying period are taken into account in estimating cash flows. The definition adopted recognizes that the Corporation and the institution will have to negotiate the purchase price for nonaccrual assets and that the price offered by the Corporation for the assets may not coincide with that amount carried on the selling institution's books. The FCA, through the process of examining both the Corporation and the selling institution, will review whether purchase prices are reasonable.

The FCCA also commented that the definition of nonaccrual loans in 12 CFR 611.1142 is too broadly defined to include nonperforming loans, which involve considerable subjective judgment in classification. They asserted that the subjective judgment involved in classifying nonperforming loans may lead to the Corporation's purchasing good assets. The FCA Board has reviewed this issue and has concluded that the definition of nonaccrual should be redefined to be the definition of nonaccrual provided in 12 CFR 621.2(a)(15).

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government Agencies), Rural areas.

As stated in the preamble, Part 611, Subpart J of Title 12 of the Code of Federal Regulations is being amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: 12 U.S.C. 2031, 2091, 2182, 2183, 2216–2216K, 2243, 2244, 2250, 2254.

Subpart J—Farm Credit System Capital Corporation

2. Section 611.1140 is amended by revising paragraphs (b) introductory text and (b)(1)(ii); by adding paragraph (b)(1)(iii); and by revising paragraphs (b)(2)(v), (b)(2)(vi)(B), (b)(2)(vi)(C), (b)(2)(vi)(F), (b)(2)(vi)(H), (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) to read as follows:

§ 611.1140 Charter and Organization of the Farm Credit System Capital Corporation.

* * * * *

(b) *Board of directors.* The board of directors of the Capital Corporation shall consist of five members, with three members to be elected by the System banks owning the voting stock in the Corporation and two members to be appointed by the Chairman of the Farm Credit Administration Board (FCA Board). The board shall be expanded by operation of law to include two additional members in the event the Secretary of the Treasury purchases any obligation of the Corporation, including stock, with the sixth board member to be appointed by the Secretary of Agriculture and the seventh member to be selected by the other six directors.

(1) * * *

(ii) *Terms.* Each appointed director shall serve a 2 calendar year term, except that the director first appointed by the Chairman shall serve a term ending December 31, 1986. Appointed directors shall serve until their successors are duly seated, shall be required to vacate their positions as provided in paragraphs (b)(2)(vi) (A) through (G) of this section, and may serve successive terms. Vacancies to terms shall be filled by appointment.

(iii) *Appointed director vacancies.* The office of any appointed director shall become vacant if any of the events in paragraphs (b)(2)(vi) (A) through (G) of this section occur to such director. All directors are required to inform the Corporation board of any loans covered by paragraph (b)(2)(vi)(F) of this section in default. System institutions having placed loans of directors in nonaccrual status must notify the Corporation board.

* * * * *

(2) * * *

(v) *Terms.* Each elected director shall serve for a term of 2 calendar years except that the initial term of the director elected to the position in paragraph (b)(2)(ii)(C) of this section shall end on December 31, 1986. Elected directors shall serve until their successors are duly seated, may be removed for cause as provided in the articles of incorporation or bylaws of the Corporation, shall be required to vacate their positions as provided in paragraphs (b)(2)(vi) (A) through (G) of this section, and may serve for successive terms. Vacancies shall be filled by election in accordance with this section.

(vi) * * *

(B) Is adjudged a debtor in an involuntary Federal bankruptcy proceeding or placed in receivership or conservatorship in a Federal or State proceeding and such proceeding is not dismissed within 30 days; or

(C) Seeks reorganization under the Federal bankruptcy laws for personal business interests or that of a corporation in which the director owns the majority or controlling interest; or

* * * * *

(F) Has a loan in his or her name, or in the name of a corporation in which the director owns a majority or controlling interest, or in the name of a partnership in which he or she is a general or limited partner, from a System institution which loan is placed by the institution in nonaccrual status, or from another financial institution, which loan is in default and such default is not cured within 30 days; or

* * * * *

(H) Resigns or is removed for cause by the remaining directors of the board in accordance with the articles of incorporation or the bylaws of the Corporation.

All vacancies shall be filled under the general nomination and election procedures set forth in this paragraph. All directors are required to inform the board of any loans covered by paragraph (b)(2)(vi)(F) of this section in default. System institutions having placed loans of directors in nonaccrual status must notify the Corporation board.

* * * * *

(4) *Expanded board membership.*—(i) *Appointment or selection.* In the event that the Secretary of the Treasury purchases any obligation of the Corporation, including stock, the board of directors of the Corporation shall be expanded to include two members as follows:

(A) One member shall be appointed by the Secretary of Agriculture; and

(B) One member shall be selected by the Corporation board of directors, including the appointee of the Secretary of Agriculture, which member shall not be a stockholder in, or a borrower from, or an employee or agent of any System institution, or a Government employee.

(ii) *Terms.* These directors shall serve 2-year terms as long as any obligations of the Corporation purchased by the Secretary of the Treasury remain outstanding but may be reappointed or reselected at the end of their respective terms. The director appointed under paragraph (b)(4)(i) (A) of this section shall serve at the pleasure of the Secretary of Agriculture but shall be required to vacate his position as provided in paragraphs (b)(2)(vi) (A) through (G) of this section. The director selected under paragraph (b)(4)(i)(B) of this section shall be removable for cause by the unanimous vote of the remaining directors and shall be required to vacate his position as provided in paragraphs (b)(2)(vi) (A) through (G) of this section.

(iii) *Vacancies.* The office of any director appointed or selected in accordance with paragraph (b)(4)(i) of this section shall become vacant if any of the events in paragraphs (b)(2)(vi) (A) through (G) of this section occur to such director. All directors are required to inform the Corporation board of any loans covered by paragraph (b)(2)(vi)(F) of this section in default. System institutions having placed loans of directors in nonaccrual status must notify the Corporation board.

* * * * *

3. Section 611.1142 is amended by revising paragraphs (i) introductory text, (i)(3), and (l)(3) and by adding paragraph (l)(10) to read as follows:

§ 611.1142 General corporate powers.

* * * * *

(i) *Financial assistance.* As soon as practicable after the appointment of a chief executive officer, the Corporation shall establish procedures consistent with this section by which System institutions may apply to the Corporation for financial assistance, and shall make those procedures available to all System institutions. The Corporation may purchase nonaccrual loans and acquired property from System institutions in accordance with paragraph (j) of this section. The Corporation may also provide direct financial assistance to System institutions through stock or other equity purchases, loans, participations, cash contributions, the assumption of some portion of receiving institution's outstanding debt obligations, or any combination of the foregoing. The Corporation shall provide periodic reports to the FCA regarding applications received, the disposition of each application, the type and amount of assistance outstanding, and such other similar information as the FCA may request. The Corporation shall administer direct financial assistance to System institutions according to the standards and criteria set forth below:

* * * * *

(3) A determination of the type and amount of direct financial assistance for any System institution meeting the application requirements of paragraph (i)(1) of this section and the eligibility criteria of paragraph (i)(2) of this section shall be in the discretion of the Corporation taking into consideration the financial condition of the requesting institution, the credit needs of creditworthy borrowers served by the institution, the minimum capital requirements of the institution established under section 4.3 of the Act and 12 CFR Part 615, and the financial and economic condition of the individual Farm Credit district involved and the entire System generally. The Corporation shall structure the financial assistance package in the most cost effective manner giving the recipient institution the greatest benefit from the assistance and ensuring that the recipient institution will use the resources optimally. In no event shall the amount of direct financial assistance to any System institution, together with loss-sharing assistance to which it may be entitled under either district or Systemwide loss-sharing or capital preservation agreements, exceed that necessary to correct any impairment of voting stock or participation certificates of the institution held by its borrowers, unless approved by the FCA. The Corporation shall reject any request for financial assistance if it concludes that the Farm Credit district involved has adequate resources to correct any stock impairment of the requesting institution.

* * * * *

(l) * * *

(3) "Nonaccrual loan" means a loan defined in 12 CFR 621.2(a)(15).

* * * * *

(10) An individual serving in a "joint capacity" for the purposes of paragraph (c) of this section means an individual employed by both the Corporation and a System institution or System service organization, and accountable to each.

* * * * *

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-8312 Filed 4-14-87; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Part 614

Loan Policies and Operations; Borrower Rights

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts amendments to existing regulations governing the lending operations of Farm Credit System (System) institutions. The amendments relate to compliance by the Farm Credit System Capital Corporation (Capital Corporation) with the disclosure, forbearance, and credit review committee regulations, 12 CFR 614.4366–4367, 614.4440–4444 and 614.4513. On October 28, 1986 (51 FR 39486), the Farm Credit Administration (FCA) published final regulations relating to the disclosure of interest rates and related information; practices relating to applications for extensions of credit; forbearance policies; notice of equity retirement; access to stockholders list; and the disclosure of loan documents. The Board determined that these regulations would become effective 30 days after publication, November 28, 1986. Because certain aspects of the final regulations were substantially changed from the regulations as proposed, the Board determined that the public would have an additional 30 days, until December 30, 1986, in which to comment on those particular matters.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On May 8, 1986 (51 FR 17035), the FCA published for comment proposed regulations implementing provisions of the Farm Credit Amendments Act of 1985 (1985 Amendments) (Pub. L. 99-205) relating to various matters, including stockholders' and borrowers' rights. On October 28, 1986, the FCA published final regulations on stockholders' and borrowers' rights. The Board determined that the regulations would be effective 30 days after publication. The Board also determined that since certain aspects of the final regulations involved considerable controversy or were substantially changed from the regulations as proposed, the public would have an additional 30 days in which to comment on such matters.

Specifically, the Board invited comments on the following four areas:

(1) Section 614.4366–4367—The requirements that each borrower be provided with the disclosure of the borrower's effective interest rate.

(2) Sections 614.4440–4444—The requirement that banks for cooperatives comply with the provisions of these sections.

(3) Sections 614.4440–4444 and 614.4513—The right of persons who seek forbearance and submit an application for the renewal, extension, deferral, etc., of the terms of an existing loan to seek review by a credit review committee of the denial of such application.

(4) Sections 614.4440–4444 and 614.4513—Whether, and under what circumstances, loans owned or participated in by the Capital Corporation should be subject to or excluded from the procedures provided in these regulations.

Comments were received from a representative of the 37 banks of the System, the Capital Corporation, banks from two System districts, and a number of non-System groups and organizations. The Board carefully analyzed and considered each comment relating to the subjects for which the Board invited comments and responds to such comments on the basis of a thorough consideration of the merits of the positions expressed. The Board has not considered those comments which addressed matters outside the four specified subject areas. However, those comments will be maintained and

considered, as appropriate, when changes to the regulations are contemplated.

Section-by-Section Analysis and Response to Comments

Sections 614.4366–4367—Requirement that each borrower be provided with disclosure of the borrower's effective interest rate

The non-System commenters strongly supported the effective interest rate disclosure provisions in the final regulations. The commenters believed the regulations are in accord with the statute and are consistent with congressional intent. The Attorneys General from Illinois, Iowa, Kansas, Minnesota, North Dakota, and Wisconsin (attorneys general) disagreed with the Board's rejection of their suggestion that the regulation require relevant information to be provided to borrowers at the time of the credit application. One commenter believed that notwithstanding the fact that all the terms and conditions may not be final, the information available would be of value to borrowers because it would be useful in negotiations with the lending institution. The attorneys general also disagreed that providing this information at the time of the credit application is "unnecessarily burdensome." Contrary to the Board's stated position, they believed that Congress intended for System institutions to have the responsibility to provide this information to borrowers early in the lending process. In addition, the attorneys general expressed concern over the Board's rejection of their suggestion that System institutions be required to disclose how the standard adjustment factors cause a change in the interest rate. The believed that mere identification of such factors is not meaningful.

The banks of one System district reiterated the comments of the Farm Credit Corporation of America (FCCA) to the proposed regulations, and claimed that the effective interest rate disclosure provisions are at variance with section 4.13 of the Farm Credit Act of 1971, as amended (Act), and with the intent of Congress. The commenter asserted that the regulations are ambiguous and do not necessarily provide borrowers with additional useful information.

The System banks' representative concurred with the FCCA's comments to the proposed regulations that section 4.13(a) of the Act was not intended to apply to outstanding loans to existing borrowers. It reiterated that there is no authority in either the 1985 Amendments or the legislative history supporting this approach. It believed that the lack of any such "retroactive disclosure" in the Truth in Lending Act and similar legislation suggests that had Congress intended retroactive disclosure it would have clearly stated so. The System banks' representative also expressed concern that because of the work involved, it was uncertain whether the System would be able to provide this information by February 28, 1987, as required by the regulations. It also argued that retroactive disclosures are neither timely nor meaningful as applied to a loan with a term of 1 year or less. It believed that there is little or no likelihood that a borrower will seek refinancing for such a loan. It recommended that the FCA exempt such loans from retroactive disclosure and claimed that such action would be consistent with the Act and would relieve a considerable burden on the System. In addition, it requested clarification of whether retroactive and prospective disclosure applies to noninvesting borrowers from System institutions.

The Capital Corporation believed it should be exempt from the interest rate disclosure requirements for a number of reasons. It argued that the Act distinguishes the Capital Corporation and its unique role from other System institutions and, that to the extent it does so, the Capital Corporation must be dealt with separately. The Capital Corporation acknowledged that section 4.14 of the Act does not authorize different treatment for it from that of other System institutions. It believed, however, that since the FCA has accorded different treatment in certain regulations to various System institutions based on their role, the same approach should be taken with the Capital Corporation. The Capital Corporation further asserted that the purpose of this disclosure requirement is not served by having it provide borrowers with such information. It contended that disclosure is intended to provide borrowers with accurate and complete information before they become legally obligated on a loan or, in the case of changes in interest rates, to afford borrowers the opportunity to obtain substitute financing. The Capital Corporation argued that since it does not originate loans and the only loans it services are nonaccrual, high-risk loans for which alternate financing is unlikely, such disclosure is unnecessary, unwarranted, and should not be required. The Capital Corporation and the System banks' representative questioned whether the FCA had incorporated a change in the final regulations with respect to loans with multiple borrowers. The preamble to the final regulations stated that the regulations had been changed to provide that disclosure to only one of the borrowers on such loans satisfies the regulations.

The Board again declines to amend the regulation to require the disclosure of information at the time of the credit application. The Board believes that requiring the institution to provide the information at the time of such application is not meaningful because the terms and conditions of the loan contract have not been finalized and may be subject to change. Disclosure is meaningful and timely as required by the Act, when the institution is in a position to make a complete and accurate disclosure, that is, when the terms and conditions of the loan contract have been finalized. However, as an editorial change, the Board has amended § 614.4367(a) to provide that disclosure must be made "prior to" the execution of the loan documents. This change is merely to clarify that the disclosure must occur before a borrower becomes legally obligated on a loan. It does not require that disclosure be given at any particular time so long as the disclosure is in advance of the execution of the loan documents. The Board continues to believe the regulations provide for the disclosure required by the Act. The Act does not obviate the need for borrowers to employ prudent business practices, including inquiries about relevant terms of the credit programs offered by System institutions about which borrowers have questions.

The Board also declines to require that System institutions explain how a change in the factors causes a change in the interest rate. The Act does not require this disclosure and the Board does not believe it would appreciably assist borrowers in evaluating the desirability of borrowing from a System institution. With respect to the question about noninvesting borrowers, the Board notes that the only disclosure which would not be required, by definition, is that of the effective interest rate.

The Board rejects the position of the Capital Corporation that it should not be required to provide the disclosures required under this subpart. Rather, the Board believes that providing the disclosures is the responsibility of the institution, including the Capital Corporation, taking the action that triggers disclosure or that is servicing the loan when the disclosure obligation arises. In the final regulations, the Board did not make the Capital Corporation

subject to the requirements of Subpart L because the Board had been informed that the Capital Corporation did not service loans. The Board was also informed that this responsibility remained with the originating institutions, which would provide the disclosures required under section 4.13 of the Act. However, in their comments, the Capital Corporation and the System banks' representative indicated that, for certain loans, the Capital Corporation is solely responsible for servicing decisions and the originating institution retains no residual authority. The Board notes that section 4.13 of the Act requires System institutions to provide certain interest rate disclosures to borrowers and section 4.28A(1) of the Act defines the Capital Corporation to be a System institution. Where the FCA has excluded a System institution from complying with a regulatory requirement, such as that identified by the Capital Corporation, it has been because the institution did not engage in the activity which the regulation governs. Whether the institution engages in unique functions is not the issue, rather it is whether the institution undertakes activities which place it within the scope of the regulation. The Capital Corporation contends that disclosures of changes in interest rates on its loans is unnecessary and not consistent with what it views as the purpose of the statute, i.e., to afford borrowers the opportunity to obtain substitute financing. However, section 4.13 of the Act does not provide for any exceptions based on a loan's status. Therefore, if only the Capital Corporation is in a position to provide these disclosures for the loans it services it must provide the disclosures required by §§ 614.4366 and 614.4367 if applicable. To clarify this point, a new paragraph has been added to § 614.4367.

The Board again rejects the System banks' position that the disclosure requirements of § 614.4367 for existing loans is inconsistent with the Act and its legislative history. The System banks' arguments are essentially no different from those submitted by the FCCA in its comments to the proposed regulations. The Board's position, as stated in the preamble to the final regulations, rebuts the FCCA's arguments. (See 51 FR 39486–39489 and 39490.) The Board notes that the comments of the non-System commenter were in favor of the final regulations and that most System institutions complied with the requirements in a timely fashion.

The Board acknowledges that an amendment to the regulation, to provide that in the case of a loan with multiple borrowers disclosure to any one of such borrowers satisfies the regulation, was inadvertently not made when the regulation was published. That amendment is incorporated in the regulations as a new paragraph in § 614.4367.

Minor editorial changes were also made to § 614.4366(e).

Sections 614.4440–4444—Required compliance by bank for cooperatives with these sections

Only one commenter, a bank for cooperatives, absolutely objected to requiring banks for cooperatives (BCs) to comply with this subpart. It claimed that the credit review committee provisions were intended to benefit farmers in their transactions with their lending institutions and not the BCs' corporate clientele. It asserted the regulations are outside the scope of the Act. The commenter did not cite any authority in either the Act or the legislative history to support its position. The Board concludes that absent an exception in section 4.14 of the Act for BCs, Congress intended the provision to apply to them. Accordingly, the Board believes a statutory amendment would be required to exempt BCs and no change is made to the regulations.

The System banks' representative generally opposed allowing a right of review by a credit review committee of an adverse forbearance decision of any System institutions, including BCs. This comment is discussed below.

Sections 614.4440–4444 and 614.4513—The right of persons who request forbearance on an existing loan to seek review by the credit review committee of a denial of such request

The System banks' representative noted a number of objections to this approach. It argued that requiring a credit review committee procedure for review of an adverse forbearance decision is outside statutory authority and inconsistent with legislative history. It asserted that the 1985 Amendments did not grant borrowers any new substantive rights to forbearance, but only required disclosure to borrowers of their right to seek forbearance. The System banks' representative believed that the inappropriateness of having a review of an adverse forbearance decision is clearly demonstrated in the case of BCs. It claimed that this type of review process does not exist for large commercial borrowers. In its opinion, having such a review procedure for BC loans, which frequently involved third party guarantors as well as collateral-sharing agreements in loan participations, could dramatically affect BC responsibilities to third parties under such agreements. It suggested that, at a minimum, the FCA should clarify that credit review committee procedures are not applicable for adverse forbearance decisions on loans subject to an existing agreement affecting the rights of non-System third parties. The System banks' representative also inquired about the degree of interaction between System forbearance procedures and other available means of protection from collection which a borrower might seek, such as a temporary restraining order enjoining foreclosure or bankruptcy. It theorized that, for example, where a borrower has availed himself or herself of any judicial protection and a court denies the borrower's forbearance request, such denial could not be reviewed subsequently by a credit review committee. In its opinion, since a judicial setting affords a borrower the opportunity to seek redress, convening a credit review committee is unnecessary.

The banks of one System district suggested that the right of review be waived where mandatory mediation is required by a State, such as in Iowa. In that instance, the banks believed that borrowers are not entitled to an appeal to the credit review committee. The Board does not believe there is statutory authority for such a waiver. In any case, the Board notes that it would seem appropriate for a borrower to exhaust all possibilities within the institution before resorting to, or being required to submit to, external resolution processes such as mediation, etc.

The Board rejects the contention of the System banks' representative that neither the Act nor the legislative history supports allowing a credit review committee to review a denial of forbearance. The System banks' representative cited no provision in the Act or the legislative history to support its interpretation. The Board agrees that the 1985 Amendments did not create a new substantive right or entitlement to forbearance. Rather, the Act and the legislative history indicate that Congress intended that the existing review procedure be modified to ensure that the borrower's application for forbearance receives a fair and objective review. As with other credit decisions, whether or not to forbear remains a business judgment to be made by the institution. The Board notes that allowing a credit review committee to review a denial of forbearance was supported by all the other commenters who addressed this issue.

The Board believes that the System banks' rationale for excluding BCs is unconvincing. Its claim that such a

review process is unheard of in the commercial context is irrelevant in light of the statutory requirements. As stated above, the Board believes a statutory amendment would be necessary to exempt BCs. Furthermore, the System banks' contention that review procedures could dramatically affect a BC's responsibilities to third parties is vague and undocumented. The credit review procedures do not provide any additional substantive rights to borrowers. Section 4.14 of the Act is merely a procedural safeguard to ensure that the institution applies its forbearance policy in an impartial and consistent fashion. If the borrower's forbearance request does not satisfy the institution's criteria, a review by the credit review committee should not change this result or affect the legal rights of any third parties involved. In addition, § 614.4513(f) specifically requires that institutions consider the effect of a forbearance decision on cosigners and guarantors.

In response to the System banks' query regarding the interaction of the credit review provisions and various legal protections against collection actions available to borrowers, the Board offers the following guidance. The determining factor is whether the court in the legal proceeding has the authority to adjust the debt of the borrower to the lending institution and has in fact done so. For example, in the bankruptcy context, the court must approve the financial plan of the debtor. Where an adjustment of a debt held by a System institution occurs, the actions of the bankruptcy court precludes the borrower from seeking additional forbearance remedies from the System institution. In contrast, where a court, whether in bankruptcy or otherwise, has not taken any action affecting the level or collectibility of the debt, and has permitted the System institution to commence or continue collection proceedings, the borrower's right to seek forebearance or a review of a denial of forbearance is unaffected.

The regulations have not been changed in response to the comments on these points.

Sections 614.4440–4444 and 614.4513—Whether, and under what circumstances, loans owned or participated in by the Capital Corporation should be subject to or excluded from the procedures provided in these regulations

The Capital Corporation believes that Congress intended for the originating institutions to comply with the borrowers' rights provisions, but not the Capital Corporation, because of its unique role. It referred to section 4.281(a) of the Act as prohibiting the Capital Corporation from acting other than in the interests of System institutions. The Capital Corporation also contended that because section 4.28G(a)(20) of the Act sets forth a specific procedure for processing forbearance requests, such procedure should supersede the general regulatory forbearance provisions. Furthermore, the Capital Corporation believes requiring it to comply with such provisions does not further the purpose of the Act because borrowers ordinarily will have exhausted the credit review process within the originating institution prior to the assets being transferred to the Capital Corporation.

Other commenters opposed excluding the Capital Corporation from these provisions. They asserted that the Act authorized the Capital Corporation to forbear on loans to System borrowers. One commenter stated that since the Capital Corporation is defined in the Act to be a System institution and the Act requires System institutions, without exception, to develop forbearance policies and to establish credit review committees, the Capital Corporation is required to comply with these provisions. In its opinion, if the Capital Corporation did not have to comply with these provisions, borrowers whose loans are sold to, or otherwise serviced by, the Capital Corporation would have lost the rights mandated by Congress. Accordingly, they believed the Capital Corporation should be subject to the regulations to the same extent as other System institutions.

While not specifically commenting on the propriety of applying these provisions to the Capital Corporation, the System banks' representative noted several problems with respect to extending credit review procedures for adverse forbearance decisions to the Capital Corporation. It believed that review by an association credit review committee of a credit decision made by the Capital Corporation on a loan transferred to the Capital Corporation is illogical because the association has no further responsibility for or authority over such loan. It suggested that the regulations should specify that the review of an adverse credit decision shall be by the credit review committee of the institution responsible for servicing the loan. It also advised that the FCA acknowledge that credit review committee procedures are inapplicable to loans transferred to the Capital Corporation prior to the effective date of the regulations. The System banks' representative noted that the borrowers on these loans have exhausted all forbearance-type remedies and such loans generally are in bankruptcy, foreclosure, or at least 90 days delinquent. It also recommended that a provision be added to the regulations to ensure that every borrower has an opportunity to apply for forbearance and to receive credit review committee review of such decision prior to commencement of any collection action or transfer of a loan to the Capital Corporation.

The Board rejects the contention of the Capital Corporation that it should not be required to develop a written policy on forbearance. Sections 4.13(b) and 4.14 of the Act provide, respectively, that each System institution shall develop a policy on forbearance, and establish a credit review committee. Neither section nor the legislative history provides an indication that Congress intended to allow the Capital Corporation an exemption from these provisions. In fact, section 4.28G(a)(20) of the Act specifically authorizes forbearance by the Capital Corporation. The Board agrees with the Capital Corporation that it was established to provide financial and technical assistance to System banks and associations. The Capital Corporation's activities are not incompatible, however, with a responsibility to comply with the forbearance provisions of the Act. The Capital Corporation is authorized to restructure loans, compromise indebtedness, and where determined necessary by the Capital Corporation, to liquidate loans. The regulation neither specifies the criteria the Capital Corporation must use to determine whether to forbear, nor does it require it to forbear. The forbearance regulation is intended to ensure that the Capital Corporation applies forbearance in a consistent and fair manner. The ultimate decision of whether to forbear is a business determination of the institution with the objective of maximizing the institution's recovery on the loan, taking into account the interests of stockholders, borrowers, and investors. (See 51 FR 39486, 39496.) The Board notes that other commenters supported requiring the Capital Corporation's compliance with the forbearance regulations.

In response to a comment by the System banks' representative regarding the interaction between the originating institution's credit review committee and the Capital Corporation for reviews of loans which have been transferred to the Capital Corporation, the Board further amends the regulations. The Board agrees with the System banks'

representative that until the time has elapsed for the borrower to request a review of an adverse forbearance decision, or until the originating institution's credit review committee has reached a decision, such institution should not transfer a loan to the Capital Corporation. In this manner, the borrower's right to a review of an adverse credit decision is preserved, and the possibility that an institution might transfer a loan to the Capital Corporation to avoid the institution's responsibility to provide a review of an adverse forbearance decision is eliminated. However, the regulation also provides that the institution may still take action to protect assets or collateral. The Capital Corporation remains responsible for resolving forbearance decisions arising under its forbearance policy for loans transferred to it.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Credit, Government securities, Investments, Rural areas.

As stated in the preamble, Part 614 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

Authority: 12 U.S.C. 2183, 2199, 2202, 2243, 2244, 2252(a)(10).

2. Section 614.4366 is amended by revising paragraph (e) to read as follows:

Subpart K—Disclosure of Loan Information

§ 614.4366 [Amended]

* * * * *

(e) "Standard adjustments factors" means those financial elements, including but not limited to, an institution's cost of funds, operating expenses, provision for loan losses, changes in retained earnings, and capital sharing which are typically taken into consideration by an institution in adjusting the interest rate on loans.

3. Section 614.4367 is amended by revising paragraph (a) introductory text and by adding paragraphs (g) and (h) to read as follows:

§ 614.4367 Required disclosures.

(a) Each association shall furnish the following information in writing to a prospective borrower prior to the time the person executes the loan documents:

* * * * *

(g) The Farm Credit System Capital Corporation shall make the disclosures required by paragraphs (a) through (f) of this section, as applicable, for any loan which it services; provided, however, that if the disclosure required by paragraphs (b) and (f)(1) of this section were made by the originating institution such disclosure need not be made by the Capital Corporation.

(h) In the case of a loan involving more than one primary obligor, the requirements of paragraphs (a) through (f) of this section will be satisfied by providing the disclosures to any one of such parties.

Subpart L—Notice of Action and Review

4. Section 614.4440 is amended by revising paragraph (c) to read as follows:

§ 614.4440 Definitions.

* * * * *

(c) "System institution" means:
(1) Banks for cooperatives;
(2) Federal land bank associations;
(3) Production credit associations; and
(4) The Farm Credit System Capital Corporation.

5. Section 614.4442 is amended by revising paragraph (b) to read as follows:

§ 614.4442 Credit review committees.

* * * * *

(b) The board of directors of each production credit association, each bank for cooperatives, and the Farm Credit System Capital Corporation shall establish one or more credit review committees. The membership of each committee shall include at least one member of the institution's board and a majority of each committee shall be composed of persons who were not involved in making the adverse credit decision under review. The duties of the members of the review committees may not be delegated to any other person, except that the duties of the board member on the committees may be delegated upon the unanimous vote of the board.

6. Section 614.4443 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 614.4443 Review process.

* * * * *

(b) Until the time period for an applicant to request review of the decision has passed, or until the credit review committee has rendered its decision, whichever is later, an institution shall not commence any collection action or transfer such loan to the Farm Credit System Capital Corporation. This paragraph shall not prevent an institution from taking any action necessary to avoid the dissipation of assets, or the diversion or deterioration of collateral.

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-8404 Filed 4-14-87; 8:45 am]

BILLING CODE 6705-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 203

[Release No. 33-6710; 34-24311; 35-24365; 39-2083; IC-15669; IA-1066]

Amendment of Rules Concerning Access to Files and Providing Copies of Formal Orders of Investigation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is amending its rules concerning access to files to provide the Director of the Division of Enforcement with authority to grant access to the Commission's regulatory files. Rule 7(a) of the Commission's Rules Relating to Investigations is also being amended to permit officials in the Regional Offices at the level of Assistant Regional Administrator or higher and officials in the Division of Enforcement at the level of Assistant Director or higher to approve the furnishing of copies of formal orders of investigation to persons testifying or producing documents in investigative proceedings.

EFFECTIVE DATE: April 15, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas B. Lawson, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 ((202) 272-2241).

SUPPLEMENTARY INFORMATION: Rule 30-4(a)(7) of the Commission's Rules on Organization; Conduct and Ethics; and Information and Requests currently provides the Director of the Division of Enforcement with authority to grant access to Commission enforcement files to specified entities, including domestic and foreign law enforcement authorities, and self-regulatory organizations. 17 CFR 200.30-4(a)(7). The Commission also receives requests from these entities for access to Commission regulatory files. The Commission is now

amending this rule to provide the Director of the Division of Enforcement with authority to grant access to both regulatory and enforcement files. When access is requested to materials in the Commission's regulatory files, the amended rule requires the concurrence of the head of the division or office responsible for those files before access may be granted.

Rule 7(a) of the Commission's Rules Relating to Investigations currently gives persons furnishing evidence in a formal Commission investigation a right to receive a copy of the Commission's formal order of investigation upon the approval of the Director, Associate Director or Assistant Director of the Division supervising the investigation. 17 CFR 203.7(a). If the investigation is being conducted by a Regional Office, such approval must come from the Regional Administrator. The requirement that approvals for copies of formal orders of investigation in Regional Office matters be granted by the Regional Administrator was burdensome and unnecessary. Accordingly, Rule 7(a) has been amended to extend the authority to provide copies of formal orders of investigation to officials in the Regional Offices at the level of Assistant Regional Administrator or higher and to officials in the Home Office at the level of Assistant Director or higher.

The Commission finds, in accordance with the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(A), that these amendments relate solely to agency organization, procedure, or practice, and that notice and public comment in accordance with the APA is not necessary.

Statutory Authority

The Commission is adopting these amendments pursuant to its authority under sections 19 and 20 of the Securities Act of 1933 (15 U.S.C. 77s and 77t); Sections 21 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78u and 78w); Sections 18 and 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r and 79t); Sections 319 and 321 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss and 77uuu); Sections 38 and 42 of the Investment Company Act of 1940 (15 U.S.C. 80a–37 and 80a–41); Sections 209 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9 and 80b–11); and the Act of August 20, 1962, Pub. L. No. 87–592, 76 Stat. 344 (15 U.S.C. 78d–1 and 78d–2), as amended by the Securities Act Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 163 (June 4, 1975).

Paperwork Reduction Act Applicability

The amendments are not subject to the Act because it does not impose an information collection requirement.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

17 CFR Part 203

Administrative practice and procedure, Investigations, Securities.

Text of Amendments

17 CFR is amended as follows:

1. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

2. Section 200.19b is revised to read as follows:

§ 200.19b Director of the Division of Enforcement.

The Director of the Division of Enforcement is responsible to the Commission for the supervision and conduct of all of the enforcement activities under each of the acts administered by the Commission and the investigations relating thereto. The Director is responsible also for recommending the institution of administrative and injunctive actions arising out of such investigations and enforcement activities and for the determination of whether the available evidence supports the allegations in the proposed complaint. In addition, the Director is responsible, in collaboration with the General Counsel, for the review of cases to be referred to the Department of Justice with a recommendation for criminal prosecution, and for granting or denying requests by domestic and foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act for access to materials in the Commission's enforcement files and, in collaboration with other involved Commission offices and divisions, regulatory files.

3. In § 200.30–4, paragraph (a)(7) is revised to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(7) To grant requests for access to, or copies of, materials in the Commission's enforcement and regulatory files upon written request submitted by domestic and foreign governmental authorities, self-regulatory organizations, receives, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act; *Provided* That, in matters in which the Commission has entered a formal order of investigation, requests for access to, or copies of, materials in the Commission's enforcement files shall be granted only with the concurrence of the General Counsel or his or her delegate; and *Provided Further* That requests for access to, or copies of, materials in the Commission's regulatory files shall be granted only with the concurrence of the head of the Commission division or office responsible for such files or his or her delegate.

* * * * *

PART 203—[AMENDED]

4. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 as amended; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

5. In § 203.7, paragraph (a) is revised to read as follows:

§ 203.7 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding shall, upon request, be shown the Commission's order of investigation. Copies of formal orders of investigation shall not be furnished, for their retention, to such persons requesting the same except with the express approval of officials in the Regional Offices at the level of Assistant Regional Administrator or higher, or officials in the Division or Divisions conducting or supervising the investigation at the level of Assistant Director or higher. Such approval shall not be given unless the person granting such approval, in his or her discretion, is satisfied that there exist reasons consistent both with the protection of privacy of persons involved in the

investigation and with the unimpeded conduct of the investigation.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

April 8, 1987.

[FR Doc. 87-8383 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

[T.D. 86-118]

Conforming Amendments to the Customs Regulations; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 86-13984, published as T.D. 86-118 on June 20, 1986 (51 FR 22513), numerous changes were made to sections of the Customs Regulations to conform to various executive, legislative, and administrative actions. Amendments concerning the personal exemptions available to returning residents were inaccurately revised, and some examples showing how to calculate duty owed were not revised in accord with the new exemption levels. This document corrects those inaccuracies.

EFFECTIVE DATE: April 15, 1987.

FOR FURTHER INFORMATION CONTACT: Samuel McLinn, Air Passenger Program Manager (566-5607).

SUPPLEMENTARY INFORMATION:

Background

T.D. 86-118, published in the **Federal Register** on June 20, 1986 (51 FR 22513), included conforming amendments to § 148.101, Customs Regulations (19 CFR 148.101), to account for the changes in personal exemptions allowed residents returning to the U.S. from American Samoa, Guam, the U.S. Virgin Islands, or elsewhere. However, the amendments did not include new figures to be used in the examples provided in that section nor was the change in the flat rate of duty on noncommercial importations, formerly 10% of $600 worth of articles imported for personal or household use, or as bona fide gifts, now 10% of $1000 worth of such articles, pursuant to item 869.00, Tarriff Schedules of the United States (19 U.S.C. 1202), included.

PART 148—[AMENDED]

To correct these omissions, § 148.101 is further amended in the following manner:

§ 148.101 [Amended]

1. In the introductory text to the section, the figure "$800" is removed from the three places it appears and "$1,000" is inserted in its place.

2. In "Example 1", the figure "$1,050" is removed and "$1,950" is inserted in its place, the figure "$300" is removed and "$400" is inserted in its place, and the table is amended to read as follows:

	Fair retail value	Duty
(a) The $400 personal exemption	$400	.....
(b) Articles which have a free rate of duty	100	.....
(c) The $1,000 flat rate of duty calculated at 10 percent	1,000	$100
(d) Balance of articles subject to duty at rates other than the flat rate	[1] 450	([1])
Total	[1] 1,950	([1])

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rates.

3. In "Example 2", the figure "$2,900" is removed and "$4,100" is inserted in its place, the figure "$600" is removed and "$800" is inserted in its place, and the table is revised to read as follows:

	Fair retail value	Duty
(a) The $800 personal exemptions for residents returning from the Virgin Islands are grouped for a total of	$1,600	.....
(b) Articles which carry a free rate of duty	100	.....
(c) The $1,000 flat rate of duty allowances calculated at 5 percent for persons arriving from the Virgin Islands are grouped for a total of	2,000	$100
(d) Balance of articles subject to duty at rates other than flat rates of duty	[1] 400	([1])
Total	[1] 4,100	([1])

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under sec. 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rates.

Dated: April 8, 1987.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 87-8376 Filed 4-14-87; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 172

[T.D. 87-51]

Customs Regulations Amendments Relating to Reduction of Petitioning Time in Liquidated Damages Cases

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to expedite the processing of cases in which liquidated damages have been assessed against a bond holder for violations of the Customs laws and regulations. The time in which the principal under the bond may petition Customs for relief from the payment of liquidated damages is being reduced from 60 days to 30 days from the date of mailing of the notice of the liquidated damages incurred. It also provides that the surety will receive notice to pay the liquidated damages, if the principal fails to either timely file a petition or to pay or make arrangements to pay the liquidated damages. The notice will be sent to the surety within 10 days after the expiration of the principal's 30-day petitioning period or as soon thereafter as possible. The surety will then have an additional 30 days from the date of such notification to petition Customs for relief from the claim for liquidated damages. This change will expedite the processing of such cases and conform the administrative petitioning time in these cases to that which currently applies to seizure and forfeiture cases.

EFFECTIVE DATE: May 15, 1987.

FOR FURTHER INFORMATION CONTACT: Evelyn M. Suarez, Entry Procedures and Penalties Division, (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

Section 172.2, Customs Regulations (19 CFR 172.2), provides procedures which are used when a petition for relief from a claim for liquidated damages for violation of the conditions of a bond is not filed or when either payment is not made to Customs or arrangements are not made to pay by any party who is liable for the payment of liquidated damages assessed for violation of any of the conditions of the bond. Currently,

§172.2 allows for a 60-day period from the mailing date of the notice of liquidated damages incurred before any collection action is taken by Customs. However, collection action may be temporarily withheld if it appears that the party liable for the payment of liquidated damages is absent from the U.S. at the time the notice is received or for more than 30 days during the 60-day petitioning period.

Current § 172.12, Customs Regulations (19 CFR 172.12), refers to the 60-day period for filing a petition for relief in liquidated damages cases and current § 172.33, Customs Regulations (19 CFR 172.33), provides for a similar 60-day period for filing supplemental petitions for relief, under certain specified conditions.

Similar 60-day filing periods formerly applied to petitions for relief filed in accordance with the provisions of Parts 162 and 171, Customs Regulations (19 CFR Parts 162, 171), concerning cases involving the seizure of merchandise subject to forfeiture or fines and penalties incurred for violations of the Customs laws and regulations. Pursuant to T.D. 85–195, published in the **Federal Register** on December 10, 1985 (50 FR 50287), this 60-day petitioning period was reduced to 30 days. This reduction was done to conform Parts 162 and 171 to changes made to the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*), with respect to the forfeiture and disposition of property seized by Customs. The petitioning period change was one of many changes to Parts 162 and 171, which resulted from certain provisions of the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473) and the Tariff and Trade Act of 1984 (Pub. L. 98–573). It was expected that these changes would reduce Customs costs relating to the storage and upkeep of seized property and expedite the processing of penalty and forfeiture cases resulting from the seizure of the property.

At the time the changes to Parts 162 and 171 were proposed, it was determined advisable not to include liquidated damages cases among those subject to the new 30-day petitioning period. Inasmuch as seized property is not being held by Customs in liquidated damages cases, it was believed that the same urgency did not attach to these cases. It was subsequently decided, however, that liquidated damages cases should nevertheless be subject to a 30-day petitioning period in order to expedite the disposition of these cases, thereby saving Customs needed time and resources. It was also decided that having the same petitioning period for seizure, forfeiture, and liquidated damages cases would be easier to administer since it would preclude any confusion as to when the 30-day or the 60-day petitioning period would apply.

Accordingly, by notice published in the **Federal Register** on April 25, 1986 (51 FR 15637), it was proposed to amend §§ 172.2(a), 172.12(b), and 172.33(a)(1) and (c)(2)(ii), Customs Regulations, to reduce the petitioning time in liquidated damages cases from 60 days to 30 days. It was also proposed to amend § 172.2(b), to reduce from "more than 30 days" to "more than 20 days," the time during the 30-day petitioning period that a party liable for the payment of liquidated damages must be absent from the U.S. in order for collection action on the case to be temporarily withheld by Customs.

It was also proposed to amend § 172.2 to provide for the referral of unsatisfied liquidated damages claims to the Department of Justice rather than the U.S. attorney. This direct referral to the Department of Justice would expedite the processing of these cases and is necessary inasmuch as cases involving unsatified liquidated damages claims are decided by the Court of International Trade rather than the local district courts before which the U.S. attorneys appear. In response to the notice, 48 comments were received. A discussion of these comments and our responses follows.

Discussion of Comments

Comment

Most of the commenters oppose reducing the petition filing time from 60 days to 30 days in liquidated damages cases. They state that requiring a petitioner to formulate and submit a petition in so limited a time period would place a tremendous burden on the petitioner, and that it would be unfair and a denial of due process. They also claim that this change may deprive petitioners of the right to effective counsel since there would be insufficient time to retain counsel and for counsel to prepare aand submit a petition.

They further claim that Customs delay in issuing liquidated damages claims makes research of pertient issues and coordination of the information gathered extremely difficult to accomplish within 30 days. Information or documents vital to a petitioner's case may be located in other countries and acquisition of this evidence may take considerable time. Consequently, the proposed reduction would result either in a flurry of requests for an extension of the petitioning period or the submission of less complete, less thoughtful petitions.

Response

Customs believes that in most liquidated damages cases, 30 days from the mailing date of the liquidated damages notice is a reasonable period of time for the principal to submit a petition. In most cases, the principal or importer has it its possession all the information necessary for the preparation of a petition and can be reasonably expected to submt a responsive petition within 30 days. However, Customs recognizes that in certain instances principals may require additional time to adequately respond to the liquidated damages notice. Therefore, the same criteria for granting extensions which are currently in use for penalty and forfeiture cases in § 171.15, Customs Regulations (19 CFR 171.15), will be used for liquidated damages cases.

Comment

The proposed change would be particularly detrimental to large corporations because the liquidated damages notice may take two or three weeks after its mailing date to be routed to the appropriate individual within the corporation. This delay would allow very little time to draft and file a petition.

Response

The internal handling of mail within a corporation is not a matter over which Customs has control. It is the responsibility of the corporation to see that the liquidated damages notice is routed to the appropriate individual for timely response.

Comment

Conforming the petitioning period in liquidated damages cases to that in seizure ane penalty cases is inappropriate inasmuch as there is not the same concern in a liquidated damages case for urgent release and disposition of the merchandise since no merchandise is being held by Customs. The reduction of the petitioning period simply for "housekeeping" purposes at the expense of petitioners is unwarranted.

Response

Although no seized merchandise is being held by Customs in liquidated damages cases, there are other valid considerations that warrant the reduction of the petitioning period. One is the expedition of the disposition of these cases, saving Customs time and resources that could be spent elsewhere. Another consideration is the avoidance of confusion as to when a 30-day or a

60-day petitioning period would apply since the same 30-day period would apply in seizure, penalty, and liquidated damages cases.

Comment

Shortening the petitioning period in liquidated damages cases will not result in any faster disposition of the cases since most of the delays are attributable to Customs.

Response

We disagree. Shortening the petitioning period will allow Customs to receive and act on these cases more quickly.

Comment

The sureties claim that giving concurrent notice of the liquidated damages claim to them and the principal and then allowing only a 30-day petitioning period is a denial of due process since at the time the surety wrote the particular bond it assumed that there would be a 60-day period in which to petition for relief. They also claim that concurrent filing periods are unfair since a surety generally has none of the relevant information available to it at the time it receives the notice, and therefore must use much more time to seek out information from Customs, the importer and its broker. Also, Customs often does not furnish the surety with sufficient documentation to fully investigate and properly handle such claims.

The sureties also contend that since over 90 percent of the liquidated damages claims are resolved by Customs and the principal without any involvement on the part of the surety, requiring the surety to investigate and prepare petitions in all cases is simply wasteful of its resources. They believe that there should be a separate and consecutive petitioning period for sureties, to allow them to devote their attention only to those cases in which there has not been a resolution of the claim.

For the above reasons, some of the commenters contend that the 60-day petitioning period for the principal and surety should be retained. One commenter also suggests that the surety should be notified by Customs within 10 days after expiration of the period for filing a petition by the principal and that the surety should be given an additional 60 days from the date of this notification to file its petition.

Response

We agree that a large majority of liquidated damages cases are resolved by the bond principal without any need for involvement of the surety. We also agree that the surety generally does not have the information relating to the claim available to it at the time the notice of the claim is received.

For these reasons a separate petitioning period is warranted for the surety, to commence after it is notified of the expiration of the principal's 30-day petitioning period if no petition is filed, or the principal's failure to comply with Customs decision on the petition.

Accordingly, the proposal is being revised to include a separate, consecutive petitioning period for sureties. They will receive notification to pay the liquidated damages only if the bond principal has not complied with the notice of liquidated damages, within 10 days after either the expiration of the principal's 30-day petitioning period if no petition is filed or payment of the liquidated damages is not tendered, or if the principal fails to comply with Customs decision on the petition or as soon thereafter as possible. The surety will have an additional 30 days from the date of this notification to file a petition for relief.

Comment

Customs should instruct the principal to file a copy of its petition with the surety, in order to eliminate unnecessary communication between Customs and the surety and to allow the surety to make early decisions in certain cases. It is also suggested that Customs attach relevant documents, *e.g.*, bonds, entry papers and redelivery notices, to the notice of liquidated damages, to help speed up the response time of the sureties.

Response

It is not Customs responsibility to instruct the principal to supply any document to its surety. That is a matter for these parties to resolve between themselves. Also, Customs does not have the time nor the resources to furnish the surety with copies of bonds, entry papers, etc. These documents should be furnished by the bond principal with whom the surety has entered into a contractual relationship. Also, one of the reasons for the surety's separate 30-day petitioning period is to allow it sufficient time to collect such documentation.

After consideration of all the comments and further review of the matter, we have decided to adopt the proposed amendments with the modification noted.

Further, an additional change is being made to Part 172 in this document. The reference to the U.S. attorney in § 172.23 is being removed and a reference to the Department of Justice is being inserted, to conform that section to the identical change being made to § 172.2.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 172

Administrative practice and procedures, Liquidated damages.

Amendments to the Regulations

Part 172, Customs Regulations (19 CFR Part 172), is amended as set forth below.

PART 172—LIQUIDATED DAMAGES

1. The authority citation for Part 172 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 172.2 is revised to read as follows:

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to Department of Justice.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 30 days from the date of mailing of the notice of the liquidated damages incurred, as provided in § 172.1 (except for sureties who are provided a separate petitioning period under § 172.12(b)), or within such additional time as may have been granted, the district director shall promptly refer the claim to the Department of Justice.

(b) *Absence from the U.S.* If it appears that the parties liable for liquidated damages are absent from the U.S. or were absent for more than 20 days during the 30-day period referred to in paragraph (a) of this section, the district director may withhold such referral for a reasonable time unless other action is

expressly authorized by the Commissioner of Customs.

3. Section 172.12(b) is revised to read as follows:

§ 172.12 Filing of petition for relief.

* * * * *

(b) *When filed.*

(1) Except with respect to sureties, a petition for relief shall be filed within 30 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the district director.

(2) The surety will receive notice to pay the liquidated damages if the principal fails to either timely file a petition or to pay or make arrangements to pay the liquidated damages. The notice will be sent to the surety within 10 days after the expiration of the principals 30-day petitioning period or as soon thereafter as possible. The surety will then have an additional 30 days from the date of this notification to file its own petition for relief.

§ 172.23 [Amended]

4. Section 172.23 is amended by removing the words "U.S. attorney," and by inserting, in their place, the words "Department of Justice."

5. Section 172.33 is amended by revising paragraphs (a)(1) and (c)(2)(ii) to read as follows:

§ 172.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director by the interested parties. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision: or

* * * * *

(c) * * *

(2) A second supplemental petition will not be considered except in one of the following circumstances: * * *

(ii) If it is filed within 30 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

* * * * *

William von Raab,

Commissioner of Customs.

Approved:

Francis A. Keating, II,

Assistant Secretary of the Treasury.

March 24, 1987.

[FR Doc. 87-8377 Filed 4-14-87; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 82N-0395]

Aspartame as an Inactive Ingredient in Human Drug Products; Labeling Requirements; Postponement of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; postponement of effective date.

SUMMARY: The Food and Drug Administration (FDA) is announcing a postponement of the effective date for a final rule concerning the labeling of aspartame as an inactive ingredient in human drug products. The new effective date (October 20, 1987) applies only to the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient declare the amount of phenylalanine in each dosage unit. April 20, 1987, remains the effective date for the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient bear a statement alerting phenylketonurics that the product contains phenylalanine. The agency is taking this action in response to two citizen petitions that requested a postponed effective date to reduce the economic burden caused by the labeling change required by the final rule published in the Federal Register of January 20, 1987 (52 FR 2108).

DATES: April 20, 1987, remains the effective date for the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient bear a statement alerting phenylketonurics that the product contains phenylalanine. October 20, 1987, is the new effective date for the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient declare the amount of phenylalanine in each dosage unit. Written comments by May 15, 1987.

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

FOR FURTHER INFORMATION CONTACT: Joseph G. Wilczek, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 20, 1987 (52 FR 2108), FDA issued a final rule (21 CFR 201.21) declaring that aspartame when used at a level no higher than reasonably required to perform its intended technical function is safe for use as an inactive ingredient in human drug products, provided that persons with phenylketonuria, who must restrict carefully their phenylalanine intake, are alerted (1) to the presence of phenylalanine in the drug product and (2) to the amount of the ingredient in each dosage unit. The effective date of this final rule was to be April 20, 1987.

The agency has received two citizen petitions (Docket Nos. 82N-0395/CP00002 and 82N-0395/CP00003) in which two manufacturers requested that the agency postpone the effective date of the final rule until October 20, 1987. The petitions are on file in the Dockets Management Branch. The petitions state that the effective date of April 20, 1987, imposes a heavy economic burden on the petitioners.

One petitioner markets three products that contain aspartame and contends that, in order to meet the April 20, 1987, effective date, approximately 1.5 million packages of finished goods will have to be scrapped, as well as supplies of cartons and bottle labels equivalent to an additional 6 million packages. The petitioner also contends that, due to the long lead time in changing artwork for 22 different printed components (labels and cartons), the products would have to be out of stock for varying periods of time. The petitioner points out that the three marketed products already carry a statement alerting phenylketonurics to the presence of phenylalanine and identify aspartame as an inactive ingredient.

The second petitioner markets one product that contains aspartame and contends that, in order to meet the April 20, 1987, effective date, approximately $250,000 worth of finished product and $6,000 in unusable cartons and labels will have to be destroyed. The petitioner also contends that the manufacturer's

product will be out of stock nationwide for a period of time after April 20, 1987, until revised packaging materials can be obtained. The petitioner points out that the product's current labels clearly advise phenylketonurics of the presence of phenylalanine.

The agency agrees that the April 20, 1987, effective date for the final rule could be economically burdensome on manufacturers who would be required to relablel their products. Further, the agency does not believe that the absence of the declaration of the amount of phenylalanine per dosage unit, for a limited period of time, on products that carry a warning and declare the presence of phenylalanine, would constitute a risk to phenylketonurics (see 52 FR 2110). For this reason, the agency has decided to delay until October 20, 1987, the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient declare the amount of phenylalanine per dosage unit. The agency, however, strongly urges all manufacturers to bring their labels and labeling into full compliance with 21 CFR 201.21 as soon as possible.

The agency believes that marketing of products containing aspartame without the statement alerting phenylketonurics to the presence of phenylalanine is a potential health hazard. Therefore, April 20, 1987, remains as the effective date of the requirement in 21 CFR 201.21 that the labeling of all human drug products containing phenylalanine as an inactive ingredient bear a statement alerting phenylketonurics to the presence of phenylalanine in the drug product.

The Commissioner of Food and Drugs finds for good cause under 5 U.S.C. 553 (b) and (d)(1) and (3) and under 21 CFR 10.40(e)(1) that notice and comment in this rulemaking to delay the effective date would be impracticable and unnecessary. Because of the short period of time involved in this postponement, together with the imminence of the effective date and the significant economic burden that would be imposed on manufacturers if required to relabel drug products containing aspartame that bear labeling alerting phenylketonurics to the presence of phenylalanine in the products before the new effective date, the Commissioner finds that good cause exists to postpone until October 20, 1987, the effective date of the requirement of 21 CFR 201.21 that the labeling of all human drug products containing phenylalanine as an inactive ingredient declare the amount of phenylalanine per dosage unit.

The agency, nevertheless, is providing a 30-day comment period during which it will accept comments on the decision to postpone the effective date. Interested persons may, on or before May 15, 1987, submit to the Dockets Management Branch (above address) written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. If FDA decides on the basis of the comments received that any change is necessary, the agency will publish notification of this change in the **Federal Register.**

Dated: April 8, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-8368 Filed 4-14-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Garver Feed & Supply Co., Inc. The NADA provides for use of a Type A article containing 0.8 gram of tylosin per pound for making Type C swine feed. FDA is also amending the regulations to remove the firm from the list of sponsors of approved NADA's. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: April 27, 1987.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Garver Feed & Supply Co.'s NADA 119-145. The NADA provides for use of a 0.8-gram-per-pound tylosin (as tylosin phosphate) Type A article for making a Type C swine feed. This document removes 21 CFR 558.625(b)(70) that reflects approval of the NADA. Additionally, since the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600(c) (1) and (2) are amended to remove the firm from the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

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

21 CFR Part 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, Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Garver Feed & Supply Co., Inc.," and in paragraph (c)(2) by removing the entry for "020966."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. 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.

§ 558.625 [Amended]

4. Section 558.625 *Tylosin* is amended by removing paragraph (b)(70) and reserving it for future use.

Dated: April 8, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-8362 Filed 4-14-87; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 6H5499/R883; FRL-3186-6]

Pesticide Tolerances for Metalaxyl; Certain Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide metalaxyl and its metabolites in or on certain feed commodities. This regulation, to establish maximum permissible levels for residues of metalaxyl in or on these commodities, was requested in a petition, by Ciba-Geigy Corp. Elsewhere in this issue of the **Federal Register**, tolerances for metalaxyl in or on various raw agricultural commodities are also being established.

EFFECTIVE DATE: Effective on April 15, 1987.

ADDRESS: Written objections, identified by the document control number [FAP 6H5499/R883], may be submitted to the: Hearing Clerk (A–110), Rm. 3708, Environmental Protection Agency, Rm. 708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lois A. Rossi, Acting Product Manager (21), Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 30, 1986 (51 FR 16106), which announced that Ciba-Geigy Corp., Agricultural Division, P.O. Box 11422, Greensboro, NC 27409, submitted food/feed additive petition 6H5499 to the Agency proposing to amend 21 CFR Parts 193 and 561 by establishing regulations permitting the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)*N*-(methoxyacetyl)alanine, methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine, methyl ester, each expressed as metalaxyl, in or on the commodity dry tomato pomace at 20.0 ppm.

Ciba-Geigy subsequently amended the petition (52 FR 8526, March 18, 1987) by adding sugar beet molasses at 1.0 ppm and revising the commodity description "dry tomato pomace" to read "tomato pomace (dry and wet) at 20.0 ppm". The Agency, however, inadvertently omitted in the amending notice the inclusion in the commodity description the term "wet" at 20.0 ppm and accordingly is corrected in this final rule to read "tomato pomace (dry and wet).....20.0".

No comments were received in response to the notices of filing.

The toxicological data and other relevant information submitted in the petition are discussed in a related document establishing tolerances in or on various raw agricultural commodities which appears elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the feed additive regulation is sought and it is concluded that the fungicide may safely be used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) et seq.). Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this rule in the **Federal Register,** file written objections with Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the ground for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 606–612), the Administrator has determined that regulations establishing new feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1982 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore 21 CFR Part 561 is amended as follows.

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.273(a) is amended by removing the entries for "tomato pomace, dry . . . 16.0" and "tomato pomace, wet . . . 5.0" and adding the following commodities to read as follows:

§ 561.273 Metalaxyl.

(a) * * *

Feeds	Parts per million
* * * * *	
Sugar beet molasses	1.0
Tomato pomace (dry and wet)	20.0
* * * * *	

[FR Doc. 87–8275 Filed 4–14–87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF STATE

22 CFR Part 2a

[108.860]

Guidelines on Protection of Foreign Missions

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Diplomatic Security Service publishes and disseminates these guidelines pertaining to the management and disbursement of congressionally appropriated funds destined to improve the security environment of Foreign Diplomatic and Consular Missions and the attendant Officials resident in the United States, and to assist state and local municipalities through the reimbursement of monies to jurisdictions whose law enforcement agencies provide "Extraordinary Protection" to the supra Missions and Officials. Fundamental guidelines are necessary to establish an equitable program that will: take into account the regional variances of police salaries; capabilities and experiences in the protective security aspects of law enforcement; consider the concentration of exile and ethnic communities that could politically impact on the security of certain foreign missions; provide security commensurate with the level of threat, and in keeping with the U.S. Government commitment to counter terrorism and fulfill its obligations under international law, treaties and conventions.

EFFECTIVE DATE: May 15, 1987.

ADDRESS: Protective Liaison Division, Diplomatic Security Service, U.S. Department of State, Washington, DC, 20520.

FOR FURTHER INFORMATION CONTACT: Johnny W. Guy, or Michael J. Tretola, Protective Liaison Division, (202) 673–3881.

SUPPLEMENTARY INFORMATION: The Foreign Relations Authorization Act of 1985 (Pub. L. 99–93) sets forth a program entitled "Extraordinary Protective Services for Foreign Missions," under Section 126. Historically the Federal Government has relied upon state and local law enforcement authorities to provide adequate protective security measures to Foreign Missions and Officials located in their respective jurisdictions. In recent years, terrorism, demonstrative activity, and reciprocity demands from foreign governments have increased at a rate exceeding the financial and manpower capabilities of local municipalities, who repeatedly sought federal financial assistance for services they deemed were a federal responsibility inasmuch as the requests were considered beyond normal police activity extended to all persons and property within their jurisdictions. These guidelines attempt to explain the program and the conditions under which reimbursement may be claimed and approved. Circumstances and procedures are specified in a step by step regulatory manner; sources of information and contacts within the Diplomatic Security Service are provided; and definitions of pertinent language are explained. This will insure that the program will be interpreted and applied identically in jurisdictions throughout the U.S. The Department of State has realized for several years that state and local governments have been in financial difficulty with respect to the numerous requests tendered in behalf of foreign mission protection. To this end, the Diplomatic Security Service has worked in close concert with our own legal advisors, several major city police departments, and numerous committees and members of Congress developing an equitable reimbursement program to alleviate much of the financial burdens shouldered by local municipalities.

The Protective Liaison Division did not receive any remarks or comments with respect to these rules published in 51 FR 28391 on August 7, 1986.

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 substantial economic impact on a substantial number of small entities."

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

List of Subjects in 22 CFR Part 2a

Foreign missions, Foreign officials, Security measures.

In consideration of the foregoing, the Diplomatic Security Service proposes that in Chapter I of title 22, Code of Federal Regulations Part 2a be added as follows.

Dated: March 25, 1987.

Louis Schwartz,

Deputy Assistant Secretary for Diplomatic Security and Director, Diplomatic Security Service.

PART 2a—DEPARTMENT OF STATE GUIDELINES ON PROTECTION OF FOREIGN MISSIONS

Sec.

2a.1 Purpose.
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2a.11 Special rules for reimbursement.
2a.12 Extraordinary protective services in cases of urgency.
2a.13 Protective security contract services.
2a.14 Foreign Missions Act determination.
2a.15 Supplementary guidelines; State and local agreements.
2a.16 Effective date: retroactive application.
2a.17 Contact for information.

Authority: Title II of the State Department Basic Authorities Act of 1956, added by the Foreign Missions Act of 1982 (Pub. L. 97–241, 96 Stat. 273, 282), 22 U.S.C. 4301–4313; the Foreign Relations Authorization Act of 1985 (Pub. L. 99–93, 99 Stat. 417), 22 U.S.C. 4314; the Foreign Missions Amendments Act of 1983 (Pub. L. 98–164, 97 Stat. 1017, 1044), Title III, U.S.C. Sections 202 and 208, as amended (Pub. L. 97–418, 96 Stat. 2089); Executive Order No. 12478, effective October 1, 1984; and Sec. 4, 63 Stat. 111, as amended (22 U.S.C. 2658).

§ 2a.1 Purpose.

(a) The purpose of these guidelines is to establish a program administered by the Bureau of Diplomatic Security of the Department of State, under which the Department can review and promote coordination between federal, state and local security authorities in the protection of foreign missions in the United States, and can assist in the provision of protective services for such missions. State and local governments of the United States will continue to have the primary responsibility for law enforcement within their respective jurisdictions. This program does not establish any legal entitlement to assistance either for a foreign mission or for any State or local government or authority. The Bureau of Diplomatic Security will maximize available federal assistance through coordination of programs and through limited federal financial assistance by contract or reimbursement for certain protective services in cases of extraordinary protective need, to the extent funds are available therefore.

(b) This program will assist the United States to carry out its international obligations relating to the protection of foreign diplomatic and consular and international organization personnel and premises in the United States under the Vienna Convention on Diplomatic Relations (23 UST 3227, TIAS 7502), the Vienna Convention on Consulor Relations (21 UST 77, TIAS 6820), the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (28 UST 1975, TIAS 8532), the Convention to Prevent and Punish Acts of Terrorism (27 UST 3949, TIAS 8413), international agreements relating to organizations such as the United Nations Headquarters Agreement (61 Stat. 3416, TIAS 1899 (Pub. Law 80–357), and other applicable multilateral and bilateral agreements and provisions of international law.

(c) The program will include the following—

(1) Foreign Missions, generally—Extraordinary protective services may be provided directly through the Department of State, or by reimbursement for services to state and local governments or contract;

(2) Missions to International Organizations—Extraordinary protective services may be provided by reimbursement to State or local officials, to missions to certain international organizations, such as the United Nations, under title 3 of the U.S. Code, 202 and 208.

(d) The provisions of these guidelines may be applied to protective assistance under both paragraph (a) and (b) of this section unless otherwise stated therein or separate standards or criteria are required by applicable law. Supplementary guidelines may be issued

by the Department of State from time to time in order to implement these guidelines in particular jurisdictions. This part is authorized by the Foreign Missions Act of 1982 (Pub. L. 97–241, 96 Stat. 273, 282), the Foreign Missions Amendments Act of 1983 (Pub. L. 98–164), title 3, secs. 202 and 208 of the U.S. Code, and Executive Order No. 12478.

§ 2a.2 Definitions.

For purposes of these guidelines—

(a) "Assistant Secretary" means the Assistant Secretary of State for Diplomatic Security.

(b) "Deputy Assistant Secretary" means the Deputy Assistant Secretary of State for the Diplomatic Security Service; any authority granted the Deputy Assistant Secretary under these regulations may be exercised by the Assistant Secretary as appropriate.

(c) "Foreign mission" or "foreign diplomatic mission" means:

(1) Any mission in the United States involving diplomatic, consular, or other governmental activities of a foreign government or an organization representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States, or

(2) Any public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288–288f) or a public international organizational agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs; or

(3) An official mission to a public international organization, including any real property and personnel of such a mission or public international organization.

(d) "Protective service" means law enforcement and security measures employed to assure proper functioning of diplomatic activities and to prevent injury or harm to personnel or facilities of foreign missions.

(e) "Extraordinary protective need" means the existence of a threat of violence, or other circumstance, as determined by the Deputy Assistant Secretary which requires extraordinary security measures which significantly exceed those which law enforcement authorities can reasonably be expected to take.

(f) "Extraordinary protective services" means protective services provided or authorized in cases determined under these guidelines to constitute an extraordinary protective need.

(g) "Metropolitan area" means a city, county, or other political subdivision of a State, and those areas related thereto determined by the Deputy Assistant Secretary to constitute a single protective area for purposes of these regulations.

(h) "State" means a state of the United States, the District of Columbia, Puerto Rico, Guam and all territories under the jurisdiction of the United States.

(i) "United States Mission" means the official US government mission to a public international organization, such as the United States Mission to the United Nations ("USUN").

(j) Determinations with respect to the meaning and applicability of terms used in the Foreign Missions Act and under these regulations are committed to the discretion of the Secretary of State.

§ 2a.3 Bureau of Diplomatic Security programs.

(a) The Bureau of Diplomatic Security will be responsible, in coordination with United States Missions as appropriate, for implementing through its constituent field offices upon request and subject to availability of resources, foreign mission security programs including, but not limited to:

(1) Assessment of available federal, state and local protective resources for a particular jurisdiction, taking into account the number of foreign missions and circumstances specific to each jurisdiction;

(2) Assistance in planning and coordinating the provision of protective security; and

(3) Regulatory functions otherwise required by these guidelines.

(b) The Protective Liaison Division (DS/PT/PL) will be the office responsible for the overall coordination of this program. Information of a potential threat to a foreign diplomatic establishment or personnel will be received and evaluated for purposes of these guidelines from:

(1) U.S. intelligence or law enforcement agencies;

(2) State or local law enforcement agencies;

(3) Bureau of Diplomatic Security Field Office, Threat Analysis Division and Regional Security Offices;

(4) Department of State country desk offices and other appropriate regional offices, United States Missions, the Office for Counter-terrorism and Emergency Planning, the Office of Foreign Missions, and the Bureau of Intelligence and Research;

(5) Foreign diplomatic establishments;

(c) DS/PT/PL will evaluate this information in concert with the Threat Analysis Division and recommend to the Deputy Assistant Secretary the appropriate level of protective coverage required, to be reviewed daily or as required.

(d) Bureau of Diplomatic Security Field Offices, together with the appropriate United States Mission, will be responsible for the foreign diplomatic establishments in their area of jurisdiction. The Field Offices will institute necessary procedures and practices in regard to the protection of foreign missions and officials. Each Field Office will designate an agent as Security Coordinator who will be responsible for primary coordination with DS/PT/PL, the Consular community, local law enforcement and private security firms.

§ 2a.4 Coordination with law enforcement and intelligence agencies.

(a) In order to coordinate and allocate their respective agency resources, the Deputy Assistant Secretary shall consult regularly with federal law enforcement and intelligence agencies, including the Federal Bureau of Investigation and the United States Secret Service, concerning assistance programs under these guidelines. Nothing in these guidelines shall preclude or limit the authority of the United States Secret Service to provide protective services pursuant to 3 U.S.C. 202 or 18 U.S.C. 3056 at a level commensurate with protective requirements as determined by the Secret Service.

(b) The Deputy Assistant Secretary shall consult and coordinate with state and local law enforcement agencies with respect to such matters as planning for foreign mission protection, communications coordination, and federal assistance under this part.

§ 2a.5 Diplomatic Reciprocity.

(a) The Deputy Assistant Secretary shall coordinate any request by a foreign mission or by a state or local government for assistance under these guidelines for the provision of protective services with the Director of the Office of Foreign Missions of the Department of State. OFM shall review the treatment accorded United States missions abroad, and make recommendations with respect to the impact of any such services provided under these guidelines on reciprocity and national security interests of the United States.

(b) No act or omission by any governmental authority under these guidelines shall be construed either as limited or as establishing in any way the entitlement of any person, property,

premises, or mission to any privileges or immunities otherwise granted or denied under applicable law.

§ 2a.6 Location of foreign missions.

(a) The Deputy Assistant Secretary shall review with the Director of the Office of Foreign Missions all existing and proposed locations of foreign missions, including, but not limited to any notification under the Foreign Missions Act to the Director by a foreign mission of a proposed acquisition, modification or use of real property. In coordination with a United States mission to an international organization, as appropriate, and with local authorities in all cases, this review shall cover security factors related to such locations, such as the availability of local resources with respect to particular locations, and whether such location might preclude adequate protection, or could result in excessive requests for assistance in providing protective services under these guidelines.

(b) The Deputy Assistant Secretary shall in appropriate cases recommend to the Director of the Office of Foreign Missions that a proposed acquisition or existing use by a foreign mission be dispproved, or conditions be attached thereto under authority of the Foreign Missions Act (22 U.S.C. 4304 and 4305) to facilitate the rendering of appropriate protection.

§ 2a.7 Provision of protective services generally.

State and local governments of the United States have as a part of their normal law enforcement functions the responsiblity to provide security to persons or property within their jurisdictions, to include foreign missions. Federal assistance intended to supplement state and local protective services shall be in accordance with these guidelines or otherwise as authorized by law.

§ 2a.8 Requests from State and local governments for protective assistance.

(a) In cases where a State or local authority or foreign mission believes that an extraordinary protective need exists, it may request assistance from the Department of State in providing protective services. The Bureau of Diplomatic Security may request that protective services be provided. Requests shall be made to the Deputy Assistant Secretary (Diplomatic Security), Department of State, Washington, DC 20520 directly or through designated Bureau of Diplomatic Security Field Offices, or through a United States Mission if appropriate. A request under this paragraph, except as provided in § 2a.12 of these guidelines shall:

(1) Be preceded by consultation between State or local authorities and the appropriate Bureau of Diplomatic Security Field Office, as well as the United States Mission, as appropriate;

(2) If related to a scheduled event or visit, be submitted in advance of the anticipated extraordinary protective need;

(3) Contain sufficient detail to allow the Deputy Assistant Secretary to make an informed determination of extraordinary protective need, including: the location of the foreign mission(s) or activities, together with any secondary locations involved; a description of the circumstances believed to give rise to the extraordinary protective need, including, in the case of a diplomatic visit, the name and title of the visting foreign official or dignitary, the temporary domicile(s) of the visiting offical or dignitary, and anticipated schedule in the United States;

(4) If from a state or local agency, include a detailed estimate of the resources required to provide protective services commensurate with extraordinary protective need (including approximate number of personnel by grade or rank, service, equipment and facilities), and an estimate of the cost of such resources; and

(5) Be accompanied by a security review by the appropriate Bureau of Diplomatic Security Field Office or by the United States Mission to an international organization.

(b) In all cases involving requests for assistance in providing extraordinary protective services, except for as provided in § 2a.13, the Deputy Assistant Secretary, in consultation with the United States Mission where appropriate, shall determine whether, for purposes of these guidelines, assistance may be considered for protective services, and whether such assistance may include direct deployment of Bureau of Diplomatic Security personnel, contract security assistance or reimbursement to state and local authorities. An analysis of security factors shall take into account potential or actual violence or interruption of diplomatic activities including, but not limited to specific events or patterns or activity involving—

(1) Confrontations between nationalist or other groups,

(2) Threats or acts of violence by terrorist or other groups,

(3) A specific diplomatic or international occurrence,

(4) Demonstrations or efforts to impede the conduct of normal diplomatic activities,

(5) The impact of security efforts in the United States upon security measures and safety of missions and personnel of the U.S. Government abroad, or

(6) Other circumstances which prevent proper conduct of foreign mission activities.

Security analysis under these guidelines may be coordinated, within the Department of State, with the Director of the Office of Foreign Missions, the Director of the Office of Counter-terrorism and Emergency Planning, and the Director of Bureau of Intelligence and Research.

§ 2a.9 Provision of protective services in cases of extraordinary protective need.

In cases determined under these guidelines to constitute an extraordinary protective need:

(a) The Deputy Assistant Secretary shall determine whether security personnel of the Department of State may be deployed;

(b) If this is not feasible, the Deputy Assistant Secretary, through the Bureau of Diplomatic Security Field Offices, or a United States Mission, as appropriate has the delegated authority to request the assistance of other Federal law enforcement authorities in the provision of protective services;

(c) If Federal law enforcement authorities are unable to provide assistance as requested, the Deputy Assistant Secretary or the designated representative of a United States Mission, in cases involving the metropolitan area of that mission or facilities related to United Nations missions, are authorized:

(1) To request state and local law enforcement authorities to provide the necessary protective services, or

(2) To obtain such services by contract with protective security organizations, in accordance with procedures issued by and subject to the approval of the Deputy Assistant Secretary.

§ 2a.10 Reimbursement for protective services provided by State or local authorities.

(a) The Deputy Assistant Secretary, in accordance with procedures set forth in these guidelines may, to the extent funds are available therefor, authorize reimbursement for reasonable direct expenses specifically incurred for the provision of extraordinary protective services incurred by State or local authorities under this section.

(b) No payment or reimbursement shall be directed to be paid by the Deputy Assistant Secretary pursuant to this section unless the specific type or scope of protective service has been requested in accordance with these guidelines; services may be provided under an interim cost estimate subject to such conditions as may be required by the Deputy Assistant Secretary for post-performance cost determinations.

(c) No payment or reimbursement shall be directed to be paid by the Deputy Assistant Secretary for that portion of protective services which are routine and were or could otherwise have been made available under the protective service standard of the jurisdiction.

(d) Direct overhead and administrative costs associated with an extraordinary protective service may be reimbursable on the basis of pre-performance negotiated rates, or interim rates subject to audit and redetermination by the Deputy Assistant Secretary.

(e) The provider of service or government agency to whom reimbursement is provided shall retain all documents and reimbursement or payment, for inspection or audit by representatives of the Department of State or of the Comptroller General.

§ 2a.11 Special rules for reimbursement.

Limited funds are made available to the Department of State for partial reimbursement to state or local government under two statutory programs, each of which contains separate criteria:

(a) Foreign Missions, generally—Assistance for extraordinary protective services may be provided by reimbursement, subject to the following limitations set forth in the Foreign Relations Authorization Act of 1985 (Public Law 99–93) as amended:

Any agreement with a State or local authority for the provision of protective services under this section shall be for a period of not to exceed ninety days in any calendar year, but such agreements may be renewed after review by the Deputy Assistant Secretary.

Of the funds made available for obligation under this section in any fiscal year—

(1) not more than 20 percent may be obligated for protective services within any single State during that year except as otherwise provided by law; and

(2) not less than 15 percent, except as otherwise provided by law, shall be retained as a reserve for protective services provided directly by the Deputy Assistant Secretary or for expenditures in local jurisdictions not otherwise covered by an agreement for protective services under this section.

The limitations on funds available for obligation in this subsection shall not apply to unobligated funds during the final quarter of any fiscal year.

(b) Missions to International Organizations—Assistance. Extraordinary protective services related to certain international organizations, such as the United Nations, may be provided by reimbursement under title 3 of the U.S. Code, Sections 202, 208.

(c) Reimbursements thereunder are subject to the following limitations (Note: Funds available under paragraph (a) of this section may be used for missions qualifying under this subsection):

(1) The foreign missions to which the protective services are provided must be located in a metropolitan area (other than the District of Columbia) where there are located twenty or more such missions headed by full-time officers;

(2) The effected metropolitan area must request such reimbursement; and

(3) The extraordinary protective need must arise in association with a visit to or occur at a permanent mission to an international organization of which the United States is a member or an observer mission invited to participate in the work of such an organization.

§ 2a.12 Extraordinary protective services in cases of urgency.

In cases of urgency, notwithstanding the requirements of §§ 2a.8 through 2a.10 of these guidelines (but within applicable statutory limitations), Bureau of Diplomatic Security Field Offices and United States Missions, under guidelines issued by the Deputy Assistant Secretary with the concurrence of the Procurement Executive, including, as appropriate, limited field delegations of authority, may in cases of urgency approve the provision of extraordinary protective services in accordance with general cost guidelines, if any, applicable to the particular jurisdiction, or subject to post-performance cost agreement. Provision of extraordinary protective services under this section shall require a review of continuing need and shall not exceed thirty (30) days after initiation thereof.

§ 2a.13 Protective security contract services.

(a) In cases where the Deputy Assistant Secretary determines that extraordinary security services may not be appropriately implemented because of federal, state or local law enforcement resource limitations or other restrictions, necessary protective services may be obtained by contract with private security firms or providers of such services. In carrying out the purposes of this section, the Deputy Assistant Secretary is authorized to proceed to utilize the procurement authorities conferred upon the Secretary by section 208(d) of the Foreign Missions Act, in addition to such authority for obtaining contract services as may be available to the Department of State.

(b) The need for contract security services should be considered in cases where an extraordinary protective need arises in more than one jurisdiction, under circumstances where, for a particular mission the provision of protective services may be adversely affected because of state or local jurisdictional limitations.

(c) The Department Procurement Executive shall provide, for purposes of this section, a pre-qualification procedure, including appropriate pre-award security clearance requirements for firms or security provider interested in pre-qualification. Awards for services under this section may be limited to pre-qualification bidders for reasons of time of performance, or otherwise as authorized by section 208(d) of the Foreign Missions Act.

§ 2a.14 Foreign Missions Act determination.

Promulgation of these guidelines, and the issuance of supplementary guidelines under § 2a.15 and implementing instructions where required, are determined hereby to constitute regulations or instructions pursuant to section 208(b) of the Foreign Missions Act (22 USC 4308(b)), and persons acting in compliance therewith are entitled to assert that section in accordance with its term. This § 2a.14 shall be applicable, but shall not be limited to, authorized acts or omissions of law enforcement and security personnel in jurisdictions outside those in which they are otherwise authorized to perform official functions, subject to federal law enforcement standards applicable to such acts or omissions, or in the absence of such standards, to the standards otherwise applicable in the jurisdictions involved.

§ 2a.15 Supplementary guidelines; State and local agreements

(a) The Deputy Assistant Secretary may from time to time issue, or authorize the issuance by designated Bureau of Diplomatic Security Field Offices or United States Missions, supplementary guidelines implementing these guidelines and applicable to particular jurisdictions or to particular categories of protective security within such jurisdictions.

(b) The Deputy Assistant Secretary may enter into agreements with state and local authorities for the provision of protective services under these guidelines. Any such agreement shall be for a period of not to exceed ninety days in any calendar year, but may be renewed after review by the Deputy Assistant Secretary.

§ 2a.16 Implementation date; retroactive application.

These guidelines were implemented as of the date of issuance, (original draft September 26, 1985). The provisions of these guidelines with respect to reimbursement may be applied retroactively to protective services, subject to qualification under the terms herein and ratification by the Deputy Assistant Secretary for the Diplomatic Security Service, on and after October 1, 1984.

§ 2a.17 Contact for information.

Requests for protective security assistance or for reimbursement in cases determined to constitute an extraordinary need may be forwarded to the Bureau of Diplomatic Security, Protective Liaison Division (DS/PT/PL)—Room 2435, Department of State, Washington, D.C. 20520, or through Department of State Field Offices of the Bureau of Diplomatic Security or the appropriate United States Mission to an international organization.

(a) State Department, Bureau of Diplomatic Security, Protective Liaison Division (DS/PT/PL) (202)—673–3881.

(b) After regular business hours, all inquiries shall be made to the Coordination Center of the Bureau of Diplomatic Security, Department of State: The Coordination Center operates on a 24-hour basis (647–2412).

(c) Office of Foreign Missions (202) 647–3416.

(d) Bureau of Diplomatic Security Field Offices:

Boston, Mass 02203, John F. Kennedy Bldg., Government Center, Room 405C, (617) 223–2753

Chicago, Ill 60604, Dirksen Federal Bldg., 219 S. Dearborn Street, Suite 1378, (312) 353–6163

Dallas, Texas 75242, Federal Bldg. Room 7C–44, 110 Commerce Street, (214) 767–0702

Los Angeles, California 90012, Federal Bldg., 300 N. Los Angeles Street, Room 8120, (213) 688–3290

Miami, Florida 33130, Federal Bldg., 51 SW First Avenue, Room 1627, (305) 536–5781

New York, NY 10278, 26 Federal Plaza, Suite 3409, (212) 264–1292

Philadelphia, Pennsylvania 19106, Mall Bldg., 325 Chestnut Street, Room 512, (215) 597–7435

San Francisco, California 94102, Federal Bldg., 450 Golden Gate Avenue, Room 13347, (415) 556–5097

(e) U.S. Mission to the United Nations (USUN) Host Country Section (212) 415–4131. After regular business hours, all inquiries should be made to the Communications Section of the U.S. Mission to the United Nations. This Section operates on a 24-hour basis (212) 415–4444.

[FR Doc. 87–8350 Filed 4–14–87; 8:45 am]
BILLING CODE 4710–24–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 15

[Docket No. R–87–1330; FR–2273]

Testimony, Production and Disclosure of Material or Information by HUD Employees

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: The Secretary is amending HUD's regulations governing the production and disclosure of material or information by HUD employees by adding a new subpart governing testimony by employees in response to subpoenas or other official demands, and by making several definitional, conforming and related changes to effectuate this addition. The Secretary is also amending the current regulations to eliminate the requirement that former employees who are served with subpoenas or other official demands obtain the Secretary's approval before responding thereto. The purpose of these amendments is to address explicitly the terms on which employees may produce information and to eliminate unnecessary regulation of former employees.

EFFECTIVE DATE: May 20, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn Lieberman, Deputy General Counsel (Operations), Room 10216, (202) 755–7250, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: 24 CFR Part 15 contains HUD's rules for the disclosure of information and production of any material in its possession or acquired by an employee or former employee as a part of the performance of the employee's official duties or because of his or her official status. The current rule prohibits such disclosure or production, "in response to a demand of a court or other authority," without the prior approval of the Secretary. 24 CFR 15.72 (1986). However, the current rule does not explicitly address the terms on which HUD employees may testify. This final rule fills that gap by describing the situations in which the Secretary will permit the testimony of HUD employees in judicial, quasi-judicial, and legislative proceedings concerning information acquired as part of the performance of their official duties or because of their official status. In addition, this rule prohibits, subject to waiver by the Secretary, any employee from being called, by any party other than the United States, as an expert or opinion witness as to matters related to the employee's duties or the functions of the Department, including the meaning of departmental documents. This rule also eliminates the requirement that former employees who are served with subpoenas or other official demands obtain the Secretary's approval before responding. The Government favors eliminating further regulation where it is not necessary, and since the conduct of former employees is already regulated by the Standards of Conduct regulations in 24 CFR Part O, and HUD has determined that there is no convincing reason to continue covering them in Part 15, deregulation is appropriate in this case.

Private parties have increasingly been requesting or subpoenaing HUD officials to provide written information or to testify in litigation in which they are involved. The current regulations do not provide sufficient guidance to HUD employees as to how they are to respond to such requests or demands. This rule is designed to clarify this situation and thereby avoid needless confusion and strain on HUD employees, as well as to clarify for private parties the terms on which HUD employees may be made available to testify. The restrictions on HUD employees' testimony provided for in this rule are necessary to conserve the time of employees for conducting official business, to minimize the possibility of involving the Department in controversial issues that are not related to its mission and to reduce the possibility that departmental policy will be misrepresented. The rule does not apply to any legal proceeding in which an employee would testify, while on leave status, as to opinions or facts that are in no way related to the duties the employee performs for, or to the functions of, the Department.

This rule provides for the Secretary's written waiver of any policy or procedure prescribed in the rule where necessary to prevent a miscarriage of

justice, to promote a significant interest of the Department, or for other good cause.

Use of Final Rule

The subject matter of this revision involves the agency's internal practices and procedures and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553) and 24 CFR Part 10. Accordingly, this revision is being made by means of a final rule.

Finding and Certifications

This rule is not subject to environmental review under the Department's procedures set out in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Under 24 CFR 50.20(k), internal administrative procedures are categorically excluded from NEPA requirements.

This rule does not constitute a "major rule" as that term is defined in section (1)(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

This rule was listed on the Department's Semi-Annual Agenda of Regulations published on October 27, 1986 (51 FR 38424) under Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not affect any program included in the Catalogue of Federal Domestic Assistance Programs.

List of Subjects in 24 CFR Part 15

Classified information, Freedom of information, Testimony, Production and disclosure of material or information by HUD employees.

PART 15—[AMENDED]

Accordingly, the Department amends 24 CFR Part 15 as follows:

1. The authority citation for Part 15 is revised to read as follows:

Authority: 5 U.S.C. 301; Freedom of Information Act, 5 U.S.C. 552; and sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. The Part heading for 24 CFR Part 15 is revised to read as follows:

PART 15—TESTIMONY, PRODUCTION AND DISCLOSURE OF MATERIAL OR INFORMATION BY HUD EMPLOYEES

§ 15-1 [Amended]

3. Section 15.1 is amended by adding paragraphs (g), (h) and (i) to read as follows:

(g) "Legal proceeding" includes any proceeding before a court of law or other authority, i.e., administrative board or commission, hearing officer, arbitrator or other body conducting a quasi-judicial or legislative proceeding.

(h) "Legal proceeding in which the United States is a party" means any legal proceeding including as a named party the United States, the Department of Housing and Urban Development, or any other Federal executive or administrative agency or department, or any official thereof in his official capacity.

(i) "Legal proceeding among private litigants" means any legal proceeding in which the United States is not a party.

4. Section 15.2 is revised to read as follows:

§ 15.2 Purpose and applicability.

(a) This part contains the regulations of the Department implementing 5 U.S.C. 552 and prescribing the Department's policies and procedures with respect to testimony of its employees as witnesses in legal proceedings. It informs the public about where and how the Department's records and information may be obtained from its organizational units as defined in § 15.1(d), and about the Department's policy concerning allowing its employees to testify in legal proceedings.

(b) All subparts of Part 15, other than Subpart I, apply to all organizational units, except that their applicability to the Office of Inspector General is subject to the provisions of Parts 2002 and 2004 of this title, and their applicability to the Office of Interstate Land Sales Registration is subject to the provisions of § 1700.30 of this title. Subpart I applies to all organizational units other than the Office of Inspector General.

5. Section 15.72 is revised to read as follows:

§ 15.72 Production or disclosure prohibited unless approved by the Secretary.

(a) Any demand of a court or other authority or any request to an employee of the Department to produce any material contained in the files of the Department, or to disclose any information relating to material contained in the files of the Department, or to disclose any information or produce any material acquired as a part of the performance of the employee's official duties or because of the employee's official status for use in a legal proceeding, shall state with particularity the material sought to be obtained or the information sought to be disclosed.

(b) No employee of the Department shall comply with any such demand or request without the prior approval of the Secretary.

(c) In determining whether to grant approval for an employee of the Department to testify in a legal proceeding, the Secretary shall follow the standards set forth in Subpart I.

(d) Where the demand or request seeks only the production of documents, the Department's procedure for authentricating documents by a keeper of the records shall be the Department's method for response. That authentication shall be evidence that the documents are true copies of documents in the Department's files.

6. Section 15.73 is revised to read as follows:

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

(a) Whenever a demand is made upon an employee of the Department for the production of material or the disclosure of information described in § 15.71, the employee shall immediately notify the Secretary and either the General Counsel or the appropriate Regional Counsel. The "appropriate Regional Counsel" shall mean the Regional Counsel for the Regional Office having delegated authority over the project or activity with respect to which the information is sought. If possible, the Secretary shall be notified before the employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before the instructions from the Secretary are received, the U.S. Attorney or such other attorney as may be designated for the purpose, will appear with the employee of the Department upon whom the demand has been made, and will furnish the court or other authority with a copy of the

regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the Secretary. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Secretary.

7. Section 15.74 is revised to read as follows:

§ 15.74 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 15.73(b) pending receipt of instructions from the Secretary, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Secretary not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Toughy* v. *Ragen*, 340 U.S. 462).

Subpart I [Redesignated as Subpart J]

8. Subpart I of Part 15 is redesignated as Subpart J, § 15.81 is redesignated as § 15.91, and a new Subpart I is added, to read as follows:

§ 15.81 [Redesignated as § 15.91]

Subpart I—[Added]

Subpart I—Testimony of Employees of the Department in Legal Proceedings

Sec.

15.81 Purpose.
15.82 Testimony in proceedings in which the United States is a party.
15.83 Legal proceedings among private litigants; general rule.
15.84 Legal proceedings among private litigants; subpoenas.
15.85 Legal proceedings among private litigants; expert or opinion testimony.
15.86 Waiver.

Subpart I—Testimony of Employees of the Department in Legal Proceedings

§ 15.81 Purpose.

(a) This subpart prescribes the policies and procedures of the Department with respect to testimony of its employees as witnesses in legal proceedings with respect to material contained in the files of the Department or information learned as part of the performance of the their official duties or because of their official status.

(b) For purposes of this subpart, the term "employee of the Department" includes officers and employee of the United States appointed by, or subject to the supervision of, the Secretary, but does not include officers and employees covered by Part 2004 of this title.

§15.82 Testimony in proceedings in which the United States is a party.

(a) In any legal proceeding in which the United States is a party, an employee of the Department may not be called to testify as an expert or opinion witness by any party other than the United States, but may be called by such non-federal party to testify as to facts.

(b) Whenever, in any legal proceeding in which the United States is a party, the attorney in charge of presenting the case for the United States requests it, the Secretary shall arrange for an employee of the Department to testify as a witness for the United States.

§15.83 Legal proceedings among private litigants; general rule.

In any legal proceeding exclusively among private litigants, no employee of the Department may testify as an expert or opinion witness as to any matter related to his or her duties or the functions of the Department, including the meaning of Departmental documents.

§ 15.84 Legal proceedings among private litigants; subpoenas.

Whenever, in a legal proceeding exclusively among private litigants, an employee of the Department is served with a subpoena or is requested to testify, the procedures set forth in §§ 15.72–15.74 shall be applicable.

§ 15.85 Legal proceedings among private litigants; expert or opinion testimony.

If, while testifying in a legal proceeding exclusively among private litigants, an employee of the Department is asked for expert or opinion testimony, the employee shall decline to answer on the grounds that he or she is forbidden to do so by this part.

§ 15.86 Waiver.

The Secretary may grant, in writing, a waiver of any policy or procedure prescribed by this subpart, where waiver is necessary to prevent a miscarriage of justice, to promote a significant interest of the Department, or for other good cause.

Dated: April 1, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-8402 Filed 4-14-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8136]

Income Tax; Applications for Exemption From Self-Employment Taxes for Ministers, Certain Members of Religious Orders, and Christian Science Practitioners

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to applications for exemption from self-employment taxes filed by ministers, members of a religious order who are not under a vow of poverty, and Christian Science practitioners. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules Section of this issue of the **Federal Register**. The temporary regulations reflect changes to the applicable tax law made by section 1704(a) of the Tax Reform Act of 1986 and provide guidance on the manner of applying for exemption from self-employment taxes under section 1402(e) of the Internal Revenue Code of 1986.

EFFECTIVE DATE: The regulations contained in this document are effective with respect to applications filed after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T (LR–153–86)). Telephone, 202–566–3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1402(e)(1)(A) of the Internal Revenue Code of 1986 provides that ministers, members of a religious order who are not under a vow of poverty, or Christian Science practitioners may file an application for exemption from self-employment taxes. This section requires any individual seeking the exemption to file an application together with a statement that either he or she is conscientiously opposed to, or because of religious principles he or she is opposed to, the acceptance (with respect to services performed as a minister, member, or practitioner) of any public

insurance that makes payments in the event of death, disability, old age or retirement, or makes payments toward the cost of, or provides services for, medical care.

Section 1704(a) of the Tax Reform Act of 1986 (100 Stat. 2085, 2779) amended section 1402(e)(1) of the Code to require an individual (other than a Christian Science practitioner) who applies for exemption from self-employment taxes to state in the application that he or she has informed the affiliate church or order that the applicant is opposed to receiving such insurance. In addition, section 1704(a) of the Act added a new paragraph (2) to section 1402(e) of the Code to require verification that all applications (including Christian Science practitioners) are aware of the grounds for which an exemption may be granted and that they seek the exemption on such grounds. No application for exemption will be approved without this verification. The amendments made by section 1704(a) of the Act are effective with respect to applications filed after December 31, 1986. Thus, neither the amendments made by the Act nor the temporary regulations apply to present exemptions or to applications for exemption that are filed before January 1, 1987.

The temporary regulations provide that applications filed after December 31, 1986, by a minister or a member of a religious order who is not under a vow of poverty must include a statement to the effect that the applicant has informed the ordaining, commissioning, or licensing body of the church or order that he or she is conscientiously opposed, or opposed on religious principles, to the acceptance of any public insurance that makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical care.

Applications for exemption under section 1402(e) shall be made on Form 4361. It is anticipated that Form 4361 will be revised to include the statement described above. However, if the form does not contain the statement, the applicant must file a separate statement along with Form 4361.

The temporary regulations also provide that any application for exemption under section 1402(e) filed after December 31, 1986, by ministers, members of a religious order not under a vow of poverty, or Christian Science practitioners may be approved by the Service only after verification that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to section 1402(e) and that the individual seeks exemption on such grounds. The temporary regulations set forth the procedure to be followed for such verification.

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980.

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects

26 CFR 1.1401–1—1.1403–1

Income tax, Self-employment income.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations.

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.1402 (e)–5T also issued under 26 U.S.C. 1402(e) (1) and (2).

Par. 2. A new § 1.1402 (e)–5T is added immediately after § 1.1402 (e)–4A to read as follows:

§ 1.1402(e)–5T Applications for exemption from self-employment taxes filed after December 31, 1986, by ministers, certain members of religious orders, and Christian Science practitioners.

(a) *In general.* (1) Except as provided in paragraph (a)(2) of this section, this section applies to any individual who is a duly ordained, commissioned, or licensed minister of a church, member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order), or a Christian Science practitioner who files an application after December 31, 1986, for exemption from the tax on self-employment income (see section 1401 and 1.1401–1) with respect to services performed by him or her in his or her capacity as a minister, member, or practitioner pursuant to §§ 1.1402(e)–2A through 1.1402(e)–4A. This section does not apply to applications for exemption under section 1402(e) that are filed before January 1, 1987.

(2) *Application of this section to Christian Science practitioners.* Paragraph (b) of this section does not apply to Christian Science practitioners. Thus, Christian Science practitioners filing applications for exemption from self-employment taxes under section 1402(e) should follow the procedures set forth in §§ 1.1402(e)–2A through 1.1402(e)–4A, and are not required to include the statement described in paragraph (b)(1)(ii) of this section. However, see paragraph (c) of this section for verification procedures with respect to applications for exemption from self-employment taxes filed after December 31, 1986, by Christian Science practitioners.

(b) *Church or order must be informed*—(1) *In general.* Any individual, other than a Christian Science practitioner, who files an application for exemption from the tax on self-employment income under section 1402(e) after Decembr 31, 1986:

(i) Shall file such application in accordance with the procedures set forth in §§ 1.1402(e)–2A through 1.1402(e)–4A, and

(ii) Shall include with such application a statement to the effect that the individual making application for exemption has informed the ordaining, commissioning, or licensing body of the church or order that he or she is opposed to the acceptance (for services performed as a minister or member of a religious order not under a vow of poverty) of any public insurance that makes payments in the event of death, disability, old age, or retirement, or that makes payments toward the cost of, or provides services for, medical care

(including the benefits of any insurance system established by the Social Security Act).

(2) *Statement to be filed with Form.* If the form provided by the Service for applying for exemption under 1402(e) does not contain the statement set forth in paragraph (b)(1)(ii) of this section, any individual required to include this statement with his or her application under this paragraph (b) shall file such statement with the individual's application at the time and place prescribed for filing such application under §§ 1.1402(e)–2A and 1.1402(e)–3A. The statement shall contain the information set forth in paragraph (b)(1)(ii) of this section and shall be signed by such individual under penalties of perjury.

(c) *Verification of Application*—(1) *In general.* The Service will approve an application for an exemption filed by an individual to whom this section applies only after verifying that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption under section 1402(e) (See § 1.1402(e)–2A) and that the individual seeks exemption on such grounds in accordance with the procedures set forth in paragraph (c)(2) of this section.

(2) *Verification procedure.* Upon receipt of an application for exemption from self-employment taxes under section 1402(e) and this section, the Service will mail to the applicant a statement that describes the grounds on which an individual may receive an exemption under section 1402(e). The individual filing the application shall certify that he or she has read the statement and that he or she seeks exemption from self-employment taxes on the grounds listed in the statement. The certification shall be made by signing a copy of the statement under penalties of perjury and mailing the signed copy to the Service Center from which the statement was issued not later than 90 days after the date on which the statement was mailed to the individual. If the signed copy of the statement is not mailed to the Service Center within 90 days of the date on which the statement was mailed to the individual, that individual's application for exemption will not be effective until the date that the signed copy of the statement is received at the Service Center.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table "1.1402(e)–5T . . . [1545–0168]."

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 3, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–8446 Filed 4–14–87; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of May 1987.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of h_i are—															
	h_1	h_2	h_3	h_4	h_5	h_6	h_7	h_8	h_9	h_{10}	h_{11}	h_{12}	h_{13}	h_{14}	h_{15}	h_{16}
May 1987	.0825	.08	.0775	.075	.0725	.07	.07	.07	.07	.07	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 6th day of April 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-8369 Filed 4-14-87; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3175-7]

Approval and Promulgation of Implementation Plans; New Hampshire Sulfur-in-Fuel; James River Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by the State of New Hampshire. This revision raises the sulfur-in-oil limit at the James River Corporation (Cascade Mill) in Gorham from 1.0% sulfur by weight to 2.2%. This source had previously been excluded from revisions to the statewide sulfur-in-fuel limitation. The intended effect of this revision is to federally approve the state's request that this source be subject to the state regulation that allows the burning of higher sulfur fuel.

EFFECTIVE DATE: May 15, 1987.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2311, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, DC 20460; and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Susan Kulstad, (617) 565-3226; FTS 835-3226.

SUPPLEMENTARY INFORMATION: On July 2, 1986, EPA published a Notice of Proposed Rulemaking for regulatory changes to the New Hampshire State Implementation Plan that would allow an increase in the sulfur-in-fuel content at the James River Corporation (Cascade Mill) from no more than 1.0% sulfur by weight to no more than 2.2% (51 FR 24163). This source was excluded from previously approved revisions to the sulfur-in-fuel limit for Coos County. The New Hampshire Air Resources Agency has now demonstrated that there will be no violations of National Ambient Air Quality Standards for sulfur dioxide when this source is burning the 2.2% sulfur oil. The rationale for EPA's action is explained in the Notice of Proposed Rulemaking and will not be restated here. No comments were received on EPA's proposed action. EPA has reviewed the New Hampshire submittal and finds it acceptable.

Final Action

EPA is approving the revision of the sulfur-in-fuel limitation of no more than 2.2% sulfur by weight for the James River Corporation (Cascade Mill), submitted on February 11, 1985.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides.

Dated: March 20, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1520, is amended by adding paragraph (c)(36) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(36) Approval of a revision to allow the James River Corporation (Cascade Mill), Gorham, to burn oil having a 2.2% sulfur-by-weight limit in accordance with previously approved SIP regulation Chapter Air 400, Section Air 402.02, submitted on February 11, 1985. This source was excluded from revisions pertaining to New Hampshire regulation Chapter Air 400, Section Air 402.02 (identified at paragraph (c)(26) of this section), but New Hampshire has now submitted adequate technical support for approval.

3. The table in § 52.1525 is amended by adding the following citation to the end of the entry entitled "Sulfur content limit in fuels" to read as follows:

§ 52.1525 EPA-approved New Hampshire state regulations.

* * * * *

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
Sulfur content limit in fuels	CH air 400		April 15, 1987.	52 FR	(c)(36)	Approval of 2.2% sulfur-in-oil limit for James River Corp-Cascade.

[FR Doc. 87-8032 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6F3434/R880; FRL-3186-4]

Exemption From the Requirement of a Tolerance for the Insect Pheromone Containing the Active Ingredients 3,7,11-Trimethyl-1-6,10-Dodecatriene 1-OL and 3,7,11-Trimethyl-2,6,10-Dodecatriene-3-OL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insect pheromone containing the active ingredients 3,7,11-trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol, (hereafter referred to in the preamble as "Stirrup-M"), in or on all raw agricultural commodities. This regulation, to eliminate the need to establish a maximum permissible level for residues of the pesticide, was requested by Fermone Chemicals, Inc. of Glendale, Arizona.

EFFECTIVE DATE: Effective on April 15, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6F3434/R880], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Arturo E. Castillo, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of March 18, 1987 (52 FR 8478) in response to pesticide petition 6F3434 submitted by Fermone Chemicals, Inc., P.O. Box 2316, Glendale, AZ 85311, which proposed establishing an exemption from the requirement of a tolerance for residues of the insect pheromone, Stirrup-M, containing the active ingredients 3,7,11-trimethyl-1-6,10-dodecatriene 1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol in or on all raw agricultural commodities.

There were no comments or request for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in detail in the proposed rule. Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance for Stirrup-M will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1086 is added to read as follows:

§ 180.378 3,7,11-Trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol; exemption from the requirement of a tolerance.

The insect pheromone containing the active ingredients 3,7,11-trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol is exempted from the requirement of a tolerance in or on all raw agricultural commodities.

[FR Doc. 87-8276 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300121B; FRL-3186-2]

Revocation of Aldrin and Dieldrin Tolerances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule document revoking tolerances for aldrin and dieldrin, published in the **Federal Register** of December 24, 1986. This action is necessary to recommend action levels for certain commodities for which existing tolerances have been revoked.

EFFECTIVE DATE: The action levels for the added commodities are effective on December 24, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, FR Doc. 86–28745, published in the **Federal Register** of December 24, 1986 (51 FR 46662) which revoked tolerances for the pesticide chemicals aldrin and dieldrin.

In the preamble, revoked tolerances and recommended action levels for certain raw agricultural commodities were inadvertently omitted from Table 1, appearing at page 46664, and are hereby corrected by adding and alphabetically inserting the following commodities:

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Tolerances (ppm) being revoked		Recommended action levels (ppm)
	Aldrin	Dieldrin	Aldrin/Dieldrin
* * * * *			
Peppers	0.1	0.1	0.05
* * * * *			
Sweet potatoes	0.1	0.1	0.05
* * * * *			

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–8272 Filed 4–14–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300119B; FRL-3186-1]

Revocation of DDT and TDE Tolerances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects the final rule document revoking tolerances for DDT and TDE, published in the **Federal Register** of December 24, 1986. This action is necessary to recommend action levels for commodities for which existing tolerances have been revoked.

EFFECTIVE DATE: The action levels for the added commodities are effective as of December 24, 1986.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (TS–767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, FR Doc. 86–28744, published in the **Federal Register** of December 24, 1986 (51 FR 46658) which revoked tolerances for the pesticide chemical DDT [a mixture of 1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)2-(*p*-chlorophenyl)ethane] and its degradation products, TDE [or DDD (1,1-dichloro-2,2-bis(p-chlorophenyl)ethane)] and DDE [1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethylene].

In the preamble, recommended action levels for certain raw agricultural commodities were inadvertently omitted from Table 3, appearing at page 46661, and are hereby corrected by adding and alphabetically inserting the following commodities:

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT

Commodities	Existing and recommended action levels (ppm) DDT/TDE/DDE
* * * * *	
Oat grain (animal feed)	0.5
Oat grain (human food)	0.5
* * * * *	

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-8273 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 6F3387/R882; FRL-3186-5]

Pesticide Tolerances for Metalaxyl; Certain Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide metalaxyl and its metabolites in or on certain raw agricultural commodities. This regulation, to establish maximum permissible levels of residues of metalaxyl in or on the commodities, was requested in a petition by Ciba-Geigy Corp. Elsewhere in this issue of the **Federal Register**, a feed additive regulation for metalaxyl is also being established.

EFFECTIVE DATE: Effective on April 15, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6F3387/R882], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois A. Rossi, Acting Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 30, 1986 (51 FR 16106), which announced that Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, submitted pesticide petition 6F3387 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy-methyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine, methyl ester, each expressed as metalaxyl, in or on fruiting vegetables except cucurbits at 1.0 part per million (ppm) and sugar beets and sugar beet tops at 0.1 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The scientific data considered in support of these tolerances include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligram/kilogram body weight/day (mg/kg bwt/day) (250 ppm).

2. A teratology study in rats with a NOEL of 400 mg/kg bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity.

3. A teratology study in rabbits with a NOEL of 300 mg/kg bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity.

4. A *Salmonella* mutagenicity study that was negative for reverse mutations with and without mammalian microsome activation.

5. A mouse dominant lethal study that was negative for mutagenicity.

6. A 3-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1,250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt (250 ppm).

8. A 2-year rat chronic feeding/oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 12.5 mg/kg bwt/day (250 ppm) based upon slight increases in liver weight to body weight ratios at 1,250 ppm.

9. A 2-year mouse oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 6.3 mg/kg bwt/day) and a hundredfold safety factor, is calculated to be 0.060 mg/kg/day. The maximum

permitted intake (MPI) for a 60-kg human is calculated to be 3.8 mg/day. These tolerances and the currently established tolerances result in a theoretical maximum residue contribution (TMRC) of 0.0057 mg/day (1.5-kg diet) for a 60-kg human and utilize 9.6 percent of the ADI.

The nature of the residue is adequately understood and analytical methodology is available in the Pesticide Analytical Manual II (PAM II) for enforcement purposes. The PAM II method involves gas-liquid chromatography (GLC) with alkali flame ionization detection (AFID), and with mass spectrometry for samples that show interference in the GLC/AFID. A newer analytical method which involves capillary gas chromatography using a nitrogen/phosphorus detector operating in the nitrogen-specific mode will be included in PAM II.

Because of the long lead-time from establishing these tolerances to publication of the enforcement methodology in the PAM II, the newer analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

By mail: William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 557–2613).

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346.

2. Section 180.408(a) is amended by removing the entries for "fruiting vegetables (except cucurbits) group [except tomatoes].....0.1" and "tomatoes..... 1.0" and adding, and alphabetically inserting, the following commodities, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Fruiting vegetables (except cucurbits) group	1.0
* * * * *	
Sugar beets	0.1
Sugar beets, tops	0.1
* * * * *	

[FR Doc. 87–8274 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

[FPMR Amendment G–80]

Transportation Documentation and Audit; Revision of Voucher-Schedule Procedures

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This rulemaking amends the Federal Property Management Regulations (FPMR) by requiring that appropriate accounting information accompanies payment checks sent to carriers by the Department of the Treasury. Air carriers complain that Treasury checks used to pay for passenger transportation often lack sufficient information to reconcile payments. This problem is attributed to improper carrier preparation of vouchers, improper or inadequate preparation of voucher-schedules by the paying agencies, and inadequate payment procedures at the disbursing facilities. The revised procedures provide explicit instructions for handling voucher-schedules and minimize the payment accounting problems by ensuring that proper payment information accompanies payment checks to carriers.

This rulemaking also changes GSA correspondence symbols which resulted from a reorganization.

EFFECTIVE DATE: April 15, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits, (202) 786–3014 or FTS 786–3014.

SUPPLEMENTARY INFORMATION:

Background

A Notice of Proposed Rulemaking (NPRM) to revise transportation disbursement procedures was published in the **Federal Register** on April 25, 1985 (50 FR 16316).

Section 101–41.806–2 is revised to eliminate the disbursing office (D.O.) voucher number. Section 101–41.806–3 is revised to allow the disbursing office to retain the original voucher-schedules, forwarding copies of the voucher-schedules to the issuing office. This change is necessary to correspond with the requirements of the Treasury Fiscal Requirements Manual (TFRM) Transmittal Letter Number 422. Section 101–41.806–3 is further revised to eliminate the forwarding of a copy of the voucher-schedule to GSA. The revisions also update Standard Form (SF) 1166 citations to conform to the current TFRM.

The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been

prepared. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act [5 U.S.C. 605(b)], GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and FIRMR 201–45.6.

Discussion of major comments. The following summarizes major comments, suggestions, and our determinations and actions taken. We received six comments to the NPRM: two Federal agencies, three carriers, and one carrier association. Both agencies suggested that clarifying amendments and editorial changes be made to the disbursing procedures. We have adopted those suggestions.

One carrier endorsed § 101–41.806–3 but requested that its agency number, which is provided on the tear-off slip, be incorporated in this section as a check identification requirement. This agency number, however, is not a GSA requirement and, therefore, cannot be adopted for inclusion in this final rule. However, § 101–41.806–3 requires that tear-off slips or enclosures bearing all information shown on the tear-off slips be forwarded to the carrier-payee with the payment check.

A carrier and the carrier association alleged that § 101–41.806–3 gives disbursing offices an alternative to forwarding detailed payment information to the carrier-payee and suggested there be no exception to remitting the tear-off slips. The main objective of this revision is to ensure that carriers receive all the information needed to identify payments, whether it be by tear-off slips, enclosures, or included on the check itself. We believe the current wording is sufficiently explicit to accomplish this objective.

The carrier suggested that § 101–41.802(b) be revised to require all agencies to adopt the disbursement procedures. This suggestion is not practical since all agencies do not use the Department of the Treasury's disbursing facilities. In fact, GSA is eliminating from this final rule that part of § 101–41.802(b) which permits other agencies to adopt these procedures after notification to GSA.

The carrier recommended that tear-off slips or media bearing all information shown on the tear-off slips be forwarded under separate cover to the carrier-payee immediately after a wire transfer of payment. In our opinion, these revised procedures clearly indicate that all information needed for check identification must be sent to the carrier-payee. GSA should be notified if, subsequent to the effective date of this final rule, these procedures are not followed.

The carrier further suggested that the interest amount be separately and distinctly identified for each carrier bill. We believe the current wording in § 101–41.803(c) sufficiently makes that distinction.

The carrier asked that it be highlighted that deductions from disbursement vouchers can only be made against foreign-flag carriers. GSA's position is that 31 U.S.C. 3726(b)(2) provides an "equivalent arrangement or exception" which encompasses domestic air transportation and, therefore, allows deductions to be made.

One carrier endorsed the proposal in its entirety.

List of Subjects in 41 CFR Part 101–41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by revising the following entries:

101–41.804 Preparation of SF 1166 OCR, Voucher and Schedule of Payments.
101–41.804–2 Listing of items on SF 1166 OCR.
101–41.806 Processing of SF 1166 OCR.

Subpart 101–41.2—Passenger Transportation Services Furnished for the Account of the United States

3. Section 101–41.206 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101–41.206 Special procedures for automatic payment of carrier charges for passenger transportation services.

* * * * *

(b) Agencies using the disbursing facilities of the Department of the Treasury shall issue Standard Form 1166 OCR, Voucher and Schedule of Payments (voucher-schedule), to the Department of the Treasury for issuance of the check. The payee block of the voucher-schedule shall include the above-cited identifying information that is to appear on the payment check. The stub attached to the SF 1166 OCR is not used in this instance and shall be destroyed.

(c) The accounting activity shall send to the General Services Administration (FWAA/C), Washington, DC 20405:

(1) The original of the blanket GTR (SF 1169);

(2) A copy of the ticket listing; and

(3) The agent's coupon of each ticket paid on the listing for air service, or the auditor's coupon of each ticket paid on a listing for Amtrak service.

* * * * *

Subpart 101–41.8—Transportation Disbursement Procedures

4. Section 101–41.802 is amended by revising paragraphs (a)(2) through (a)(6), by adding paragraph (a)(7), and by revising paragraph (b) to read as follows:

§ 101–41.802 Standard forms for scheduling transportation vouchers for payment.

(a) * * *

(2) SF 1166 OCR (Optical Character Recognition—Readable Format), Voucher and Schedule of Payments (Original) (white paper).

(3) SF 1166–A OCR, Voucher and Schedule of Payments (Memorandum) (yellow paper).

(4) SF 1166–EDP (Electronic Data Processing), Voucher and Schedule of Payments (Computer-generated).

(5) SF 1167 OCR, Voucher and Schedule of Payments (Continuation Sheet) (Original) (white paper).

(6) SF 1167–A OCR, Voucher and Schedule of Payments (Continuation Sheet) (Memorandum) (yellow paper).

(7) SF 1186, Transmittal for Transportation Schedules and Related Basic Documents.

(b) The procedures prescribed for preparation of SF 1166 OCR, Voucher and Schedule of Payments (voucher-schedule), are applicable to all Federal agencies using the disbursing facilities of the Department of the Treasury. The procedures prescribed for the use of SF

1166 OCR apply also to SF 1166–A OCR, SF 1167 OCR, and SF 1167–A OCR.

* * * * *

5. Section 101–41.803 is amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 101–41.803 Scheduling procedures.

(a) Agency shall prepare a voucher-schedule (SF 1166 OCR) for all basic vouchers covering transportation services furnished for the account of the United States submitted by carriers in accordance with §§ 101–41.214 and 101–41.310 of this part. Transportation vouchers (SF 1113) shall be listed separately from all other types of payment vouchers. All information required for check issuance purposes must be included on the SF 1166 OCR. After certification by the authorized certifying officer, the voucher-schedule shall be transmitted to the appropriate disbursing office. The transportation vouchers shall be retained by the agency for later transmittal to GSA (FWAA/C) in accordance with § 101–41.807 of this subpart.

(b) The tear-off slips from the related basic SF 1113 must also be sent to the disbursing office for forwarding to the carrier-payees with the payment checks. However, agencies submitting payment data on magnetic tape to a Department of the Treasury disbursing facility may arrange with that facility for the preparation of enclosures (TFS Form 3039, Notice to Check Recipient), bearing all information shown on the tear-off slips, which must be sent to the carrier-payee with the payment checks instead of the tear-off slips.

(c) Paid amounts must be clearly identified against individual carrier bills. Each carrier bill number and related payment amount for transportation charges and payment amount for interest, if any, for that bill number must be included in each check issue entry if the agency certifies on SF 1166 OCR, or it must be included as magnetic tape payment data if the agency certifies on SF 1166–EDP.

6. Section 101–41.803–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101–41.803–1 Classification of basic transportation vouchers for purposes of separate scheduling.

(a) Basic transportation vouchers shall be sorted into three general classifications for separate listing on SF 1166 OCR:

* * * * *

7. Section 101–41.804 is recaptioned and §§ 101–41.804–1 and 101–41.804–2 are revised to read as follows:

§ 101–41.804 Preparation of SF 1166 OCR, Voucher and Schedule of Payments.

§ 101–41.804–1 Assignment of schedule numbers.

Each SF 1166 OCR covering transportation vouchers shall be assigned a schedule number prefixed by the letter "T" and taken from a series of numbers running consecutively for each fiscal year. The "T" numbers assigned to transportation voucher-schedules shall be taken from a series of numbers separate from the series assigned to voucher-schedules covering nontransportation charges.

§ 101–41.804–2 Listing of items on SF 1166 OCR.

Each basic voucher shall be listed on a voucher-schedule with all information required for check issuance purposes, and paid amounts must be clearly identified against individual carrier bills (see § 101–41.803 (a) and (c)). The maximum practical number of check issue entries, consistent with normal spacing requirements, shall be listed on each voucher-schedule page.

8. Sections 101–41.804–4 and 101–41.804–5 are revised to read as follows:

§ 101–41.804–4 Name and address space.

Generally, the disbursing office draws checks only from information recorded on the SF 1166 OCR. Thus, except as provided in § 101–41.805, the information shown in the name and address column shall be complete (including ZIP codes) but shall be restricted to the information to be shown on the face of the check. Long addresses shall be avoided unless necessary for postal identification. The format and State abbreviations developed by the U.S. Postal Service for addressing envelopes shall be used.

§ 101–41.804–5 Amount column.

The amount for which the check is to be drawn shall be imprinted in the amount column on the same line as the payee's name. The total of the amount column on the SF 1166 OCR must include all items listed on the continuation sheets and must agree with the aggregate of amounts classified by appropriation or fund in the appropriation summary block.

9. Section 101–41.805–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–41.805–1 No-check vouchers.

* * * * *

(a) Vouchers requiring the processing of an accounting transaction for inclusion in the agency's SF 224, Statement of Transactions (Classified According to Appropriation, Fund, and Receipt Account, and Related Control Totals); SF 1220, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts; or SF 1221, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts (Foreign Service Account), or other approved reporting form, by transfer or without the issuance of a check shall be listed on SF 1166 OCR covering transportation vouchers for which checks are to be issued. Show the words "NO CHECK" in the amount column of SF 1166 OCR opposite the payee's name and address. The amount shall be shown on SF 1096, Schedule of Voucker Deductions, as provided in § 101–41.805–2.

(b) Vouchers which do not require the processing of an accounting transaction by the disbursing or accounting office for inclusion in the ageny's SF 224, SF 1220, SF 1221, or other approved reporting form, shall be scheduled separately. Such voucher-schedules shall be plainly marked "No-check vouchers." They shall not be submitted to disbursing officers for processing but shall be submitted to GSA (FWAA/C) for audit.

10. Section 101–41.805–2 is amended by revising the introductory text of paragraph (c) and paragraphs (c)(1) and (c)(2) to read as follows:

§ 101–41.805–2 Deductions from disbursement vouchers.

* * * * *

(c) When an amount is deducted from more than one basic voucher listed on an SF 1166 OCR, the agency shall take action as follows:

(1) Show the net amount payable to each payee in the amount column of the SF 1166 OCR;

(2) Record the total amount deducted as the last item in the address column of the SF 1166 OCR: "See attached SF 1096 No. —— $ ——";

* * * * *

11. Section 101–41.806 is recaptioned and §§ 101–41.806–1, 101–41.806–2, and 101–41.806–3 are revised to read as follows:

§ 101–41.806 Processing of SF 1166 OCR.

§ 101–41.806–1 Makeup and initial distribution of forms.

Agencies shall prepare an original SF 1166 OCR and at least two copies of the SF 1166–A OCR. The original and two copies shall be forwarded to the appropriate disbursing office for payment processing.

§ 101-41.806-2 Information to be furnished by the disbursing office.

The disbursing office (D.O.) shall clearly imprint within the PAID BY block the word "Paid"; the month, day, and year of payment; and the D.O. (station) symbol number. The disbursing office shall also list in the appropriate column opposite each payee's name the serial numbers of any checks issued in payment of the voucher.

§ 101-41.806-3 Disposition of forms after payment.

The disbursing office shall forward the payment check to the carrier-payee with pertinent tear-off slips (or Notice to Check Recipient, TFS Form 3039 bearing all information shown on the tear-off slips), return two copies of the voucher-schedule to the issuing agency, and retain the original voucher-schedule to support its statements of accountability. If neither a tear-off slip nor a Notice to Check Recipient is provided, the carrier's bill number and related payment amount for transportation charges, and payment amount for interest, if any, for that bill number must appear on the check. In distributing the accomplished voucher-schedule, the issuing agency shall use one copy to support its statement of transactions (SF 224, SF 1220, or SF 1221) and retain a copy in its files.

12. Section 101-41.807-1 is revised to read as follows:

§ 101-41.807-1 Identification of basic transportation payment documents.

Each basic transportation voucher (SF 1113) and its related voucher-schedule (SF 1166 OCR) shall be cross-referenced by voucher number (military agencies) or schedule number (civilian agencies) in the appropriate space to provide positive association of one with the other and the date of payment as shown in the PAID BY block of the voucher-schedule.

13. Section 101-41.807-2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 101-41.807-2 Submission of transportation vouchers.

* * * * *

(a) Each month, after the statement of transactions (SF 224, SF 1220, or SF 1221) has been accomplished, the basic transportation vouchers and supporting documents shall be securely bound with cord or tape and forwarded promptly to the General Services Administration (FWAA/C), Washington, DC 20405.

* * * * *

(d) The cover or container of each package shall include the following information.

From: Names and address of transmitting office. Period of account. Package number ——— of ———.

Disbursing office symbol number. Package number ——— of ———.

To: General Services Administration, (FWAA/C), Washington, DC 20405.

14. Section 101-41.808-1 is revised to read as follows:

§ 101-41.808-1 New or discontinued agency stations.

Agencies shall notify the General Services Administration (FWCA), Washington, DC 20405, whenever a new or existing agency station is authorized to prepare voucher-schedules for transportation services or when an agency station is no longer so authorized. This notice shall show the name and station location of the bureau or office and the date on which its authority to schedule payments for transportation services was granted or discontinued.

Dated: March 30, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-8351 Filed 4-14-87; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[Circular No. 2593; AA-320-87-4220]

Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the regulations in subpart 2091 to place in one location the regulations that cover all forms of segregation of public lands, as well as the procedures under which those lands are opened to the operation of the public land laws and the mineral laws. This final rulemaking modernizes outdated provisions, making the subpart easier for the public to use in determining the status of public lands. The revision also makes it easier to improve the accuracy of the public land records.

EFFECTIVE DATE: May 15, 1987.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sue Bosma, (202) 343-6486.

SUPPLEMENTARY INFORMATION: A proposed rulemaking revising the regulations in 43 CFR Subpart 2091 was published in the **Federal Register** on June 7, 1985 (50 FR 24124), with a 60-day comment period. During the comment period, comments were received from 25 sources, 3 from associations, 3 from businesses, 2 from State and local governments, 1 from an Indian tribe, 1 from a legal service group and 15 from Federal agencies. The comments generally supported the rulemaking, but made suggestions on specific sections of the proposed rulemaking. Those suggestions are discussed in this preamble. Only those sections that were the subject of comments are discussed.

A few of the comments wanted to be certain that the regulations and the opening orders would give everyone an equal opportunity for access to the public lands covered by an opening order. The proposed and final rulemaking are designed to summarize in one location the procedures that deal with the opening and closing of the public lands to provide the public with as much information as possible about those procedures and the steps required to gain access to public lands that have been opened by an opening order. This summarization does not change the provisions of the existing provisions in other parts of Title 43 relating to opening and closing.

One comment expressed the view that the existing notation rule used by the Bureau of Land Management needed to be revised. The changes contained in the proposed rulemaking, and continued by the final rulemaking, are designed to limit the use of the notation rule as the official procedure for disclosing the availability of the public lands for public use. The new procedures will, to the extent possible, eliminate the notation rule and provide greater public notice, through publication of opening and closing orders, of the status of the public lands. Publication of opening and closing orders should provide greater accessibility to information about the public lands for the public.

A couple of comments questioned whether the proposed rulemaking would require the publication of an opening order in every instance where the public lands are opened to entry under the public land laws. The proposed rulemaking, as well as the final rulemaking, was designed to require the publication of an opening order when the lands are opened to the public land laws, except in those instances where a statute provides for automatic opening upon the occurrence of an event, such as

the termination of an emergency withdrawal.

One comment pointed out that the proposed rulemaking did not address withdrawals made for reservoirs under the Act of October 2, 1888 (43 U.S.C. 662) and the Act of June 25, 1910 (43 U.S.C. 141), and suggested that the final rulemaking needed to specifically address these withdrawals. The final rulemaking does not specifically address these withdrawals. The statutory authority for these withdrawals was repealed by the Federal Land Policy and Management Act and any action on the existing withdrawals would be taken under procedures for withdrawal action under the Federal Land Policy and Management Act.

A couple of comments pointed out that the definition of the term "opening order" sets out the requirement for publication of that document in the **Federal Register** and questioned the need to repeat the instructions for publication in each of the sections that discusses opening orders. The final rulemaking continues to repeat the publication requirement in each of the sections where an opening order is mentioned. After careful review of this issue, it was determined that repeating the instructions would make clear the steps that were to be taken for publication of an opening order.

One comment suggested that the final rulemaking should provide for the posting of opening orders to assist in informing the public, especially those who do not have access to the **Federal Register**, of the opening of the public lands. The final rulemaking has not adopted this suggestion because existing Bureau of Land Management operating procedures require the posting of a copy of the **Federal Register** notice in the public room of each State office.

One comment raised questions about the intended effect of the proposed rulemaking. The proposed and final rulemakings are designed to summarize in one location the regulations that cover all forms of segregation and opening of the public lands. The requirements that must be followed in making a withdrawal are covered in those parts of Title 43 where the procedures for making a specific withdrawal are set out. This final rulemaking makes no changes in the withdrawal or classification requirements.

One comment questioned the removal by the proposed rulemaking of §§ 2091.5 and 2091.6–3 from the existing regulations and suggested that these sections should be reinstated by the final rulemaking. The final rulemaking has not adopted this suggestion and the sections have not been reinstated. These sections do not deal with the issue of segregation and opening of lands, but contain procedural instructions that are part of Bureau of Land Management's Manual system and will be followed in those instances when Indians are occupants of the public lands. This final rulemaking will have no effect on that existing procedure and the Bureau of Land Management will continue to follow the existing procedure that protects Indians who are occupants of the public lands. Finally, the final rulemaking will continue the procedure of segregating those public lands that are the subject of a properly filed application.

Comments on Specific Sections

Two comments pointed out that the authority section and authority citation provision did not contain a reference to the Alaska National Interest Lands Conservation Act. The final rulemaking corrects this oversight and includes a reference to that Act.

One comment suggested that the proposed rulemaking could be read to include lands of agencies other than the Bureau of Land Management. The proposed and final rulemakings deal with the opening and closing of those lands administered by the Secretary of the Interior through the Bureau of Land Management. Only those lands are covered by this final rulemaking even though the public land records of the Bureau show the status of the lands of other Federal agencies as required by statute. It should be noted that other agencies do not always keep the Bureau informed of changes in the status of lands under their jurisdiction, and this prevents the Bureau from maintaining current land records.

One comment was concerned that the proposed rulemaking did not continue segregation as a mechanism for protecting wildlife refuge lands from entry under the public land laws. These rulemakings are designed to deal only with lands under the jurisdiction of the Bureau of Land Management. Lands withdrawn or set aside for refuge purposes are protected under the regulations of the Fish and Wildlife Service.

The definition section of the proposed rulemaking was the subject of a number of comments. Several of the comments wanted new terms added to the section, while others requested that certain of the terms be amended. After careful review of the comments on this section, the final rulemaking adopts the language of the proposed rulemaking with an amendment in paragraph (b) that is a clarifying amendment.

A couple of comments raised questions about the availability of segregated lands for lease under the mineral leasing laws, with some reading the proposed rulemaking as closing all segregated lands to mineral leasing. Section 2091.0–7 makes this point clear in that it continues the policy of the Department of the Interior that lands are available for leasing under the mineral leasing laws, the Geothermal Steam Act and the material disposal laws unless the segregation provides otherwise. This final rulemaking continues unchanged the wording of the proposed rulemaking. This final rulemaking will continue the policy of the Secretary of the Interior of exercising his/her discretion under the mineral leasing laws, the Geothermal Steam Act and the material disposal laws unless the segregation specifies otherwise in order to provide special protection for the segregated lands.

The comments indicated some confusion about when lands are open to entry under the public land laws. One comment pointed out that there are situations where public lands are automatically opened without the issuance of an opening order and felt that the proposed rulemaking did not give proper recognition to this situation. The final rulemaking makes a change to § 2091.2–2(a)(2) of the proposed rulemaking to make it clear that lands are open as specified in the opening order. The proposed and final rulemakings contain provisions which allow automatic openings, as well as other actions that open lands.

A few comments on § 2091.1 of the proposed rulemaking raised the point that there are special statutory provisions concerning the filing of applications for lands in Alaska. In recognition of this situation, the final rulemaking has adopted language that clarifies this point.

One comment indicated that § 2091.1(b) of the proposed rulemaking was confusing and appeared to repeat the provisions of § 2091.0–7(a). The section has not been changed by the final rulemaking.

Several of the comments on § 2091.2 of the proposed rulemaking questioned the use of a notice of realty action as the method for classification of lands requiring classification actions. During its continuing efforts to update the provisions of Title 43 of the Code of Federal Regulations dealing with land disposals, the Bureau of Land Management is making the notice of realty action the vehicle for notification to the public that public lands are being made available for disposal. These changes, some of which are already in

place in Title 43, will standardize the use of the notice of realty action as the vehicle for land classification, a process that should clear up the confusion that was indicated in the comments on this issue.

One comment on § 2091.2–1 of the proposed rulemaking suggested that the final rulemaking provide that the filing of an application to exchange lands should segregate the public lands and pointed out that this amendment would follow the existing practice for exchanges of lands within the National Forest System. The final rulemaking has not adopted the suggestion. The exchange regulations, 43 CFR Group 2200, provide the authorized officer with latitude as to when the notice of realty action for an exchange should be issued in order to provide the greatest protection for the lands that are subject to the exchange. The Bureau of Land Management's experience shows that the finalization of an exchange normally takes longer than two years. However, the provisions of 43 CFR 2201.1(b) allow a 2-year period of segregation for exchanges and this final rulemaking cannot extend this period. Therefore, the 2-year period of segregation must be used at a point when it is most effective. If the segregation is imposed with the filing of the exchange proposal, the segregative effect would end before the exchange could be completed. This could result in entries on the lands that are the subject of the exchange that could jeopardize the exchange at a point where the parties had expended large amounts of time and money. For these reasons, the timing of the publication of the notice of realty action is left to field personnel who are responsible for completing the exchange.

Section 2091.2–2 of the proposed rulemaking was the subject of several comments, most of which raised points that they felt needed to be clarified. As a result of the concerns about clarity raised by the comments, the section was carefully reviewed to see if it could be clarified. The final rulemaking modifies the language of § 2091.2–2(a) of the proposed rulemaking to clarify an ambiguity about whether the lands are automatically opened when patented. Such action does terminate the segregative effect and the final rulemaking so states. The final rulemaking has adopted a suggested change to paragraph (a)(2) that makes it clear that the opening occurs on the date specified in the **Federal Register** notice, not upon publication in the **Federal Register**. Another suggested change that has been adopted by the final rulemaking is the inclusion of a reference to section 206 of the Federal Land Policy and Management Act. Finally, § 2091.2–2(c) of the proposed rulemaking has been amended by the final rulemaking to clarify that lands received by the United States as part of an exchange become open to "some or all of the public land laws," rather than open to all of the public land laws as stated in the proposed rulemaking.

Several comments were directed to § 2091.3 of the proposed rulemaking. One of the comments suggested that the final rulemaking should contain language covering land selections by the State of Alaska. This suggestion has not been adopted because the land selections of the State of Alaska are covered in § 2091.9 of the proposed and final rulemaking. These selections have been covered in a separate section because of the special nature of the land selection procedures for the State of Alaska, a procedure that did not fit with the provisions in the general sections.

A couple of the comments on § 2091.3–1(c) of the proposed rulemaking suggested the need to clarify the issue of when the segregation for an application to purchase Federally-owned mineral interests of the United States becomes effective. The final rulemaking has adopted a change which follows the provisions of 43 CFR Part 2720 and makes the segregation effective upon publication of the notice of the filing of an application to purchase Federally-owned mineral interests. This notice is to be published as soon as possible after the filing of the application in order to protect the lands from any unauthorized entry.

As suggested in a comment, the final rulemaking has adopted a change which adds the requirements of the Airport and Airway Improvement Act of 1982 to § 91.3–1(d) of the proposed rulemaking.

A couple of comments on § 2091.3–2 of the proposed rulemaking made the point that lands acquired through exchange should not be automatically opened to the public land laws. To clarify this point, the final rulemaking has adopted a change that specifies that the date on which lands acquired through exchange are open to the public land laws is the date of the publication of a notice of availability.

One comment questioned the inclusion of lands of the National Forest System in this proposed rulemaking which covers lands administered by the Secretary of the Interior through the Bureau of Land Management. These lands are included in both the proposed and final rulemaking because of the statutory authority given the Secretary of the Interior in connection with actions on National Forest exchanges.

One comment on § 2091.4 of the proposed rulemaking suggested that the phrase "leases, grants or contracts" be deleted. The final rulemaking has not adopted this suggestion, leaving the section as it appeared in the proposed rulemaking.

A comment on § 2091.4–1 of the proposed rulemaking expressed the view that there was a conflict between the language of the proposed rulemaking and § 2531.3 of the existing regulations. After a careful review of both sections, the final rulemaking retains § 2091.4–1 without change because there is no conflict between the two cited sections.

A comment on § 2091.4–3 of the proposed rulemaking wanted to know the effect of the segregation granted upon the signing of a Carey Act contract on the segregation that took effect upon filing of the application. The segregation created by the signing of a Carey Act contract is a new segregation that supersedes the prior segregation and is good for a period of 10 years, with the Secretary of the Interior having authority to extend that segregation for another 5 years. The final rulemaking makes no substantive change in this section of the proposed rulemaking.

The comments on §§ 2091.5, 2091.5–1 and 2091.5–2 of the proposed rulemaking pointed out several places where the proposed rulemaking was in error and needed clarification. The final rulemaking has adopted the suggestion that the word "withdrawals" be replaced with the word "segregations" because the latter word properly describes the action that occurs as a result of the filing of an application or proposal. Other comments on these sections of the proposed rulemaking make the point that the proposed rulemaking discusses "publication" without specifying where the publication is to be made. The final rulemaking adopts language requiring the publication to be in the **Federal Register.**

Nearly all of the comments on this section noted that the word "before" is used in error in § 2091.5–1(b) and that it should be replaced with the word "after." The final rulemaking has adopted this correction.

A couple of the comments on § 2091.5–2 of the proposed rulemaking indicated some confusion about segregations resulting from withdrawal applications filed prior to October 21, 1976. The final rulemaking makes no substantive changes in this section of the proposed rulemaking. The final rulemaking requires that any amended

withdrawal application filed prior to October 21, 1976, will subject the lands covered by the amended application to the requirements for a withdrawal application filed on or after October 21, 1976. One comment questioned what was meant by paragraph (b) of this section of the proposed rulemaking. That paragraph provides that lands affected by a subsequent amendment to a withdrawal application that had been filed prior to October 21, 1976, are subject to the same requirements as those for a withdrawal application filed on or after October 21, 1976. This means the segregation of all the lands covered by the amended application will terminate two years from the date of publication of the amendment. The final rulemaking makes no substantive change in this section.

Several comments were received on § 2091.5–3 of the proposed rulemaking. The comments raised the point that the language of the proposed rulemaking concerning the automatic termination of the emergency withdrawal was confusing and needed clarification. The final rulemaking has amended paragraph (b) to clarify that the segregative effect of an emergency withdrawal terminates unless it is continued by publication in the **Federal Register** of a notice of the filing of a withdrawal application or proposal covering all or part of the lands that were included in the emergency withdrawal.

Section 2091.5–4 of the proposed rulemaking was the subject of five comments. These comments raised questions about the procedures under which waterpower withdrawals can be terminated. After careful review of the proposed rulemaking and the comments, this section has been amended by the final rulemaking to clarify the procedures for opening lands covered by a waterpower withdrawal to the operation of the public land laws, including the mineral laws.

Section 2091.5–5 of the proposed rulemaking was the subject of six comments, with most of the comments raising questions about when lands covered by a Federal Power Act withdrawal that is vacated are opened. This section has been amended by the final rulemaking to clarify when such lands are opened, with the lands being opened when the vacated withdrawal is noted on the land records. The public is reminded that the Federal Power Act provides that lands covered by a Federal Power Act withdrawal are, at the time the withdrawal is vacated, subject for a period of 90 days to the right of the State where the lands are located to select a right-of-way for highway purposes. The final rulemaking also contains a reference to 43 CFR Part 3730 to give the interested public a better understanding of the effect of a Federal Power Act withdrawal.

Three comments were directed to § 2091.5–6 of the proposed rulemaking, with the comments expressing some confusion about the authority of the Secretary of the Interior in those instances where the Congress makes a withdrawal of the public lands and fails to specify the extent of the segregation. The final rulemaking has been amended to clarify the authority of the Secretary in such instances.

Only three comments were received on § 2091.6 of the proposed rulemaking. The comments were widely varied and raised questions about the effective date of a withdrawal and its termination. In order to assist the users of this section, the final rulemaking has added a reference to 43 CFR Part 2310—Withdrawals, General Procedure.

Section 2091.7–1 of the proposed rulemaking was the subject of eleven comments. A couple of the comments expressed the view that the section was too restrictive and should be simplified. After careful review, the title of the section has been changed by the final rulemaking to clarify that the section is applicable to all classification actions. The final rulemaking also replaces the word "cancellation" in § 2091.7–1(a)(2) with the word "classification," the word that was originally intended.

The comments on section 2091.7–2 of the proposed rulemaking raised questions about the provisions of this section. One comment pointed out that lands classified for disposal under the Recreation and Public Purposes Act and the Small Tract Act are segregated from the Mineral Leasing Act, which is inconsistent with the language of the proposed rulemaking. The final rulemaking has removed the reference to the mineral laws in the first sentence of the section. This change means that the classification notice will set out the extent of the segregative effect, including whether the lands are segregated from the mineral laws.

Sections 2091.9 through 2091.9–3 of the proposed rulemaking was the focus of three comments. One of the comments recommended that the final rulemaking repeat the provisions of 43 CFR Part 2650 that are applicable to opening and closing of the public lands. As stated earlier in this preamble, this part is a restatement of the provisions located in other parts of Title 43 of the Code of Federal Regulations on opening and closing of the public lands. Repeating these provisions is not required and the final rulemaking has not adopted the recommendation. The final rulemaking does make a correction in § 2091.9–3 by removing the phrase "Part 4220" and replacing it with the phase "Part 4200." While this final rulemaking cannot address the suggestion of one of the comments that the provisions of 43 CFR Part 2650 need to be updated, the Bureau of Land Management is reviewing Part 2650 to determine what, if any, changes are needed.

Editorial and grammatical corrections have been made as needed.

The principal author of this final rulemaking is Jim Powell, Division of Lands, 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 revision made by this final rulemaking is a restatement in one location of the existing procedures for segregating or opening the public lands to the various public land laws and the mineral laws. The final rulemaking makes no change in the procedures that exist in other parts of Title 43 of the Code of Federal Regulations, procedures that apply equally to all entities who desire to use the public lands.

Since this final rulemaking is a restatement of regulations that are located in other parts of Title 43 of the Code of Federal Regulations, there are no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects 43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indian lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1202), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 231, 321, 3233, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the

Act of February 18, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 29, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1701 et seq.), Part 2090, Group 2000, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

James E. Cason,

Acting Assistant Secretary of the Interior.

March 25, 1987.

PART 2090—[AMENDED]

1. An authority citation for Part 2090 is added to read:

Authority: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1701 et seq.; 30 U.S.C. 189; 48 U.S.C. 462 note; 43 U.S.C. 279–283.

2. Part 2090 is amended by revising subpart 2091 to read:

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Sec.

2091.0–1 Purpose.
2091.0–3 Authority.
2091.0–5 Definitions.
2091.0–7 Principles.
2091.1 Action on applications and mining claims.
2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.
2091.2–1 Segregation.
2091.2–2 Opening.
2091.3 Segregation and Opening resulting from the filing of an application or offer.
2091.3–1 Segregation.
2091.3–2 Opening.
2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.
2091.4–1 Segregation and opening—Desert land entries and Indian allotments.
2091.4–2 Segregation and opening—airport leases and grants.
2091.4–3 Segregation and opening—Carey Act.
2091.5 Withdrawals.
2091.5–1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.
2091.5–2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.
2091.5–3 Segregative effect and opening—emergency withdrawals.
2091.5–4 Segregative effect and opening—water power withdrawals.
2091.5–5 Segregative effect and opening—Federal Power Act withdrawals.
2091.5–6 Congressional withdrawals and opening of lands.
2091.6 Opening of withdrawn lands—general.
2091.7 Segregation and opening of lands for a specific use.
2091.7–1 Segregative effect and opening—classification.
2091.7–2 Segregative effect and opening—Taylor Grazing Act.
2091.9 Segregation and opening resulting from laws specific to Alaska.
2091.9–1 Alaska Native selections.
2091.9–2 Selections by the State of Alaska.
2091.9–3 Lands in Alaska under grazing lease.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in Title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management and summarize the existing procedures covering opening and closing of lands as they relate to the filing of applications. The provisions of this subpart do not replace or supersede any provisions of Title 43 covering opening and closing of public lands.

§ 2091.0–3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

§ 2091.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) "Land" or "public lands" means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Mineral laws" means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) "Public lands records" means the Tract Books, Master Title Plats and Historical Indices maintained by the Bureau of Land Management, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, reservations, openings, classifications applications, segregations, leases, permits and disposals.

(f) "Opening" means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if appropriate, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals, reservations, classifications, and management decisions. Depending on

the language in the opening order, an opening may restore the lands to the operation of all or some of the public land laws.

(g) "Opening order" means an order issued by the Secretary or the authorized officer and published in the **Federal Register** that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) "Revocation" means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the "Secretary".

§ 2091.07 Principles.

(a) Generally, segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law;

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the **Federal Register** under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2-1 Segregation.

The publication of a Notice of Realty Action in the **Federal Register** segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869-4), for a period of 18 months (See Part 2740 and Subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See Part 2710); and

(c) The exchange provisions of section 206 of the Federal Land Policy and Management Act of 1976(43 U.S.C. 1716) for a period of 2 years (See Part 2200).

§ 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2-1 of this title (See Part 2740); or

(2) As of the date specified in an opening order published in the **Federal Register**; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Lands conveyed under either the Recreation and Public Purposes Act or sections 203 and 206 of the Federal Land Policy and Management Act, upon opening, remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(c) Lands conveyed to the United States by exchange become public lands upon acceptance of title by the United States and become open to the operation of some or all of the public land laws, to the extent and on the date and time set forth in an opening order published in the **Federal Register**.

§ 2091.3 Segregation and opening resulting from the filing of an application or offer.

§ 2091.3-1 Segregation.

(a) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See Subparts 2621 and 2622)

(b) The filing of a notice of an offer for exchange of lands within the National Forest System segregates the lands for a period of 2 years from the date of such filing with the authorized office. (See § 2203.1(b))

(c) The filing of an application and publication of the notice of the filing of an application in the **Federal Register** for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See Part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211-213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982

(49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See Part 2640 and Subpart 2911)

§ 2091.3-2 Opening.

(a) If the application or offer described in § 2091.3-1 of this title is not denied or otherwise terminated prior to the end of the 2-year segregative period, the segregative effect of the filing of the application or offer terminates either:

(1) Upon the issuance of a patent, other document of conveyance or lease to such lands; or

(2) Upon publication in the **Federal Register** of an opening order terminating the segregative effect and specifying the date and time of opening; or

(3) Automatically upon the expiration of the 2-year period commencing on the date the application or offer is filed; whichever occurs first.

(b) If the application or offer described in § 2091.3-1 of this title is denied or otherwise terminated prior to the end of the 2-year segregation period, the lands are opened by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States within the National Forest System under the authority of the Act of March 20, 1922, as amended (16 U.S.C. 485), or the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are open to operation of all laws and regulations applicable to National Forest System lands on the date the lands are transferred to the National Forest System; and the public lands, as applicable, on the date of publication of a notice of availability.

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4-1 Segregation and opening—Desert land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See Parts 2520 and 2530).

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the **Federal Register** of an opening order which specifies the date and time of opening. (See Parts 2520 and 2530).

§ 2091.4-2 Segregation and opening—airport leases and grants.

(a) The issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands. (See Part 2640 and Subpart 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, but are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See Part 2640 and Subpart 2911).

§ 2091.4-3 Segregation and opening—Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the **Federal Register** that a contract has been signed segregates the lands described in the contract, as of the date of publication of a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See Part 2610).

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of Subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5-1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.

(a) Publication in the **Federal Register** of a notice of an application or proposal for withdrawal, as provided in Subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Segregations resulting from applications and proposals filed on or after October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication in the **Federal Register** of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the publication in the **Federal Register** of a Public Land Order effecting the withdrawal in whole or in part;

(3) Upon the publication in the **Federal Register** of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the **Federal Register** of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

§ 2091.5-2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application or withdrawal proposal filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the **Federal Register**, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5-1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5-1 of this title.

(b) Segregations resulting from applications filed under this section terminate in accordance with procedures in § 2091.5-1 of this title.

§ 2091.5-3 Segregative effect and opening—emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, and cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration of the withdrawal unless segregation is effected by the publication in the **Federal Register** of a notice of a withdrawal application or proposal.

§ 2091.5-4 Segregative effect and opening—water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public land laws, but are not withdrawn and segregated from the operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws after a revocation or cancellation order issued by the Department of the Interior or after a determination to open the lands is made by the Federal Energy Regulatory Commission under section 24

of the Federal Power Act. (See Subpart 2320) Mining claims may be located on such lands under procedures in Subpart 3730 of this title. These lands are opened by publication in the **Federal Register** of an opening order specifying the extent, date and time of opening.

§ 2091.5–5 Segregative effect and opening—Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate.

(2) The issuance of a permit or license for a project by the Federal Energy Regulatory Commission withdraws the lands from the operation of the mining laws. (See Part 3730).

(b) Lands withdrawn under section 24 of the Federal Power Act remain withdrawn until the withdrawal is vacated and the lands opened by proper authority.

(c) After a withdrawal has been vacated, the lands are opened to the operation of the public land laws by notation of the lands records to that effect.

§ 2091.5–6 Congressional withdrawals and opening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date, duration and extent of segregation, the Secretary shall publish in the **Federal Register** a Public Land Order so specifying.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the **Federal Register** an opening order so specifying.

§ 2091.6 Opening of withdrawn lands—general.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the **Federal Register** of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the **Federal Register** of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the **Federal Register** as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened. (See Subpart 2310.)

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7–1 Segregative effect and opening classifications.

(a)(1) Lands classified under the authority of the Recreation and the Public Purposes Act, as amended (43 U.S.C. 869–4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act, except as provided in the notice of realty action.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411–18) are segregated to the extent described in the notice of classification.

(b) The segregative effect of the classification described in § 2091.7–1 of this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications; (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2470 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2470 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date on these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classification shall be terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening.

§ 2091.7–2 Segregative effect and opening—Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice. The segregative effect for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening or upon issuance of a patent or other document of conveyance,

§ 2091.9 Segregation and opening resulting from laws specific to Alaska.

§ 2091.9–1 Alaska Native selections.

The segregation and opening of lands authorized for selection and selected by Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), are covered by Part 2650 of this title.

§ 2091.9–2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by Subpart 2627 of this title.

§ 2091.9–3 Lands in Alaska under grazing lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a–316o) are covered by Part 4200 of this title.

[FR Doc. 87–8342 Filed 4–14–87; 8:45 am]
BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6749]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant

Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest Room 416 Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new contruction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measure after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

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

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

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

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

§ 64.6 List of Eligible Communities.

State	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Maine	Hudson, town of, Penobscot County.	230392	June 24, 1977, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Apr. 17, 1987.
Vermont	Johnson, town of Lamoille County.	500063	May 13, 1975, Emergency; Feb. 1, 1979, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Region IV					
Mississippi	Warren County, Unicorporated Areas.	280198	Dec. 26, 1973, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
South Carolina	Charleston County, Unicorporated Areas.	455413	June 30, 1970, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Do	McClellanville, town of, Charleston County.	450039	Dec. 16, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Do	Walterboro, city of, Colleton County.	450058	Apr. 2, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Region V					
Indiana	La Fontaine, town of, Wabash County.	180267	June 4, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do

State	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Ohio	Enon, village of, Clark County	390795	Sept. 12, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Wisconsin	Dousman, village of, Waukesha County.	550480	June 30, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Minimal Conversions					
Region I					
Maine	Frenchboro, town of, Hancock County.	230594	Apr. 25, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1986, Suspension.	Apr. 17, 1987.	Apr. 17, 1987
Do	Troy, town of, Waldo County	230269	Mar. 15, 1976, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Region II					
New York	Laurens, village of, Otsego County.	361351	Jan. 27, 1976, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do
Region III					
West Virginia	Junior, town of, Barbour County	540001	Nov. 21, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension.	Apr. 17, 1987.	Do

Code for reading fifth column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: April 9, 1987.

[FR Doc. 87-8388 Filed 4-14-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-55; RM-4861]

Television Broadcasting Services; Bradenton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF television Channel 66 to Bradenton, Florida, in response to a petition for reconsideration filed by Broadcast Technical Services, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-55, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. In § 73.606(b), Table of Assignments, the entry for Bradenton, Florida, Channel 66, is added.

Federal Communications Commission.

Mark N. Lipp,
Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-8409 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-98; RM-5188, 5375]

Radio Broadcasting Services; Seymour and Pigeon Forge, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A to Seymour, Tennessee, as that community's first FM service at the request of William J. Miller. A site restriction of 3.4 kilometers (2.1 miles) northeast of Seymour is required. In addition, this action denies the mutually exclusive petition of J.A. Adams requesting the allotment of Channel 242A to Pigeon Forge, Tennessee. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 26, 1987; The window period for filing applications will open on May 27, 1987 and close on June 25, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-98, adopted February 27, 1987, and released April 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry for Seymour, Tennessee, Channel 242A.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8408 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-434; RM-5573]

Radio Broadcasting Services; Pago Pago, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 221A to Pago Pago, American Samoa, as the community's first local FM service, at the request of Samoa Technologies, Inc. Channel 221A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 26, 1987; The window period for filing applications for open on May 27, 1987, and close on June 26, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-434, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Pago Pago, American Samoa, Channel 221A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8406 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-248; RM-5244]

Television Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Television Channel 38 to Walker, Minnesota, in response to a petition filed by Hubbard Broadcasting, Inc. This assignment will provide a second commercial television service for Walker. Canadian concurrence has been obtained for the assignment of Channel 38 to the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 26, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-248, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Assignments is amended under Minnesota by adding Channel 38- to Walker.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8410 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-201; RM-5003, RM-5529]

Radio Broadcasting Services; Falmouth, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 245A for FM Channel 237A at Falmouth, Kentucky and modifies the license of Station WIOK(FM) to specify the new channel at the request of IOK, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's corrected Report and Order, MM Docket No. 86-201, adopted December 10, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of Allotments is revised under the State of Kentucky by adding Channel 245A and deleting Channel 237A at Falmouth.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8407 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522 and 552

[Acquisition Circular AC–87–2]

Annual Report From Federal Contractors

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends Parts 522 and 552 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to implement the Department of Labor (DOL) regulations published in the March 4, 1987 **Federal Register** (52 FR 6674–6679). The DOL regulations require Federal Contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans. The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

DATES: *Effective Date:* April 3, 1987.

Expiration Date: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4764.

SUPPLEMENTARY INFORMATION: This rule was not published for public comment because it merely implements the Department of Labor regulations which have already ungone the public comment process. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The Secretary of Labor certified to the Chief Counsel for Advocacy, Small Business Administration, that the annual reporting requirement would 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.*). This rule implements the DOL requirement that contractors submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans. Therefore, no regulatory flexibility analysis has been prepared. The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB Control No. 1293–0005. Government Procurement.

PARTS 522 and 552—[AMENDED]

1. The authority citation for 48 CFR Parts 522 and 552 continues to read as follows:

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

2. 48 CFR Parts 522 and 552 are amended by the following Acquisition Circular:

April 1, 1987.

General Services Administration Acquisition Regulation; Acquisition Circular (AC–87–2)

To: All GSA contracting activities.

Subject: Annual Report from Federal Contractors.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12) to prescribe an Employment Report on Special Disabled Veterans and Veterans of the Vietnam Era clause for inclusion in GSA contracts, and to make related changes.

2. *Background.* As required by the Veterans' Compensation, Education and Employment Amendment of 1982, the Department of Labor (DOL) prescribed on March 4, 1987 (52 FR 6674–6679, March 4, 1987), a requirement that Federal contractors submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans. This acquisition circular implements the DOL requirements.

3. *Effective Date.* All solicitations issued on or after April 3, 1987, shall include the clause prescribed at § 522.1308. In addition, amendments to solicitations and modifications to contracts issued on or after April 3, 1987, shall incorporate the clause prescribed at § 552.1308 in solicitations or contracts if the clause is not included in the original solicitation or contract.

4. *Expiration date.* This acquisition circular expires October 2, 1987, unless canceled earlier.

5. *Reference to regulation.* Sections 522.1308, 522.1370 and 552.222–87 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.* a. Section 522.1308 is added to read as follows:

§ 522.1308 Contract clause.

The contracting officer shall insert the clause at § 522.222–87, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts, including leases of real property, whenever the clause at FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, is included.

b. Section 522.1370 is added to read as follows:

§ 522.1370 Annual reports from Federal contractors.

The Veterans' Compensation, Education and Employment Amendments of 1982 established requirements for Federal contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special veterans. Department of Labor regulations implementing this requirement are prescribed at 41 CFR 61–250.

c. Section 552.222–87 is added to read as follows:

§ 552.222–87 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in § 552.1308 insert the following clause:

Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Mar. 1987).

(a) The Contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS–100." Computer-generated forms are acceptable, provided that all required information and data are presented in the same format as the VETS–100 form.

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) above shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C.

2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012. Nothing in this paragraph (e) shall preclude an employee from informing a Contractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) shall relieve a Contractor from liability for discrimination under 38 U.S.C. 2012.

(f) The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause.)

7. *Forms.* The VETS–100 Form, Federal Contractor Veterans' Employment Report, is illustrated as an attachment to this circular. Contractors shall obtain the VETS–100 form prior to the filing date. Forms may be obtained from OASVET (VETS–100), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Editorial note. The attachment, which contains the VETS–100 Form, is not published in the **Federal Register** or the Code of Federal Regulations.

Richard H. Hopf III,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 87–8352 Filed 4–14–87; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 61220–7033]

Groundfish of the Gulf of Alaska

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

ACTION: Final rule; correction.

SUMMARY: This document corrects two deletions that occurred in the regulatory text of the final rule implementing Amendment 15 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This rule was published March 13, 1987, 52 FR 7868.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907–588–7230.

In rule document 87–5358 beginning on page 7868 in the issue of March 13, 1987, make the following corrections:

§ 672.24 [Corrected]

1. On page 7876, in the third column, the last sentence in paragraph (2) should read "Except in the Western Area during 1987 and 1988, no person may use any gear other than hook and line or trawl gear in fishing for groundfish in the Gulf of Alaska".

2. On the same page, in the third column, after paragraph (2) and before paragraph (i), insert the heading "(3) *Sablefish bycatch amounts*".

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

Dated: April 9, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–8483 Filed 4–14–87; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 61220–7033]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quotas (TQs) allocated to trawl gear in the Central Regulatory area of the Gulf of Alaska will be achieved before the end of the fishing year if directed fishing for sablefish with trawl gear is allowed to continue. In order to provide adequate bycatch amounts of sablefish for continued groundfish fishing by trawlers in the area, the Secretary of Commerce is prohibiting directed fishing for sablefish in the Central Regulatory area by persons using trawl gear from April 11, 1987, through the remainder of the 1987 fishing year.

DATES: Effective dates: From noon, April 11, Alaska Standard Time (AST), until midnight, AST, December 31, 1987.

Public comments on this notice may be submitted until April 27, 1987.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS) 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central and Eastern Regulatory Areas in the Gulf of Alaska. An emergency rule (52 FR 422, January 6, 1987) and Amendment 15 (52 FR 7868, March 13, 1987), effective April 8, 1987, establish an optimum yield range for the Gulf of Alaska of 116,000 to 800,000 metric tons (mt).

Under the procedure set forth in the emergency rule at § 672.20(f) and Amendment 15 at § 672.20(a), 1987 TQs were established for each of the groundfish species, which were then apportioned among the regulatory areas. One of the groundfish species is sablefish, for which the 1987 TQ in the Central Regulatory Area is 8,800 mt (52 FR 785, January 9, 1987).

Under Amendment 15, § 672.24(b)(2) restricts the trawl take of sablefish in the Central Regulatory area to 20 percent of the TQ, or 1,760 mt. Section 672.24(b)(3)(i) specifies that when the Regional Director determines that the share of the sablefish TQ assigned to any type of gear for any year and any area or district may be taken before the end of that year, the Secretary will prohibit directed fishing for sablefish by persons using that type of gear for the remainder of the year, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group.

For trawlers, the fishing season began on January 1, 1987. Several trawlers have targeted, or are targeting on, sablefish and others have reported bycatch amounts of sablefish. The estimated trawl catch through March 21 in the Central Regulatory area is 946 mt. Early in the year, most of the domestic trawl fleet was fishing for pollock and rock sole in the Bering Sea area. Those fisheries are experiencing their usual seasonal decline and as many as a dozen large factory trawlers may move into the Gulf of Alaska. The most recent week's catch of sablefish by five such trawlers in the Central Gulf exceeded 230 mt. If such catch rates continue, and particularly should a further influx of vessels with such high catch rates occur, the remainder of the sablefish trawl quota in the Central Regulatory area could be taken in a few weeks, or even in a few days. At the present rate of catch about 1,600 mt will have been harvested by April 11.

The total TQ tonnage of other target groundfish species (Pacific cod, flounders, and Pacific ocean perch) in the Central Regulatory area is 24,027 mt; in addition, at least 54,000 mt of the 84,000 mt combined Western and Central Regulatory areas pollock quota

is expected to be taken in the Central area. Only a small portion of these amounts (about 8,000 mt) has been taken to date and it is not known what amounts of these species trawlers will take during the remander of the year. Observer data indicates that sablefish bycatches can be as high as nine percent in fisheries for pollock, Pacific cod, or flounders. Thus, the sablefish amounts remaining in the Central Regulatory trawl quota are needed to provide bycatch for trawlers fishing in that area for other target species.

Under § 672.24(b)(3)(ii), if the share of the sablefish TQ assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year. In 1986, the Central Regulatory area was closed to further retention of sablefish by trawlers on April 26. Such closures prevent overfishing of the stocks, but also result in wastage due to the required discard of a valuable species, and in operational inefficiencies caused to the boat operator who must promptly sort sablefish and return them to the sea. This action will alleviate such problems by postponing the dates upon which the sablefish trawl quotas will be reached, therefore, shortening the time period during which sablefish must be discarded.

After the effective date of this notice, fishing that is intended, or can reasonably be expected, to result in the catching, taking, or harvesting of quantities of sablefish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time will be prohibited.

Classification

Wastage of sablefish that must be treated as prohibited species will result unless this notice takes effect promptly. NOAA, therefore, finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: April 10, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-8443 Filed 4-10-87; 4:47 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Proposed Amendment No. 6 to Handling Regulation; Change in Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require each lot of production area cantaloups to grade at least U.S. Commercial and tighten the existing tolerance for serious damage. Currently, at least half of the cantaloups in each lot must grade U.S. Commercial with allowances for serious damage. For honeydew melons, the current 50 percent U.S. Commercial grade requirement and relaxed serious damage tolerance would remain unchanged, but a minimum sugar content requirement would be added to the requirements. Current grade requirements for South Texas melons are too low to provide the quality necessary for optimum consumer satisfaction. Improving the quality of the melons will enhance consumer satisfaction, increase sales, and tend to increase grower returns. This proposal was recommended by the South Texas Melon Committee. The committee works with the Department in administering the order. The proposed changes, if adopted, would apply for the 1987 and subsequent seasons.

DATES: Comments must be received by April 27, 1987.

ADDRESSES: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250–1400. Three copies of all written materials shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400 (202) 475–3914.

SUPPLEMENTARY INFORMATION: This proposed 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 would 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 of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 35 handlers of melons will be subject to regulation under the South Texas Melon Marketing Order during the course of the current season. In addition, there are about 72 producers of melons in South Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers and handlers may be classified as small entities.

The primary production area for South Texas melons is the Lower Rio Grande Valley. Cantaloup shipments in 1986 totaled 5.2 million cartons with harvested acreage of 19,277 acres. Honeydew shipments from the area totaled 2.9 million cartons from 7,424 acres. Nearly all the crop is marketed fresh.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this proposal on small entities. The regulatory action in this instance is a proposal to: (1) Require production area cantaloups to grade at least U.S. Commercial with 8 percent serious damage including not more than 5 percent for decay; and (2) require a minimum of 8 percent sugar (soluble solids) for honeydew melons in addition to the current grade requirements. The current grade requirements for cantaloups and honeydew melons require that not more than 50 percent of the melons in any lot fail to meet the requirements of U.S. Commercial grade except that no more than 20 percent shall be allowed for serious damage, including not more than 10 percent for melons affected by soft decay. Black surface discoloration is not considered as a grade defect in scoring melons under these requirements. In addition, the individual cartons within a particular lot must contain at least 25 percent U.S. Commercial or better quality. Thus, some of the cartons of a lot of size 18 melons could contain five melons of U.S. Commercial or better grade and 13 melons of lower quality as long as the entire lot met the requirement of not less than 50 percent U.S. Commercial or better grade.

According to the committee, the current minimum requirements have allowed some melons of undesirable quality to be marketed. Some members of the trade have voiced concerns about this practice. The committee also indicated this practice depresses prices for all melons from the area and negatively impacts industry returns.

The proposed quality requirement changes are expected to result in better quality melons in the marketplace and enhance the reputation of South Texas melons. This is expected to promote increased sales and shipments and to improve industry returns. Estimates of the quantity of melons that would be removed from the market range from one-half percent to a maximum of five percent.

Improvement in the quality of the melon pack is not expected to short the market. Preliminary indications to the South Texas Melon Committee are that plantings of both cantaloups and honeydew melons in the production area will be increased moderately compared with the 1986 season. Barring adverse

weather, this season's melon crop in the area should be larger than last year. In addition, competitive melon supplies from other sources, including imports, are expected to be at least equal to those in the 1986 season.

Although this proposal would increase the quality requirements for cantaloups and honeydew melons shipped from the production area, exemptions to these requirements would continue in effect. For example, any handler may handle, other than for resale, up to, but not to exceed 120 pounds net weight of melons per day without regard to the requirements of the handling regulation. In addition, the regulation permits shipments for charity, relief, canning, and freezing exempt from the grade, container, and inspection requirements of the handling regulation. Safeguard provisions of the handling regulation apply to such shipments.

The actual cost to handlers for complying with these proposed changes cannot be precisely determined, but it is expected to be minimal. On the other hand, the increased returns from better quality melons should more than offset the slight increase in the quantity of melons expected to be eliminated from the marketplace if this proposal is adopted following the Department's analysis of comments.

This proposal is being issued under the Marketing Agreement and Order No. 979 (7 CFR Part 979) regulating the handling of melons grown in South Texas. The agreement and order are effective under the Act. These actions were recommended unanimously by the South Texas Melon Committee. The committee works with the USDA administering the marketing agreement and order program.

On February 5 the committee met and unanimously recommended changing the quality requirements for South Texas melons. Recently there have been complaints voiced by industry members that the quality requirements are too low, and as a result many low quality melons are appearing in marketing channels. The committee contends that this is detrimental to the image of production area melons and puts downward pressure on the prices for all melons.

In order to provide consumers with melons of acceptable quality and to improve growers' returns the committee recommended requiring all cantaloups to meet a minimum grade of U.S. Commercial, with a tightened tolerance for serious damage of eight percent including not more than five percent decay. For honeydew melons, the committee recommended that the current grade requirements remain unchanged, except for the addition of a minimum of eight percent soluble solids (sugar) requirement as determined by an approved hand refractometer. An eight percent soluble solids requirement for honeydew melons is quite modest, and shippers should have no problem meeting that requirement. Since the grade standards for honeydew melons do not provide for a minimum sugar content, tightening the grade requirements would not necessarily result in a sweeter or more mature melon.

The current scoring provision with regard to black surface discoloration would continue under the proposal. In addition, the proposal would provide that individual packages may not contain more than double the specified lot tolerance.

Regulations for the South Texas melon marketing season begin May 1, and these proposed changes are important for a successful marketing season. The committee recommended the changes at an open meeting attended by both committee members and other interested persons. The industry has been advised of the provisions of this proposal by the committee, and the local media. Therefore, it is determined that 10 days is adequate for comments.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

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

2. Section 979.304 is hereby proposed to be further amended by revising paragraph (a) to read as follows:

§ 979.304 Handling regulation.

* * * * *

(a) *Grade requirements.* (1) Cantaloups shall be U.S. Commercial grade or better, except that not more than 8 percent serious damage including not more than 5 percent decay shall be permitted.

(2) At least 50 percent of the honeydew melons in any lot shall meet the requirements of U.S. Commercial grade except that not more than 20 percent serious damage shall be allowed including not more than 10 percent for melons affected by decay. In addition, the combined juice from the edible portion of a sample of honeydew melons selected at random shall contain not less than 8 percent soluble solids as determined by an approved hand refractometer. Individual cartons shall contain not less than 25 percent U.S. Commercial or better quality.

(3) Black surface discoloration shall not be considered as a grade defect with respect to such grade.

(4) Individual packages may contain not more than double the specified lot tolerance.

* * * * *

Dated: April 10, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87–8596 Filed 4–14–87; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1011

[Docket No. AO–251–A32]

Milk in the Tennessee Valley Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes to the Tennessee Valley order that would allow a handler operating more than one distributing plant to combine the receipts and dispositions of those plants for the purpose of qualifying them as pool plants. The decision is based on the record of a public hearing held February 12, 1987, at Knoxville, Tennessee.

The changes are necessary to accommodate more efficient procedures for handling milk, to reflect current marketing conditions and to assure orderly marketing in the Tennessee Valley area. The proposed changes were submitted and supported by a cooperative association that represents a substantial majority of producers who supply the market. In addition, the changes were supported by a proprietary handler operating a pool supply plant under the order.

DATE: Comments are due on or before April 30, 1987.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small businesses. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have significant economic impact on a substantial number of small entities. Only one multi-plant handler operation is expected to elect unit pooling to effect more efficient processing of certain milk products. The amendment would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued January 29, 1987; published February 3, 1987 (52 FR 3251).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Tennessee Valley marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 15th day after publication of this decision in the **Federal Register.** Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment set forth below is based on the record of a public hearing held a Knoxville, Tennessee, on February 12, 1987, pursuant to a notice of hearing issued January 29, 1987 (52 FR 3251).

The material issues on the record of hearing relate to pool plant qualification standards for distributing plants.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

The provisions affecting the pool qualification of distributing plants under the Tennessee Valley Federal milk order should be changed. Currently, 60 percent of the amount of milk received at or diverted from each distributing plant during the months of August through November, January and February must be disposed of as Class I milk in order for the plant to be qualified as a pool plant. The applicable percentage requirement for the months of March through July and December is 40 percent. These provisions should be amended to allow a handler who operates two or more distributing plants to consider them as a unit for the purpose of meeting the order's total Class I disposition requirement. Each plant should continue to be required to distribute at least 10 percent of the total amount of milk received at or diverted from the plant as route disposition in the marketing area.

Dairymen, Inc. (DI), a cooperative association representing nearly three-quarters of the producers whose milk is pooled on the Tennessee Valley order, proposed that the order provide for unit pooling of distributing plants. Under DI's proposal, the receipts and disposition of the distributing plants requested by a multi-plant handler to be considered as a unit would be combined, and the plants would be treated as a single plant for the purpose of determining whether the unit meets the total route disposition requirement for a pool distributing plant.

According to proponent witness, DI operates three Flav-O-Rich distributing plants that traditionally have been pooled under the Tennessee Valley order. These plants are located at Bristol, Virginia; London, Kentucky; and Rossville, Georgia. The witness explained that Flav-O-Rich, Inc., recently consolidated its Class II processing at its Bristol, Virginia, plant so that Class II products processed at Bristol may be distributed from other Flav-O-Rich locations, including London and Rossville. The witness stated that while the consolidation was undertaken to increase efficiency in operations, the result of increasing Class II use as the Bristol plant has been a reduction in the percentage of receipts used in Class I. As a consequence, DI has experienced difficulty in assuring that the Bristol plant meets the 60 percent Class I disposition pooling requirement of the Tennessee Valley order.

In order to maintain the pool status of the Bristol plant, the DI representative stated, DI has found it necessary to make bulk Class I sales to pool plants from the Bristol distributing plant instead of from a pool balancing plant operated by the cooperative, also located at Bristol. Although such action does result in maintaining the Bristol distributing plant's pool status, the witness pointed out that monitoring the percentage of the plant's Class I sales in order to shift the necessary amount of bulk sales from the balancing plant to the distributing plant is costly and inefficient, as is the additional movement of milk that must be undertaken to carry out such actions.

The DI witness testified that continued pooling of the Bristol Flav-O-Rich distributing plant is necessary to maintain the pool status of DI's member producers who deliver milk to that plant. He also stated that DI's Bristol balancing plant meets the pool requirements of the Tennessee Valley order because 60 percent of all the DI producer milk pooled under the order is delivered to pool distributing plants each month. If the Bristol distributing plant does not maintain its status as a pool distributing plant, the witness said, it would be difficult and costly for Dairymen, Inc., to maintain the pool qualification of the Bristol balancing plant, which ships milk to the Bristol Flav-O-Rich plant. The witness also pointed out that a Kraft supply plant located at Greenville, Tennessee, qualifies as a pool plant by virtue of its shipments to the Flav-O-Rich distributing plant at Bristol. The witness stated that if the Bristol Flav-O-Rich plant were to lose its pool status, it would be almost impossible to maintain the pool status of the Greenville Kraft plant.

In addition to altering the pool status of the Bristol Flav-O-Rich plant, as well as two other pool plants, the DI representative testified that failure of the Bristol Flav-O-Rich plant to meet the 60-percent Class I disposition requirement of the Tennessee Valley order during fall months would result in that plant becoming a fully regulated pool distributing plant on the Ohio Valley Federal milk order, where the total route disposition requirement during the same period is only 40 percent. The witness stated that approximately 27 percent of the Bristol Flav-O-Rich plant's route disposition is distributed within the Ohio Valley marketing area, and that the Ohio Valley order requires only 15 percent of a distributing plant's route disposition to be distributed within the marketing area

in order for the plant to be qualified for pooling. The witness stated that differences in the Class I and producer blend prices between the two orders would create disruptive marketing conditions among the affected handlers and producers. Also, he noted that as the percentage of Class I use at the Bristol Flav-O-Rich plant fluctuates above and below 60 percent, regulation of the plant would shift between the two orders.

A witness for Kraft, Inc., testified in support of the proposed order amendment. He stated that adoption of the amendment would assure that the nonmember producers currently shipping milk to the Kraft pool plant at Greenville would continue to have their milk priced and pooled under the Tennessee Valley order. The Kraft witness also introduced data to illustrate he difference between the producer pay prices under the Tennessee Valley and Ohio Valley orders, and expressed concern that disruptive marketing conditions would result from such a difference in prices to producers.

The proposed change in the pool distributing plant definition should be adopted. The record clearly establishes a need for amending the order to maintain the pool status of the Bristol Flav-O-Rich distributing plant and the DI and Kraft producers whose milk is pooled on the basis of the plant's fluid disposition. It has been necessary to suspend the 60-percent route disposition requirement of the order for the months of November 1986 and January and February 1987 to assure that DI will not have to enage in inefficient and uneconomic hauling practices in order to continue the pool status of all of its producers historically associated with the Tennessee Valley pool. This action temporarily mitigates DI's pooling problem until August 1987, when the route disposition requirement for Tennessee Valley pool distributing plants once more increases from 40 percent to 60 percent of a plant's receipts and diversions. However, the record evidence shows that the pooling problem in question is not temporary. Rather, it is the result of long-term changes in the distribution of Class I and Class II products from and betwen DI's Flav-O-Rich plants.

As the DI representative testified, the pool status of the Bristol Flav-O-Rich plant can be maintained only by closely monitoring the percentage of its receipts distributed as Class I disposition, and moving bulk Class I sales to other plants from the Bristol distributing plant instead of from DI's balancing plant at Bristol. Such a practice, however, adds unnecessarily to the cooperative's cost of handling its milk supplies. If the Flav-O-Rich plant fails to maintain its pool status, unnecessary and uneconomic handling and hauling will have to be undertaken to continue the pool status of the producer milk that is currently pooled at DI's Bristol balancing plant and at the Kraft Greenville supply plant on the basis of the Bristol Flav-O-Rich plant's pool qualification.

A provision of the order allowing the distributing plants of a handler to be pooled as a unit will remove the need to move milk solely for the purpose of qualifying it for pooling. Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and by-products in another. With unit pooling, as herein adopted, it will be possible for a multi-plant handler to confine certain specialized operations to one plant in order to achieve an economy of scale comparable to that which would be realized by maintaining his total operation in one plant.

Data in the record indicate that while the Flav-O-Rich plant at Bristol has in some months barely met the order's 60-percent pooling requirements, Class I dispositions as a percentage of total receipts for the three Tennessee Valley Flav-O-Rich plants, when considered as a unit, have been well in excess of the required 60 percent. In addition, the plant's disposition within the Tennessee Valley marketing area clearly associates it more strongly with that market than with any other marketing area. In any case, the order will continue to assure that any distributing plant that disposes of a greater volume of fluid milk products on routes inside another order marketing area than in the Tennessee Valley area will become a pool plant under the other order.

As under the present provisions of the order, adoption of the proposed amendment would not allow the pooling of any plant that does not distribute a significant amount of fluid milk, or any distributing plant that is not primarily associated with the Tennessee Valley marketing area. As indicated previously, to qualify for pooling as a unit, each distributing plant in the unit would still have to dispose of at least 10 percent of its receipts as route disposition in the marketing area. Such a requirement will ensure that each plant pooled in the unit has a significant commitment to supplying fluid milk products to the marketing area.

The witnesses' concerns about disorderly marketing conditions in the event the Bristol distributing plant fails to quality for pooling under the Tennessee Valley order and, as a result, becomes a pool plant under the Ohio Valley order are valid. Due to the fact that the Class I price differential at Bristol is significantly lower under the Ohio Valley order than under the Tennessee Valley order, a Bristol distributing plant pooled under the Ohio Valley order would have a distinct cost advantage in competing with handlers regulated under the Tennessee Valley order. In addition, prices to producers for milk delivered to the same location would differ significantly depending on the order under which the milk was pooled. For December 1986, for example, the Ohio Valley blend price at Bristol was $13.17, while the Tennessee Valley order price for producer milk delivered to Bristol was $13.77. A difference of sixty cents per hundredweight in producer pay prices at the same location certainly may cause disruptive marketing conditions. Further, it is possible that regulation of the Bristol Flav-O-Rich plant could shift between the two orders on a monthly basis. This would make it more difficult for affected parties to know how to plan their marketing arrangements.

In order to qualify for unit pooling, a handler would be required to notify the market administrator in writing prior to the first month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. However, if other plants of the handler are added to or dropped from the unit, the handler would need to notify the market administrator prior to the month in which such change is to be effective.

Adoption of the proposed amendment is in the best interests of orderly marketing, as well as economic and efficient handling, of milk in the marketing area. Unit pooling of distributing plants will allow DI more flexibility in pooling its members' milk and operating its distributing and balancing plants in the most efficient manner. Another means of alleviating DI's problem of maintaining the pool status of the Bristol Flav-O-Rich plant would be to lower the 60-percent pooling standard for distributing plants during fall months to 40 percent year-round. However, the percentage of producer milk used in Class I in the Tennessee Valley market averages over 60 percent. Therefore, adoption of unit pooling will allow all of the market's traditional milk supplies to continue to participate in marketwide pooling and pricing without relieving any handler of its obligation to

supply its share of fluid milk to the market.

A proposal by Kraft, Inc., to amend the order's "plant" definition to eliminate a reload point with stationary storage tanks from the definition was abandoned by Kraft at the hearing. Since no testimony was presented in support of or opposition to the proposal, it was not considered for adoption.

Rulings on Proposed Findings and Conclusions

A brief and proposed findings and conclusions were filed on behalf of proponent. The brief and proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Tennessee Valley order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handing of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Tennessee Valley marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1011

Milk marketing orders, Milk, Dairy products.

PART 1011—[AMENDED]

1. The authority citation for 7 CFR part 1011 continues to read as follows:

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

2. In § 1011.7, paragraph (a)(2) is revised to read as follows:

§ 1011.7 Pool plant.

* * * * *

(a) * * *

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1011.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered before the first day of the month in which the plants are to be considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to effect a similar adjustment pursuant to § 1011.13(e)(3). Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

Signed at Washington, DC, on April 10, 1987.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 87–8391 Filed 4–14–87; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 86–057]

Animals Destroyed Because of Scrapie

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations in 9 CFR Part 54 to provide for the payment of Federal indemnities for the destruction of scrapie-exposed sheep and goats when destruction of exposed animals is more cost effective than maintaining the flock under surveillance. Our proposal should both reduce disease spread and control expenditures.

DATE: Written comments must be received on or before June 15, 1987.

ADDRESS: Written comments, concerning this proposed rule should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86–057. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. C. A. Gipson, Program Planning Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8321.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 54 (referred to below as the regulations), authorize the payment of Federal indemnities for sheep and goats destroyed because of scrapie.

Scrapie is a fatal disease of sheep and goats, affecting the nervous system. Destruction of infected animals is necessary in order to prevent the spread of the disease since no treatment for scrapie exists. Confirmation of the disease is dependent upon microscopic examination of brain tissues because no diagnostic test exists for confirming scrapie in live animals.

Scrapie develops slowly. Animals may carry the disease agent for as long as 60 months before symptoms of the disease appear. When symptoms do appear, they allow a preliminary clinical diagnosis of scrapie. These symptoms include lack of luster in the wool and central nervous system disorders such as slight muscular tremors and itching.

Affected and Bloodline Animals

Current regulations only provide indemnity payments for:

1. Affected animals—animals for which a diagnosis of scrapie has been made by a Veterinary Services representative or State representative; and

2. Bloodline animals—the dam, or female parent, of an affected animal and the dam's first generation progeny, the maternal grand-dam of an affected animal, the first generation progeny of an affected animal, and all succeeding generations of female progeny from female progeny of an affected animal.

Scrapie normally spreads from dam to offspring, with an infected female exposing her offspring at birth and immediately after birth. There is far less chance of scrapie being transmitted by an infected male parent since, under customary flock management practices, a sire seldom, if ever, has contact with his offspring. While it is possible that scrapie can be transmitted by exposure from animal to animal, other than from parent to offspring, that risk is relatively minimal.

Flock

We propose to add the following definition of the term "flock" to § 54.1.

Flock. (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch); or (b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with each other.

Our proposed amendments to the regulations include frequent use of the term "flock." By providing readers of the regulations with a specific definition of what would otherwise be a vague term, we hope to avoid confusion as to which animals are part of an infected flock and are, therefore, to be considered to be scrapie-exposed animals under this proposal.

Geographic separation will not protect animals from disease transmission if they are intermingled, as scrapie may be spread by animal-to-animal contacts. We believe, therefore, that all sheep and goats should be considered part of the same flock if they are under common ownership or supervision on the same premises, or if they are on separate premises and have been interchanged or had contact with each other.

Scrapie-Exposed Animals

We propose to add the following definition of the term "scrapie-exposed animal" to § 54.1.

Scrapie-exposed animals. Animals, other than affected or bloodline animals, in a flock in which an affected animal has been diagnosed by a Veterinary Services representative or State representative. Animals in the flock are no longer considered exposed after they are destroyed or upon the flock's release from surveillance by State animal health authorities.

Rather than being destroyed, scrapie-exposed sheep and goats are usually maintained under surveillance as these animals present a minimal risk of disease spread. Surveillance is carried out under State authorities and usually lasts for a period of 42 months following the most recent exposure. Under proposed § 54.8(b), the Deputy Administrator would authorize payment of indemnities to the owners of scrapie-exposed animals when:

1. Destroying the entire flock is more cost effective than the combination of destroying affected and bloodline animals and maintaining scrapie-exposed animals under surveillance; and

2. Sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year.

Cost-Benefit Analysis

To determine whether it would be more "cost effective" to destroy scrapie-exposed animals or maintain them under surveillance, a cost-benefit analysis would be conducted. This analysis would measure the total cost of Federal and State indemnities to be paid if the entire flock were to be destroyed, versus:

1. *The cost of Federal and State indemnities if only affected and bloodline animals are destroyed.*

2. *The cost to Federal and/or State agencies for travel and the conducting of periodic inspections.* Flocks being maintained under surveillance are normally inspected every six months. However, inspections may be performed more frequently if flocks contain animals with suspicious histories or symptoms. Since scrapie control is carried out as a cooperative Federal-State program, inspections may be performed by either Federal or State veterinary officials.

3. *Disruptions in manpower and work schedules.* Excessive scrapie-related travel can understaff field offices and result in costly overtime and reduced effectiveness in carrying out other animal health activities.

4. *Administrative and paperwork costs, including projected owner recordkeeping and reporting expenditures.* An inventory is taken of all exposed sheep and goats after the initial discovery of an infected animal and during each subsequent inspection of the flock. State veterinary officials usually issue written permits before new sheep or goats can be added to flocks under surveillance. Owners are normally permitted to move or sell scrapie-exposed animals, but must comply with State recordkeeping and reporting requirements.

Allocation of Insufficient funds

There may be times funding is not sufficient to pay indemnities to all eligible owners seeking payment for scrapie-exposed animals. Under proposed footnote 1 to proposed § 54.8, the funds that are available, at such times, shall be paid first in those instances where the following indicates the greatest need for flock destruction:

1. *Whether any of the affected flocks contain animals for which bloodlines cannot be determined and the number of such animals in each flock.* Department veterinarians believe that such animals should be destroyed when possible, as the risk of spreading scrapie would be intensified if they actually were bloodline animals.

2. *The number of affected and bloodline animals found and destroyed in each affected flock—and the number of remaining scrapie-exposed animals displaying symptoms indicative of scrapie—versus the total number of animals in that flock.* By comparing numerical relationships between known infected, symptomatic, and apparently well animals, Department veterinarians should be able to estimate the extent of infection (including the probability of new discoveries of scrapie infected animals during the surveillance period) within each affected flock.

3. *Any previous history or scrapie in an affected flock.* If a flock has a previous history of scrapie, the possibility exists that one or more of the flock's scrapie-exposed animals may have a low-level infection that will not result in visible symptoms, but that could lead to subsequent scrapie outbreaks.

These three factors cannot be individually ranked. Their importance varies greatly according to their combination and level of intesity within a particular flock. Thus, we believe that the "greatest need for flock destruction" can only be determined through studies of the relationship and intensity of these factors within each affected flock, and then by comparing and ranking the results.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determinied to be not a "major rule." Based on information compiled by the Department it has been determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of Unitd States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Over the past 5 years, scrapie indemnities totaled slightly over $2.4 million for an average annual expenditure of $482,528. This figure is expected to increase only slightly if authority is granted to pay indemnities in the two limited instances proposed in this documents. Moreover, the increase in indemnity costs would be accompanied by a greater reduction in the cost of maintaining affected flocks under surveillance. The primary effect of this proposal would be to further decrease the risk of spreading scrapie and to reduce excessive flock surveillance costs.

This proposal should not affect a substantial number of sheep and goat producers. The current program is controlling the disease, with the United States experiencing no more than 27 scrapie-affected flocks in any one of the past 5 years. This proposal should not have an adverse affect on the current program since it should eliminate the current primary threat of disease spread (i.e.—scrapie-exposed animals with undeterminable bloodlines).

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

PART 54—ANIMALS DESTROYED BECAUSE OF SCRAPIE

Accordingly, it is proposed to amend 9 CFR Part 54 as follows:

1. The authority citation for Part 54 would be revised to read as follows and the authority citations following the sections in Part 54 are removed:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 would be amended by adding , in alphabetical order, the following:

§ 54. 1 Definitions.

* * * * *

Flock. (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch); or

(b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which anmals from the different premises have been interchanged or had contact with each other.

* * * * *

Scrapie-exposed animals. Animals, other than affected or bloodline animals in a flock in which an affected animal has been diagnosed by a Veterinary Services Representative or State representative. Animals in the flock are no longer considered exposed after they are destroyed or upon the flock's release from surveillance by State animal health authorities.

* * * * *

§ 54.3 [Amended]

3. Paragraph (a) of § 54.3 would be amended by changing "affected animals and bloodline animals for which indemnity is to be paid under this part" to read "amimals for which indemnity is to be paid under § 54.8(a) and (b)".

§ 54.7 [Amended]

4. Paragraph (a) of § 54.7 would be amended by changing "affected animals and bloodline animals destroyed under" to read "animals persuant to § 54.8(a) and (b) of".

5. Paragraph (b) of § 54.7 would be amended by changing "Affected animals and bloodline animals" to read "Animals for which indemnity is sought pursuant to § 54.8(a) and (b) of this part".

§ 54.8 [Amended]

6. In § 54.8 paragraphs (b) and (c) would be redesignated (d) and (e), respectively.

7. In § 54.8, current paragraph (a) would be redesignatd (c) and would be amended by changing "affected anmals and bloodline animals" to read "affected animals, bloodline animals and scrapie-exposed animals for which the Deputy Administrator authorizes payment of indemnity pursuant to § 54.8(b) of ths part".

8. In § 54.8 new paragraphs (a) and (b) would be added to read as follows:

§ 54.8 Payment to owners for animals destroyed.

(a) The Deputy Administrator shall authorize the payment of a Federal indemnity to owners of affected animals and bloodline animals.

(b) The Deputy Administrator shall authorize the payment of a Federal indemnity ot any owner of scrapie-exposed animals when a cost-benefit analysis establishes that it is more cost effective to destroy the flock than to maintain it under surveillance: Provided, That sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year.[1] The cost-benefit analysis shall be based on:

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[1] Should funding not be sufficient to pay indemnities to all eligible owners seeking payment for scrapie-exposed animals, then the funds that are available shall be paid first in those instances where the following indicates the greatest need for flock destruction:

1. Whether any of the affected flocks contain animals for which bloodlines cannot be determined and the number of such animals in each flock.

2. The estimated extent of infection in each affected flock as measured by the number of affected and bloodline animals found and destroyed—and the number of remaining scrapie-exposed animals displaying symptoms indicative of scrapie—versus the number total number of aminals in each affected flock.

3. Any previous history of scrapie in an affected flock.

(i) The applicable laws and regulations of the State in which the flock would be maintained; and

(ii) The total cost of Federal and State indemnities to be paid if an entire scrapie-exposed flock were to be destroyed versus projected costs for indemnities if only affected and bloodline animals are destroyed; travel and per diem for the conducting of periodic flock inspections by Federal and State inspectors; resulting disruptions of Federal and State manpower schedules; and administrative and paperwork costs, including projected owner recordkeeping and reporting expenditures.

* * * * *

Done in Washington, DC, this 9th day of April, 1987.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 87-8392 Filed 4-14-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Adjudications; Special Procedures for Resolving Conflicts Concerning the Disclosure or Nondisclosure of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a proposed rule published in the **Federal Register** on May 22, 1985 (50 FR 21072). In this rule, the Commission proposed amending its rules of practice to provide special procedures for resolving conflicts concerning the disclosure or nondisclosure of information relating to an NRC investigation or inspection not yet concluded or which would reveal the identity of a confidential informant and deemed relevant and material to an adjudiction. The Commission has decided that in view of the few remaining licensing proceedings and the consequent limited number of occasions in which the proposed procedures might be use in those proceedings, an existing policy statement is an adequate means of resolving these conflicts an thus there is no need at this time to codify the proposed procedures.

DATE: This withdrawal is effective April 15, 1987.

FOR FURTHER INFORMATION CONTACT: Jane R. Mapes, Senior Attorney, Rulemaking and Fuel Cycle, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 492-8695.

SUPPLEMENTARY INFORMATION: In its Statement of Policy on Investigations, Inspections and Adjudicatory Proceedings published in the **Federal Register** on September 13, 1984 (49 FR 36032-36034) the Commission reemphasized the importance and need for full disclosure of information in an adjudication so that all issues in controversy in the adjudication may be fully resolved. At the same time, the Commission recognized the need in certain circumstances to limit disclosure to avoid compromising a NRC inspection or investigation or to protect a confidential informant. In its policy statement, the Commission identified a procedure under which the NRC staff would provide an adjudicatory board with an explanation of the basis for its concern about disclosure and would present the information to the board *in camera* without other parties present. Recognizing that this procedure would be a departure from normal Commission practice, the Commission directed the staff to initiate a rulemaking proceeding.

Accordingly, on May 22, 1985, a notice of proposed rulemaking was published in the **Federal Register** (50 FR 21072-21077) proposing amendments to the Commission's rules of practice (10 CFR Part 2) that would provide special *ex parte in camera* procedures for resolving conflicts concerning the disclosure or nondisclosure of information deemed relevant and material to an adjudication and relating to an NRC investigation or inspection not yet concluded or likely to reveal the identity of a confidential informant. On May 31, 1985 (50 FR 23138-23139) a correction notice was published. On July 26, 1985, the date for submitting comments on the proposed amendments was extended to August 23, 1985 (50 FR 30446-30447).

The Commission received nine letters of comment expressing the views of interested utilities, professional organizations, private counsel, intervenors and individual members of the public. No commenter was satisfied with the text of the rule as proposed. Most of the commenters recognized the Commission's need to withhold or otherwise protect information in order to protect a confidential source or to avoid compromising an ongoing investigation or inspection and the consequent necessity for *in camera* presentations. However, the commenters uniformly opposed using *ex parte* techniques to achieve that objective. The principal objections voiced by the commenters were that the proposed procedure are illegal, unnecessary, contrary to due process and unfair. One commenter state that if the Commission's rules of practice were amended as proposed, decisions reached in proceedings in which the proposed procedures were used would be subject to a greatly increased risk of judicial reversal. In addition, the proposed amendments were faulted as bad public policy. Several commenters suggested alternative methods, dependent principally upon the use of protective orders, to achieve the objectives sought by the Commission.

Since publication of the notice of proposed rulemaking in 1985, the Commission has made certain decisions respecting its board notification policy and procedures which are expected to reduce significantly the occasions on which the proposed procedures would actually be used. For, as the Commission made clear when it promulgated its Statement of Policy on Investigations, Inspections and Adjudicatory Proceedings, the Statement and any implementing procedures only take over "once a determination has been made, *under established board notification procedures*, that information should be disclosed to the boards and public but OI [the Office of Investigations] or staff believes that the information should be protected." (49 FR 36032 at 36033, September 13, 1984, emphasis supplied.)

The Commission's board notification policy and procedures have been in effect for many years and serve an important purpose—to keep the boards and the Commission advised of matters which may need to be considered in making licensing and other regulatory decisions, particularly matters which present serious safety or environmental issues. Recently, the Commission directed significant changes in the manner in which its board notification policy and procedures are implemented. These changes were first enunciated by the Commission in a Memorandum and Order issued January 30, 1986 in *Louisiana Power & Light Company* (Waterford Steam Electric Station, Unit 3) Docket No. 50-382-OL, CLI-86-1, 23 NRC 1, affirmed *sub. nom. Oystershell Alliance, et al. v. U.S. Nuclear Regulatory Commission, et al.*, No. 85-1182, U.S.C.A.D.C., September 9, 1986, *800* F.2d *1201*. Subsequently, at the express direction of the Commission, the changes in the manner in which the Commission's board notification policy is being implemented were formally incorporated in NRR Office Letter No.

19, Revision 3, issued May 29, 1986.[1] On June 3, 1986, the Executive Director for Operations directed other NRC staff offices to revise the implementation of their board notification policy and procedures consistent with Revision 3 of NRR Office Letter 19.

Under the Commission's board notification policy and procedures as now implemented, NRC offices and staff [2] are only required to notify the boards when they are apprised of allegations and new information not previously submitted to the boards which are relevant and material to the issues in controversy in the proceeding. If the information is not relevant and material, the staff has no obligation to inform the boards. Moreover, under current practice, the facts on which an allegation is based must be substantiated and the implications drawn from those facts must be shown to be valid before any notification is made.

The above-described changes in the implementation of the Commission's board notification policy are expected to have the effect of severely limiting the circumstances in which the proposed procedures would be applicable. These circumstances are further limited by the fact that the number of pending licensing adjudicatory proceedings is small and it is unlikely that large numbers of new proceedings will be initiated in the near future.

The Commission has reviewed its Statement of Policy on Investigations, Inspections, and Adjudicatory Proceedings in light of the above-described changes. On the basis of the guidance provided in the Policy Statement, the Commission has concluded that it could, using existing procedures, adequately protect information from disclosure in those very rare instances in which such protection might be needed. In view of the controversial nature of the proposed procedures and because it now appears that such procedures will seldom be used, the Commission has also concluded that codification of the proposed procedures in the Commission's rules of practice is not warranted.

Accordingly, for the foregoing reasons, the Commission hereby withdraws the notice of proposed rulemaking published on May 22, 1985 (50 FR 21072–21077), and terminates this rulemaking proceeding.

[1] This document is available for inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

[2] As used in this preamble, the term "staff" is intended to refer to all NRC offices.

Dated at Washington, D.C., this 9th day of April, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 87–8427 Filed 4–14–87; 8:45 am]

BILLING CODE 7590-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[OPP-300162; FRL-3186-7]

Pesticide Tolerances in Animal Feeds for Malathion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a feed additive regulation to permit residues of the insecticide malathion in or on the grain dust of barley, corn, oats, rice, rye, sorghum, and wheat resulting from postharvest application of the insecticide to these stored grains. This regulation to establish the maximum permissible level for residues of the insecticide was requested by the Pacific Northwest Grain and Feed Association, Inc.

DATE: Comments, identified by the document control number [OPP–300162], should be received by May 15, 1987.

ADDRESS: By mail, submit written comments to: Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: William H. Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: The Pacific Northwest Grain and Feed Association, Inc., 200 SW. Market St., Suite 1005, Portland, OR 97201 has requested that EPA, pursuant to section 409(d) of the Federal Food, Drug, and Cosmetic Act, propose a feed additive regulation to cover residues of the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) occurring in or on the grain dust of the aforementioned grains resulting from postharvest application of the insecticide to these stored grains.

The Pacific Northwest Grain and Feed Association, Inc., requested this regulation in order to allow disposal of these grain dusts as commercial animal feed. This dust, which is the fine particulate matter formed during the handling and shipping of grain, is normally removed from the grain during transfer operations, such as when grain is being loaded onto a ship. Consequently, thousands of tons of this dust may be enerated at port facilities.

The Association supports this request by pointing out that current Federal and State authorities either prohibit or discourage the disposal of grain dust through other means such as in public waterways, public landfills, and through reintroduction of grain dust into grain shipments. For these reasons, the Association maintains that the most effective and economically viable means of disposing of the enormous volumes of grain dust has been to feed the material to livestock. The 135 parts per million (ppm) level was requested because several feed items have tolerances for residues of malathion at this level (40 CFR 180.111), and adding grain dust at this level would not affect the theoretical exposure of livestock to malathion.

The Administrator agrees with the Pacific Northwest Grain and Feed Association, Inc. Currently, there are established tolerances of 8.0 ppm for residues of malathion in or on the aforementioned grains as raw agricultural commodities resulting from postharvest application of the insecticide on these grains (40 CFR 180.111). Since pesticide residues tend to be found on the outer surfaces of the

grain, residues in the dust can be higher than those in or on the grain itself.

Although definitive residue data are lacking, the requested level of 135.0 ppm is considered appropriate based on available information, which includes the Food and Drug Administration's monitoring data. Since many other feed items carry tolerances for residues of malathion at 135.0 ppm, the theoretical exposure to animals is not affected. This regulation will cover only those residues of malathion presently occurring in grain dust from registered uses of malathion and no new or additional residues are involved. This feed additive regulation will not necessitate initiating or increasing existing tolerances on any items intended for human consumption.

The currently established tolerances for residues of malathion in meat, milk, poultry, and eggs are adequate to cover any secondary residues of malathion in meat, milk, poultry, and eggs resulting from the feeding of the treated grain dust to livestock.

The metabolism of malathion is adequately understood and adequate analytical methods for enforcing this tolerance have been published in the Pesticide Analytical Manual, Volume I and II. There are presently no actions pending against continued registration of this chemical.

This tolerance will be reassessed under the Malathion Registration Standard, as well as all established tolerances for malathion.

Based on the information considered, the Agency concludes that the regulation will protect the public health. Therefore, it is proposed that 21 CFR Part 561 be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300162]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives or raising such food or feed additive levels, do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 21 CFR Part 561 be amended as follows:

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.270 is amended by adding paragraph (c) to read as follows:

§ 561.270 Malathion.

* * * * *

(c) Tolerances are established for residues of the insecticide malathion (O, O-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the following feed commodities as a result of the post-harvest application of this insecticide to barley, corn, oat, rice, rye, sorghum, and wheat grains.

Feeds	Parts per million
Barley grain dust	135
Corn, grain dust	135
Oats, grain dust	135
Rice, grain dust	135
Rye, grain dust	135
Sorghum, grain dust	135
Wheat, grain dust	135

[FR Doc. 87-8277 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-154-86]

Income Tax; Applications for Exemption From Self-Employment Taxes for Ministers, Certain Members of Religious Orders, and Christian Science Practitioners

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to applications for exemption from self-employment taxes filed by ministers, members of religious orders who are not under a vow of poverty, and Christian Science practitioners. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by June 15, 1987. The regulations are proposed to be effective with respect to applications filed after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, 111 Constitution Avenue NW., Attention: CC:LR:T (LR-154-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (Attention: CC:LR:T (LR-154-86)). Telephone 202-566-3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) under section 1402(e) of the Internal Revenue Code of 1986.

For the text of the temporary regulations, see T.D. published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the amendments to the regulations.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that the proposed rule is not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department Service and Treasury Department participated in developing these regulations both on matters of substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-8447 Filed 4-14-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania on April 16, 1985, as a modification to the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977. The amendment pertains to material damage to structures or facilities caused by subsidence. OSMRE previously invited public comment on this amendment provision on June 5, 1985 (50 FR 23715). Following that public comment period OSMRE determined that the State provision was less effective than the Federal standards in effect at that time. Thus, OSMRE imposed a requirement at 30 CFR 938.16(b) for Pennsylvania to amend its program within a specified time to be no less effective than the Federal rules. On February 17, 1987, OSMRE promulgated final subsidence control rules relating to the protection of surface structures and facilities. In light of the promulgation of these Federal regulations, OSMRE believes that the program provisions submitted by the State on April 16, 1985, and previously considered by OSMRE may not be consistent with the Federal provisions. Accordingly, OSMRE is reinviting comment on the amendment.

DATES: Written comments not received on or before 4:00 p.m. on May 15, 1987 will not necessarily be considered.

If requested a public hearing on the proposed modifications will be held on May 11, 1987, beginning at 9:00 a.m. at the location shown below under **"ADDRESSES"**.

ADDRESSES: Written comments should be mailed or hand delivered to: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. 11 and 15, Camp Hill, Pennyslvania.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg Pennsylvania 17101. Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed modification to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each person may receive, free of charge, one single copy of the proposed modification by contacting the Harrisburg Field Office.

Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg Pennsylvania 17101. Telephone: (717).

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street NW., Washington, DC 20240

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business May 5, 1987. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE Office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTRACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 20, 1982 **Federal Register** notice (47 FR 33050).

III. Background on Program Amendment

On April 18, 1985, Pennsyvlania submitted to OSMRE pursuant to 30 CFR 732.17 proposed amendments to 25 Pa. Code Chapter 89, Subchapter F (pertaining to subsidence control) (OSMRE Administrative Record PA 550). The amendment deleted the existing subchapter in its entirety and set forth a new subchapter.

OSMRE published a notice in the **Federal Register** on June 5, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 23715). The public comment period ended July 5, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director determined that the amendment was inconsistent with SMCRA and the Federal regulations as explained below.

The Pennsylvania rule submitted for OSMRE's approval on April 18, 1985, does not require the operator to correct any material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner. The Pennsylvania rule at section 89.143(b) limits the requirement to prevent damage to dwellings, cemeteries, municipal utilities, to those structures and facilities in place on April 27, 1986. At the time of OSMRE's review and approval of Pennsylvania's amendment, OSMRE determined that the State provision was less effective than 30 CFR 817.121(c)(2). The Federal rule (as revised on July 1, 1983, 48 FR 24638) was amended on February 21, 1985 (50 FR 7274–7278) to suspend the language limiting the operator's responsibility for damage to structures to the extent required by State law. Thus in the notice announcing the Director's findings and decision on the amendment submitted on April 18, 1985 (50 FR 45820, November 4, 1985), the Director imposed a requirement on Pennsylvania to amend its program to be consistent with the Federal regulations.

The requirement imposed by the Director which is listed at 30 CFR 938.16(b) specified the following:

"Within 12 months following promulgation of a revised Federal rule, Pennsylvania shall amend its program to be no less effective than 30 CFR 817.12(c)(2) to require an operator to correct any material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner."

On February 17, 1987, OSMRE promulgated final subsidence control rules relating to the protection of surface structures and facilities. These final rules were promulgated pursuant to the District Court's order in *In Re: Permanent Surface Mining Regulation Litigation (II).* No. 79–1144 (D.D.C.). Under the final rule operator responsibility for material damage to structures or facilities resulting from subsidence will derive from applicable provisions of State law. In light of the Federal rule adopted February 17, 1987, OSMRE believes that the State provision at section 89.143(b) which was previously considered by OSMRE may now be consistent with the Federal requirements.

Accordingly OSMRE is reinviting comment on the adequacy of the State proposal. If OSMRE makes a determination that the State provision at 89.143(b) is consistent with the Federal regulations adopted February 17, 1987, it will approve the State amendment provision and eliminate the requirement at 30 CFR 938.16(b) for Pennsylvania to amend its program. Additional background on the Federal subsidence control rules relating to the protection of surface structures and facilities is contained in the February 17, 1987 **Federal Register** notice (52 FR 4860).

Written comments should be specific, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than that listed under **"ADDRESSES"** will not necessarily be considered and included in the Administrative Record for this rulemaking.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 8, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–8448 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 447

Code of Ethical Conduct for Postal Employees; Proposed Amendment To Allow Attendance at Group Functions

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The United States Postal Service proposes to amend the Code of Ethical Conduct to permit postal employees under certain conditions to attend social functions at which food and refreshment are served, given by

persons whose business is affected by the Postal Service. Under the proposal, attendance at such functions would be permitted if a responsible official determines that it will assist employees in performing their duties.

DATE: Comments must be received on or before May 15, 1987.

ADDRESS: Written comments should be mailed or delivered to the General Counsel, Law Department, United States Postal Service, Washington, DC 20260–1113. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at Room 6147, 475 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley (202) 268–2971.

SUPPLEMENTARY INFORMATION: The Code of Ethical Conduct for Postal Employees, 39 CFR Part 447, implements Executive Orders 11222 and 11590 by establishing standards of conduct for employees of the Postal Service. These standards, like their counterparts in effect at other Federal agencies, are designed to prevent conflict of interest which would undermine public confidence in the integrity of the Postal Service. In doing so the standards generally prohibit certain types of activity which, although not inherently improper, may be seen as tending to bias an employee in favor of persons who do business with the Postal Service. The acceptance of gifts is an example of this. In general a postal employee may not accept anything of value, including entertainment, from a person who does business with the Postal Service or has interests that may be substantially affectd by the performance of the employee's duties. A limited number of exceptions to this principle permit the acceptance of items or benefits not of great value under circumstances in which the risk of bias or abuse seems minimal.

The proposed amendment would add an additional exception to allow attendance at group social functions, and the acceptance of food or refreshment, otherwise not permitted because of the relationship of the host to the Postal Service, when attendance is desirable because it assists the employee in the performance of his or her duties. It is by no means unusual for a trade association, for example, to invite to a reception or a dinner persons in related segments of both the public and private sectors. Attendance by a postal employee may be useful in facilitating the informal exchange of views on common problems or, more simply, in gaining a better acquaintance with persons with whom an employee has official dealings.

The determination that attendance at a function will assist the employee in the performance of his or her duties must be made by a postal executive at the level of the general manager/postmaster of a field division or an office director at Headquarters or a comparable level. An executive at this level may make such a determination about himself or herself but must then notify the appropriate agency ethics official of that decision.

Provisions generally similar to this proposal may be found in the regulations of other agencies, see *e.g.*, The Securities and Exchange Commission's regulations, 17 CFR 200.735–3(b)(3)(i). Following the receipt of public comments but before adoption this proposed amendment must be submitted for approval to the Office of Government Ethics. 5 CFR 735.104.

In view of the above considerations, the Postal Service proposes to amend 39 CFR Part 447 as follows:

List of Subjects in 39 CFR Part 447

Postal Service, Conflict of interests, Government employees.

PART 447—CODE OF ETHICAL CONDUCT FOR POSTAL EMPLOYEES

1. The authority citation for Part 447 is revised to read as set forth below, and any authority citations following the sections in Part 447 are removed.

Authority: 39 U.S.C. 401; 18 U.S.C. 207(j); E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp., p. 10, as amended by E.O. 11590, 36 FR 7831, 3 CFR 405 (1972); 5 CFR 735.104.

2. In § 447.24 the introductory text of paragraph (b) is revised and new paragraph (b)(7) is added as follows:

§ 447.24 Conflicts of interests—gifts, entertainment, and favors.

* * * * *

(b) The provisions of paragraph (a) are intended to prevent a conflict of interest or the appearance of such a conflict on the part of a Postal Service employee. The conduct described in the following paragraphs (b) (1) through (7) of this section is permitted because it is considered that it will not create a conflict of interest and that its prohibition would unduly and unnecessarily restrict Postal Service employees in legitimate activites and relationships. Upon this basis, nothwithstanding the provisions of paragraph (a) of this section an employee may:

* * * * *

(7) Accept appropriate food and refreshments offered free in the course of a group function at which attendance is desirable because it will assist the employee in performing his or her official duties. Office and regional directors, general managers/postmasters of field divisions and other executives at comparable or higher levels are authorized to determine for themselves and their subordinates the propriety of accepting such invitations. Persons making such determinations with respect to themselves shall notify their Associate Ethical Conduct Officer of each invitation which they accept; those persons who are Associate Ethical Conduct Officers shall notify the Ethical Conduct Officer of each invitation which they accept.

Example (1): A trade association of major mail users invites a number of managers to a reception and dinner honoring the retiring president of the association. A postal marketing manager who has received an invitation concludes that if she does not attend it may appear discourteous to the retiring president and that by attending she will have an opportunity to discuss mailing problems informally with several customers. She may properly determine that accepting the invitation will assist her in performing her duties. Because she is the Associate Ethical Conduct Officer for her Headquarters group, she should notify the General Counsel, who is the Ethical Conduct Officer, of her decision to accept.

Example (2): A contracting officer is negotiating a modification of a contract with a supplier. The supplier's representative invites the contracting officer to have dinner with him at the supplier's expense. The contracting officer's manager, the director of a procurement and material management service center, may authorize him to accept, because the dinner is not a group function, because—whether or not having dinner with his opposite number in the negotiations will assist the contracting officer in performing his duties relating to those negotiations—there is no reason why the contracting officer cannot pay for his own dinner, and because the dinner is too closely related in time and circumstances to a matter involving the interests of the supplier which may be affected by the performance of the contracting officer's duties.

Example (3): If it had been proper for the manager in Example (2) to authorize acceptance of an invitation by the contracting officer, the manager would not have needed to notify his Associate Ethical Conduct Officer, who is the Senior Assistant Postmaster General, Facilities and supply Group, because he was not accepting on his own behalf.

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–8424 Filed 4–14–87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3378/P414; FRL-3185-2]

Pesticide Tolerance for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide metolachlor and its metabolites in or on the raw agricultural commodity tabasco peppers. The proposed regulation to establish a maximum permissible level for residues of metolachlor in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 6E3378/P414], should be received on or before April 30, 1987.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3378 to EPA on behalf of Dr. Robert H. Rupelian, National Director, IR–4 Project and the Agricultural Experiment Station of Louisiana and the U.S. Department of Agriculture.

This petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide) and its metabolities, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methyl-phenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or the raw agricultural commodity tabasco peppers at 0.5 part per million (ppm). The petitioner proposed that this use of metolachlor on tabasco peppers be limited to Louisiana based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The data considered in support of the tolerance include:

1. A 90-day dog feeding study with a no-observed effect level (NOEL) of 500 ppm (12.5 milligrams (mg)/kilogram (kg)).

2. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg).

3. A rat teratology study with no teratogenicity and fetotoxicity at the highest dose tested of 360 mg/kg.

4. A rabbit teratology study with a maternal NOEL of 120 mg/kg and no teratogenicity and fetotoxicity at the highest dose tested of 360 mg/kg.

5. A 2-generation rat reproduction study with a reproductive NOEL of 300 ppm (15 mg/kg) and a lowest effect level (LEL) of 1,000 ppm (50 mg/kg).

6. A mouse dominant-lethal study negative for mutagenic effects.

7. An AMES mutagenicity assay negative for mutagenic effects and a 2-year mouse oncogenicity study with no observed oncogenic potential at 30, 1,000, and 3,000 ppm (428 mg/kg, highest dose tested).

8. A repeated 2-year mouse oncogenicity study with no observed oncogenic potential at the same dose levels as the original study.

9. A 2-year chronic feeding/oncogenicity study in the rat (IBT validated, core supplementary) at dietary doses of 0, 30, 300, and 3,000 ppm with a statistically significant increase in primary liver neoplasms if females at the high dose group (3,000 ppm).

10. A repeated 2-year chronic feeding/oncogenicity study in the rat conducted at the same dietary doses as the original study with a systemic NOEL of 30 ppm (1.5 mg/kg), a systemic LEL of 300 ppm (testicular atrophy), and a statistically significant increased incidence of neoplastic liver nodules and proliferative hepatic lessions in females in the high dose group (3,000 ppm).

The Agency has concluded that the available data constitute limited evidence for carcinogenicity of metolachlor. Metolachlor is, therefore, tentatively classified as a Category C carcinogen (limited evidence of carcinogenicity in animals) based on the following considerations:

1. The oncogenic responses observed in rats were confined to the high dose females at one site (liver).

2. The proliferative liver lesions observed in rats were primarily benign (neoplastic nodules in 6 of 60 animals) rather than hepatocellular carcinomas (1 of 60 animals). There was no apparent difference in the time-to-occurrence of the lesions (almost all liver tumors were observed at terminal sacrifice).

3. Metolachlor was not oncogenic to mice under the conditions of the 2-year mouse oncogenicity studies.

4. An Ames mutagenicity assay and a dominant lethal study were negative for mutagenic effects.

The Agency has evaluated oncogenic risk resulting from dietary exposure to residues of metolachlor based on the rat studies. Assuming 100 percent of the crops are treated, the "worst case" dietary risk is calculated to be 3×10^{-6} for existing tolerances and 8×10^{-9} for the proposed tolerance for tabasco peppers. The incremental increase in risk is extremely small (0.3 percent).

Tolerances have previously been established for residues of metolachlor ranging from 0.02 ppm in meat, milk, poultry, and eggs to 30.0 ppm in peanut forage and hay. Based on the rat chronic feeding study with a NOEL of 30 ppm (1.5 mg/kg/day) for nononcogenic effects and using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.015 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.9 mg/day.

The theoretical maximal residue contribution (TMRC) for existing tolerances is 0.001256 mg/kg/day for the total U.S. population. The proposed use will contribute an additional 0.000004 mg/kg/day (a 0.3 percent increase).

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. Analytical enforcement methods are currently available in the Pesticide Analytical Manuals (PAM) Volumes I and II. There are presently no actions pending against the continued registration of this chemical.

Based on the data and information considered, and the fact that tabasco peppers are not considered an animal feel commodity, the Agency concludes that the proposed tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act [5 U.S.C. 553(d)(3)], the comment period is shortened to less than 30 days because of the necessity to expeditiously provide a means for weed control in tabasco pepper production.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3378/P414]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 State. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.368 is amended by removing the entry for "peppers, chili. . . . . 0.5" from the table in paragraph (a), by revising the introductory paragraphs to the list of commodities in paragraphs (a) and (b), and by adding paragraph (c) to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide)and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the following raw agricultural commodities:

* * * * *

(b) Tolerance are established for indirect or inadvertent residues of metolachlor in or on the following raw agricultural commodities when present wherein as a result of the application of metolachlor to growing crops listed in paragraph (a) of this section to read as follows:

* * * * *

(c) Tolerances with regional registration as defined in § 180.1(n), are established for the combined residues of the metolachlor and its metabolites in or on the following raw agricultural commodities:

Commodities	Parts per million
Peppers, chili	0.5
Peppers, tabasco	0.5

[FR Doc. 87–8161 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 276

[Docket NO. 110]

Construction-Differential Subsidy Repayment

April 10, 1987.

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule would allow four vessels that repaid their construction-differential subsidy (CDS) in exchange for the right to operate in the domestic trade to remain in that trade. Three of those vessels have been operating in the Alaska oil trade after repaying their CDS under a 1985 Department of Transportation rule. A recent court decision vacated that rule, but delayed the effective date of its order to July 16, 1987. The fourth vessel was approved to repay its CDS by an administrative decision in 1980 under conditions of an interim rule that was subsequently vacated by the court. However, the court allowed the vessel to remain in the domestic trade pending agency reconsideration of the rule. In response to those court decisions, this proposed rule would allow those four vessels to remain in the domestic trade in the furtherance of the purposes and policies of the Merchant Marine Act, 1936, as amended.

DATES: Comments must be received by May 15, 1987.

ADDRESS: Submit comments to James E. Saarl, Secretary, Maritime Administration, Room 7300, 400 Seventh Street SW., Washington, DC 20590. The Maritime Administration requests that commenters send six copies of their comments.

FOR FURTHER INFORMATION CONTACT: Lynne Adams-Whitaker, Chief, Division of Regulations, 400 Seventh Street SW., Washington, DC 20590, Tel (202) 366–5181.

SUPPLEMENTARY INFORMATION:

Background

The Jones Act (46 U.S.C. 883) generally provides that all cargo transported in the domestic trade between points in the United States must be carried on vessels built in the United States, documented under United States law and owned by United States

citizens. While United States vessels in the domestic trade operate under the protection of the Jones Act (46 U.S.C. 883), vessels operating in the foreign trade do not have such protection. Thus, vessels operating in the foreign trade must compete with foreign-flag vessels that have lower operating and construction costs. To offset these higher U.S. construction costs, Congress passed Title V of the Merchant Marine Act, 1936, as amended ("the Act"), which authorized the payment of construction-differential subsidy (CDS) for the purpose of building ships in U.S. shipyards to be operated in foreign commerce. 46 App. U.S.C. 1151 *et seq.* The Secretary of Transportation, throught the Maritime Administration (MARAD), may pay as much as half the construction costs of vessels used in the U.S. foreign trade. 46 App. U.S.C. 1152. There is no corresponding subsidy program for vessels constructed by U.S. owners exclusively for use in the domestic trade. In 1970, Congress expanded the scope of the Act to include bulk (i.e., tanker or dry bulk) vessels. Merchant Marine Act of 1970, Pub. L. 91–469, 84 Stat. 1018.

In addition, Title VI of the Act authorized the payment of an operating-differential subsidy (ODS) for U.S.-flag vessels manned by U.S. citizens and operated in accordanced with U.S. safety standards. 46 App. U.S.C. 1171. By a policy decision, ODS was not paid to CDS-built bulk-vessels over 100,000 DWT. Because of the large economy of scale of these vessels, labor costs, which are the essential subsidized item under the ODS program, are relatively small in terms of the overall project cost.

CDS-built vessels are subject to certain restrictions. Under section 506 of the Act, vessels constructed with CDS "shall be operated exclusively in foreign trade or on a round-the-world voyage. . . ." 46 App. U.S.C. 1156. Section 506 of the Act allows CDS vessels to be operated in the domestic trade in the following limited circumstances: (1) On a round voyage from the west coast of the United States to European ports which includes Intercoastal U.S. ports; (2) on a round voyage from the Atlantic coast of the U.S. to the Orient which includes intercoastal ports of the U.S.; (3) on a foreign voyage including a stop in Hawaii or an island possession or territory of the U.S. In addition, CDS vessels may be operated in the domestic trade with the consent of the Secretary of Transportation for up to six months in any year under authority of section 506 with the requirement that the vessel owner repay the subsidy on a *pro rata* basis. All domestic trading restrictions for each CDS-built vessel lapse at the end of the vessel's statutory life. Section 9 of Pub. L. 86–318 (74 Stat. 216) sets a 20 year economic life for tankers.

The overall objectives of the 1970 amendments to the Act were to encourage U.S. shipbuilding, thus enhancing the U.S. merchant marine fleet, and to serve the needs of national commerce and defense. The specific goal of the 1970 amendments was to build 30 ships per year over ten years, with emphasis on building bulk carriers, including tankers, for operation in the foreign commerce.[1] Prior to the 1970 amendments, the direct subsidy programs of the Merchant Marine Act had been confined to liner vessels, which operated scheduled services in foreign commerce under the regulatory supervision of the Federal Maritime Commission. The Congress, in extending the reach of these programs to the unregulated bulk trades, specifically recognized the need to make these vessels "competitive" with foreign flag ships. *See* H. Rep. No. 1073, 91st Cong., 1st Sess., 38 (1969); Merchant Marine Act, 1936, 603(b), 46 U.S.C. 1173(b). There was however, no guarantee that even with these subsidies U.S.-flag vessels could compete in the U.S. foreign commerce.

Unfortunately, the governmental subsidy programs offered to U.S.-flag very large crude carriers ("VLCCs", i.e., tankers over 160,000 DWT) has not enabled them to be competitive in the foreign trade. In 1970, Congress did not foresee, and perhaps could not have foreseen, the drastic changes that would occur in the world oil market. The decline in export of crude oil from the Middle East, in addition to an oversupply of world tankers built since 1970, has been financially devastating for the world tanker market. Further, the gap between foreign construction costs and U.S. construction costs widened beyond the level Congress authorized under the CDS program. As a consequence, the two ultra large crude carriers and nine VLCCs constructed with CDS under the 1970 amendments were left with no significant competitive opportunities in the foreign commerce.

The domestic market, however, has not fared as poorly. With the opening in 1977 of the Trans-Alaska Pipeline System, the demand for U.S.-flag tanker tonnage has increased and that demand has not been completely met by the existing Jones Act (domestic) fleet. To alleviate the shortage of suitable Jones Act tanker vessels, MARAD has allowed CDS-built tankers to enter the trade for up to six month periods after repaying the subsidy *pro rata* under section 506 of the Act and in accordance with 46 CFR Part 250.[2] Since 1977, MARAD has approved 43 such applications for CDS-built tanker service in the Alaska oil trade (of those approvals, 37 were for VLCCs). However, because of the limited duration and availability of these temporary permissions and the depressed market conditions confronting tankers in the foreign trade, several CDS tanker owners (predominantly those owning VLCCs) applied for permission to enter the domestic market on a permanent basis in exchange for the total repayment of any unamortized CDS received plus interest.

Prior to 1978, requests for permanent repayment were handled *ad hoc*. No hearings were held on these requests and notice of the proposed determinations was not given to the public. However, after MARAD admitted the *VLCC Stuyvesant* (operated by Seatrain Lines) to the domestic trade, competitors in that trade brought suit challenging MARAD's action. The ultimate disposition of the suit was that, on writ of certiorari, the Supreme Court held that the Secretary's broad contracting powers and discretion to administer the Act encompass the authority to grant permanent release to vessels under CDS restriction. *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, 444 U.S. 572 (1980).

In 1978, MARAD issued a notice of proposed rulemaking (NPRM) that would have set guidelines for permanent CDS repayment. Charterers and owners of six CDS-built vessels applied for CDS repayment. On October 15, 1980, MARAD adopted and made immediately effective an interim rule to govern applications for CDS repayment. Under the interim rule, MARAD retained greater discretion than proposed in the (NPRM) to determine whether to grant or deny CDS repayment applications. Approvals would be granted only for vessels of at least 100,000 DWT and only in exceptional circumstances, after a

[1] In fact, only 34 petroleum tankers were built with CDS authorized by the 1970 amendments.

[2] 46 CFR Part 250 establishes procedures by which MARAD may temporarily waive (i.e., for no more than six months in any twelve month period) the domestic trade restrictions on CDS-built vessels over 100,000 deadweight tons (DWT) in the Alaska-Panama Canal trade. Applications for such waiver must be accompanied by information showing that suitable vessels (i.e., those over 100,000 DWT) of a competitor would not be available for the prospective voyage.

determination that no favorable opportunities existed for viable employment of the vessel in foreign trade during a protracted period. MARAD was to consider a number of factors in determining whether exceptional circumstances existed.

On November 13, 1980, through an adjudicative decision, MARAD approved the CDS repayment application for the *Bay Ridge*, another Seatrain vessel. MARAD deferred action on the other pending CDS repayment applications. On November 25, 1980, the independent U.S. Tanker Owners Committee filed a complaint in the U.S. District Court for review of the interim rule and the *Bay Ridge* decision, alleging substantive and procedural defects in connection with both actions. The District Court granted summary judgment for defendants on all counts. An appeal was taken.

The Court of Appeals considered the alleged substantive and procedural defects of the interim rule. The Court concluded that MARAD was not legally obligated to issue regulations limiting its discretion and that the interim rule itself did not constitute an abuse of MARAD's statutory discretion. Nevertheless, the Court vacated the interim rule on procedural grounds. It concluded that the rule lacked a general statement of basis and purpose, as required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), to explain MARAD's position on the various issues raised during the rulemaking proceeding. The Court also found that adjudication allowing the *Bay Ridge* repayment was procedurally and substantively flawed.

The Court of Appeals remanded the case to the District Court with Instructions to vacate the interim rule and to order new rulemaking procedures, and to vacate the approval of the *Bay Ridge* application, but to allow the *Bay Ridge* to continue in domestic operation pending reconsideration of the *Bay Ridge* adjudication. The Court left to MARAD's discretion whether the new *Bay Ridge* decision should await publication of a permanent rule regarding CDS repayment. The Court also left to MARAD's discretion whether to adopt a permanent rule similar to the interim rule so long as the justification for the rule adopted was "clearly and thoughtfully presented in a statement published contemporaneously with the rule". *Independent U.S. Tanker Owners Committee* v. *Lewis*, 690 F.2d 906, 920 (D.C. Cir. 1982) [hereinafter referred to as *ITOC* v. *Lewis*].

The Department of Transportation published a new NPRM on January 31, 1983, 48 FR 4408. That NPRM, which was issued by the Secretary, proposed to permit total CDS repayment for all U.S. tanker vessels. The notice reviewed the entire history of this issue since the MARAD first accepted total repayment on the *VLCC Stuyvesant* and reviewed the comments received on earlier MARAD rulemakings pertaining to total repayment in return for domestic trading privileges. It invited further comment on these issues and assessed the economic impact of allowing the owner/operators of these vessels to determine on their own whether to repay their CDS. The rulemaking concluded that the Government was not in a position to assess, on its own, which vessels should, and which should not, be allowed to meet the needs for additional capacity in the domestic trade. For example, it pointed out that only allowing operators in financial jeopardy to repay their CDS was not consistent with the objectives of the 1936 Act. 48 FR at 4412.

The Department concluded that the marketplace decisions of individual operators would best serve the needs of the fully deregulated domestic tanker trade, provided that those operators that repaid were placed on an equal competitive cost footing with the existing Jones Act fleet. *Id.* at 4409–4410. Accordingly, the proposed rule would require repayment of an additional amount consisting of compound interest on the unamortized subsidy from the date of its original receipt. The addition of this amount, which frequently could exceed the unamortized subsidy itself, would duplicate the financial condtions inherent in a private sector decision to commit any comparable new asset to the domestic trade, with an allowance only for its age, by allowing the amortization of the subsidy pursuant to its statutory useful life of 20 years. *See* 48 FR 4408–4414. Since the Government does not otherwise regulate entry of new capacity in the domestic trade, duplicating the conditions ordinarily governing such entry was deemed the most appropriate approach.[3]

Shortly after the close of the comment period on the NPRM, the Congress took action to prevent the Secretary from promulgating a final rule. The DOT FY 84 Appropriations Act (Pub. L. 96–78), August 15, 1983) prohibited the enforcement of any rule with respect to the repayment of CDS until 60 days following the promulgation of any such rule. Thereafter, the Commerce Department's FY 84 Appropriations Act (Pub. L. 98–166, November 28, 1983) imposed an additional restriction that prohibited DOT from enforcing any CDS repayment rule until after June 15, 1984. In August of 1984, the FY 85 Appropriations Act for Commerce, Justice and State, which provides appropriations for MARAD, imposed yet another restriction. That Act prohibited the Department from enforcing any CDS repayment rule until May 15, 1985 (Pub. L. 96–411, August 30 1984). Thereafter, Congress considered, but did not extend, these prohibitions.

On May 7, 1985, the Department published in the **Federal Register** a final rule which allowed any owner or operator of a tanker built with CDS to repay its subsidy (with interest) and consequently obtained a permanent removal of domestic trading restrictions. The amount of repayment included the unauthorized CDS on the vessels plus compounded interest on that amount. The Interest rate, to be used for computational purposes, was the rate at which the original Title XI obligation was made or the Title XI long-term bond rate at the vessel's delivery. The final rule included a one-year time limit after the rule's effective date during which total CDS repayment had to be made irreversibly.

That time limit was from June 6, 1985 to June 6, 1986. During that time, three VLCCs repaid the CDS: the Arco Independence (262,400 DWT), ARCO SPIRIT (262,400 DWT), and the Brooklyn (226,200 DWT). The total amount of CDS repaid by these ships was $105.8 million. Those ships are now operating in the domestic trade.

On January 16, 1987, the Court of Appeals for the District of Columbia held that the Secretary of Transportation violated section 553(c) of the Administration Procedure Act by adopting a final rule on CDS repayment which did not contain a statement of basis and purpose giving an adequate account of how the rule served the objectives of the Act and why alternatives were rejected in light of them. *Independent U.S. Tanker Owners Committee* v. *Dole*, Civil Action Nos. 85–01555, 85–01740, 85–01752 and 85–1771. (D.C. Cir. January 16, 1987) [hereinafter referred to as *ITOC* v. *Dole*]. The court found that the Secretary's failure to provide an adequate statement of basis and purpose was arbitrary and capricious. The court vacated the rule, but withheld issuance of its mandate until July 16, 1987 "to avoid further disruptions in the domestic market and to allow the Secretary to undertake

[3] Similarly, damaged foreign-built vessels may be acquired and reconstructed for use in the domestic trade under the Wrecked Vessels Act without prior government approval, provided a specific amount is expended in the reconstruction (i.e., three times their salvage value). 46 App. U.S.C. 14.

further proceedings to address the problems of the merchant marine trade." Slip op. at 16. The court ruled that, as of July 16, 1987, the present rule will be vacated and conditions will be returned to the *status quo ante*, before the CDS repayment rule took effect, subject to any "further action" that the agency may have taken in the interim.

By letter dated March 10, 1987, counsel for the *Bay Ridge* requested that a proceeding on the *Bay Ridge* should be conducted independently of proceedings with respect to the three vessels which repaid CDS pursuant to the repayment rule that has been vacated by the Court of Appeals. The court in *ITOC* v. *Lewis* specifically left to MARAD's discretion whether or not the *Bay Ridge* decision should await publication of a permanent rule governing repayment applications. MARAD has decided that it would be appropriate to consider the *Bay Ridge* in this rulemaking, since it affects the same domestic trade as the other three vessels at issue.

The Proposed Rule

This proposed rule would reaffirm the allowance of the repayment of CDS, with interest, and rescisison of the domestic trading restriction for tankers that applied to and were approved by MARAD between June 6, 1985 and June 6, 1986. The approved applications were for the *Arco Independence, Arco Spirit* and *Brooklyn*. Further, this proposed rule would reaffirm the allowance of the repayment of CDS, with interest, and rescission of the domestic trading restrictions for *the Bay Ridge*, which was approved to repay its CDS in November 1980. It would impose the same conditions on the *Bay Ridge* that were imposed in 1980.

This proposed rule would differ from the 1985 CDS repayment rule in that it does not provide a one-year window for applicants to seek MARAD approval of their CDS repayment. This proposed rule would impose the same terms and conditions on the three tankers that repaid during the one-year window as were required in the 1985 CDS repayment rule.

Comments

MARAD solicits comments on this proposed rule from all interested parties. In particular, MARAD seeks comments on the future of the Alaska North Slope (ANS) trade.

The Purposes and Policies of the Merchant Marine Act

The preamble to the Merchant Marine Act, 1936, as amended, states that the intent of the Act is "[t]o further the development and maintenance of an result and well-balanced American merchant marine, to promote the commerce of the United States, to aid in the national defense. . . ." The specific goals of the Merchant Marine Act, 1936, as amended, as set out in section 101 of the Act, are to foster the development and encourage the maintenance of an American merchant marine that is

(a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States, insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. 46 App. U.S.C. 1101.

MARAD believes that this proposed rule, which would allow the four CDS-built very large crude carriers ("the four VLCCs") to remain in the domestic trade, would benefit the domestic water-borne commerce by providing vessels that are the "most suitable" for the Alaska-Panama oil trade, which would result in a "well-balanced" American merchant marine. Although originally built to operate in the foreign trade, these VLCCs are not competitive in that trade. If not allowed to operate in the domestic trades, the four VLCCs would likely be unemployed and possibly scrapped.

The balance of this statement discusses how this proposed rule would fulfill the objectives of the Act. The suitability of these vessels for the Alaska-Panama trade is discussed in more detail in Section I. Section II discusses the effect of this proposed rulemaking on the U.S. tanker fleet operating in the foreign commerce. Section III analyzes the effect of this proposed rulemaking on the naval auxiliary. Section IV addresses the effects of this rulemaking on shipyards. Section V considers other objectives of the Act that support this rulemaking. Section VI addresses the alternatives considered by MARAD.

I. The Alaska Oil Trade and the Need for Suitable Tankers

The main purpose for allowing the four VLCCs to remain in the domestic trade is to foster the development of suitable vessels for that trade. "Suitability" is determined not only by the physical ability of a vessel to carry a certain product, but by market conditions. As will be shown below, market conditions in the oil trade have fluctuated drastically since the advent of the *CDS* program, affecting the distribution of oil in both foreign and domestic markets.

A. ANS Crude Oil Production

When the Trans-Alaska Pipeline opened in 1977, Alaska North Slope (ANS) crude oil loadings averaged 629,000 barrels per day (b/d). Average loadings have steadily increased since then. In 1982, average loadings reached 1.62 million b/d. Production for 1987 is expected to be 1.8 million b/d. The most rapid growth occurred between 1978 and 1980 when average loadings grew at an annual rate of 18.4 percent. Average loadings from 1980 to 1986 grew at an annual rate of 2.2 percent. (See Table 11–2 in Regulatory Impact Analysis).

B. The Distribution of ANS Crude Oil

While ANS crude oil production has grown steadily since 1977, the distribution of that oil has changed dramatically. ANS crude oil is shipped to the West Coast, to Panama, to the Gulf and East Coasts from Panama, and to the Virgin Islands around Cape Horn.[4] In the five months of 1977 when ANS oil production began, approximately 75 percent of the oil from Valdez, Alaska was shipped to the West Coast, 24 percent to Panama (to be shipped to the Gulf/East Coasts), and two percent to the Virgin Islands. Shipments to Panama increased to 30 percent of total loading in 1980, and peaked at 43 percent in 1982. During this period, the volume of oil going to the West Coast dropped from 63 percent to 50 percent. During 1986, 32 percent of the Alaska oil was shipped to Panama, and 62 percent to the West Coast.

The amount of future ANS shipments to Panama will likely decline, for several reasons. More ANS crude oil will likely be shipped to the West Coast during 1988 due to the imminent opening of the All-American pipeline from Southern California to the Texas Gulf, assuming the pipeline is completed in that time frame. This pepeline will have a capacity of 300,000 b/d and will ship surplus West Coast crude to the Gulf Coast for refining. While increases in West Coast crude production are anticipated, the surplus pipeline capacity would probably eliminate some need for vessels to carry the oil to Panama (to be shipped to the Gulf).

[4] All of the oil carried to the Virgin Islands currently is moved in foreign-flag vessels via Cape Horn.

Valdez loading may decline in the 1990's due to production reduction as well as the potential construction of a 105,000 b/d (rated capacity) refinery at Valdez by Alaskan Refining, Inc. Products from the refinery may be transported abroad on foreign-flag tankers, thus reducing the shipments of oil from Valdez for U.S.-flag tankers.

C. Tanker Demand in the ANS Crude Oil Trade

Tanker demand in the ANS trade depends on ANS oil production and the distribution of the oil. As production increases, so does the amount of tonnage needed to carry the oil. However, the increase in demand for tankers may not be proportional to oil production if there is also a change in the distribution of the oil. For example, tanker demand peaked in 1982 when approximately 182 billion-barrel miles of oil were shipped. This peak in demand was due not only to the increased production of oil, but also due to the peak in shipments to Panama (43 percent of total loadings). A drop in ANS crude oil shipments between 1982 and 1984 (from 7.2 million DWT to 5.9 million DWT) was attributable not to production, which remained fairly constant, but to a drop in oil shipments to Panama and corresponding rise in shipments to the West Coast.

The distribution of oil affects the demand for certain size tankers. Historically, VLCCs have carried the majority of oil from Alaska to Panama (see Table 111–2 in the Regulatory Impact Analysis). During 1986, about half the full-time equivalent tanker employment in the Alaska-Panama trade was for vessels from 200,000 DWT to 265,000 DWT; most of the other half was for VLCCs from 170,000 DWT to 190,000 DWT. A small percentage was carried by tankers from 110,000 DWT–137,000 DWT, while only 0.6 percent in 1986 was carried by vessels under 100,000 DWT. (Historically, the share carried by tankers under 100,000 DWT has been no more than 6 percent.) Even prior to the 1985 CDS repayment by four of the VLCCs, the Valdez-Panama trade was dominated by tankers over 100,000 DWT. Many of these were CDS built VLCCs operating under six month permissions in the domestic trade.

Several factors contribute to the suitability of the four VLCCs for this trade. VLCCs are more suitable for long-haul, high volume trades than smaller tankers, due to economies of scale. That is, tanker operating costs do not rise as fast as cargo volumes. Thus, VLCCs are more efficient and economical than smaller tankers for long-haul, high-volume trades. Studies of optimal ship size have shown that optimal ship size is determined by minimizing costs per ton at sea and in port. (In port, costs per ton increase with ship size; at sea, however, costs per ton decline with ship size). J.O. Jansson and D. Shneerson, "The Optimal Ship Size," *Journal of Transport Ecomomic and Policy*, 217, 223 (Sept. 1982). VLCCs are more suitable for the Panama leg of the ANS trade because of the length of the voyage (approximately 4,950 miles). The at-sea time is significantly longer than any other legs of U.S.-flag oil shipments in the U.S. Another factor contributing to the suitability of the VLCCs for the Panama leg is the deep-draft of the Panama port, which can accommodate those larger tankers. Because of these factors, VLCCs are able to carry oil in that trade more efficiently than small tankers under 100,000 DWT.

Conversely, smaller tankers are more suitable for the West Coast and upcoast (Gulf/East Coast) trade than the Panama trade. The Valdez-West Coast ANS trade has been served by vessels in all DWT ranges: 47 percent of the full-time equivalent tanker employment in that trade is carried by vessels under 100,000 DWT; 53 percent is carried by tankers over 100,000 DWT.

Once the oil reaches Panama, smaller tankers (i.e., under 150,000 DWT) are needed to carry the oil to the Gulf and East Coasts. (VLCCs are less suitable than smaller tankers for such short haul, low volume trades, because their capital and port charges, which are higher than those for smaller tankers, are spread over smaller cargo volumes.) Tankers under 55,000 DWT carry 22 percent of the Panama-Gulf/East Coast ANS oil. Tankers in the 55,000 DWT to 92,000 DWT range now carry about two-thirds of the ANS oil in this trade. Such tankers are more suitable for that trade than larger tankers because they often stop at many ports (which would not be economical for larger tankers to do), and most Gulf/East Coast ports are not deep-draft. Further, the at-sea time is much less because of the shorter distances involved.

The Regulatory Impact Analysis indicates certain trends in the distribution of oil by trade and by vessel tonnage. Since the permanent entrance of the three CDS-built VLCCs in the domestic trade (i.e., from 1985–1986), the percentage of full-time equivalent tanker employment for VLCCs over 200,000 DWT in the Alaska-Panama trade has risen considerably, and employment by vessels under that tonnage range has decreased correspondingly. It appears that the trend of these VLCCs carrying the majority of Valdez-Panama ANS trade will continue.[5]

Allowing the four VLCCs to remain in the domestic trade makes the domestic fleet better balanced than it would be without these vessels in the trade. It should be noted that, even with the four VLCCs in the domestic trade, shortages of tankers have led to one smaller CDS-built tanker, the *Beaver State*, entering the trade for a month under a section 506 waiver. (See Regulatory Impact Analysis). Further, only six percent of the domestic tankers (12 tankers) were in lay-up as of February 1987. This percentage is quite low, considering that February is a slow month for the upcoast oil trade and is a reasonable reserve to cover temporary losses from the active fleet due to casualties, safety inspections and repairs as well as seasonal increases in upcoast petroleum movements. As for the future, while ANS tanker loadings have increased from 629 thousand barrels per day in 1977 to 1,788 thousand barrels per day in 1986, loadings are expected to fall over the period 1988–95, due to a gradual decline in ANS production (Table II–2 of the Regulatory Impact Analysis) with uncertain consequences. Comments are invited specifically on the extent and the consequences of this decline in ANS production.

Finally, no data has been developed yet on the extent that the lower costs of tranporting ANS crude on VLCCs, including those that repaid their CDS, has increased shipments to Panama since those four vessels were admitted to the trade. To the extent that occurs, overall tanker demand in the trade would be increased, and the displacement caused by the entry of those vessels thereby reduced. Commenters are invited to submit such data.

D. Availability of Tankers in the Trade

When ANS crude oil loadings began in 1977, there were 215 privately-owned unsubsidized tankers (8.0 million DWT) in the U.S.-flag fleet (excluding special product tankers). Of those, only seven were over 100,000 DWT (totaling 848,000 DWT). An additional 15 tankers (2.3 million DWT) were on order for the domestic trade, of which 12 (2.0 million DWT) were over 100,000 DWT. Two tankers (totaling 259,900 DWT) were rebuilt under the Wrecked Vessel Act in 1981 and 1983 respectively. Five VLCCs repaid their CDS from 1977 to 1986

[5] It should be noted, however, that in some years, the full-time equivalent of three VLCCs operated in the ANS trade under six month waivers pursuant to 46 CFR Part 250.

(totaling 1.2 million DWT). One new EXXON tanker was delivered in November 1986 and the second in April 1987 (those two vessels total 418,000 DWT). Both are currently operating in the domestic trade. No other U.S. tankers are currently under construction.

With the opening of the Alaskan pipeline in 1977, there has been a recurring shortage of suitable tankers in the ANS oil trade. MARAD has tried to alleviate this shortage in several ways. First, MARAD issued a rule in 1977 allowing CDS tankers over 100,000 DWT to carry ANS crude oil in the domestic trade for six months in a twelve month period in exchange for a *pro rata* repayment of their CDS (46 CFR Part 250). Under that rule ("Part 250 rule") MARAD has approved temporary transfers of CDS-built VLCCs to the Alaska-Panama trade on 37 occasions. Such transfers peaked between 1980 and 1983 when there were approximately three CDS vessels (totaling 750,000 DWT) operating in the trade on a full-time basis.

Permissions for three CDS-built VLCCs—*Arco Independence, Maryland and Williamsburgh*—to operate temporarily in the Alaskan oil trade were terminated on January 12, 1984. Their approval had been conditioned on the acquisition of suitable employment (by January 1984 when they would become available) of four over 100,000 DWT Jones Act vessels—*Overseas Boston, Overseas Juneau, Ogden Columbia,* and *Prince William Sound.* When the latter two were not chartered, the conditional approvals were terminated in accordance with the order of October 7, 1983. No CDS-built VLCCs entered the ANS trade after that until the *Maryland* on November 15, 1984. Two additional VLCCs were granted waivers in January 1985 and January 1986. In addition, a CDS-built 90,000 DWT tanker (the *Beaver State*) made two voyages in the Valdez to West Coast trade under a section 506 waiver in March 1986.

From 1977 to the last approved transfer on November 1, 1985, eight CDS VLCCs operated under six month waivers at various times in the ANS trade. Of those eight, four are the subject of this rulemaking.

The other four CDS-built vessels are the *Maryland, Massachusetts,* and *New York* (each 264,100 DWT), and the *Williamsburgh* (225,100). None of those vessels has applied to enter the ANS trade under Part 250 since November 1985. (The *New York* applied in November 1985 and operated until July 1986). At present, those four are in lay-up.

While the Part 250 rule alleviated the shortage of tankers to a large extent, it did not totally solve the problem. To alleviate the shortage, MARAD began accepting total repayment of CDS in exchange for domestic trading privileges. Since 1977, five vessels have totally repaid their CDS. The first was the VLCC *Stuyvesant* (224,700 DWT), which was allowed to enter the domestic trade in August 1977.

The second was the *Bay Ridge* (225,000 DWT) which repaid its CDS in November 1980, after entering the trade for six months under a Part 250 temporary waiver in 1979. The other three VLCCs repaid their CDS pursuant to the most recent rule, and are still operating in the domestic trade. The four VLCCs in the trade that are the subject of this rulemaking total 976,000 DWT. They represent approximately 43 percent of the capacity operating in the Valdez-Panama trade.

Employment prospects for the four VLCCs in the ANS trade appear to be positive at least for the near future. It is with this near future in mind that these vessels repaid their CDS. Domestic trading restrictions for CDS-built vessels are lifted at the end of their statutory life (i.e., 20 years). The *Arco Independence* and *Arco Spirit* were built in 1977, the Brooklyn in 1973, and the *Bay Ridge* in 1979.[6] Since no new tankers are on order, and prospects for new buildings seem unlikely, these four VLCCs would be among the most suitable vessels for the Alaska-Panama trade. If the four VLCCs remain in the domestic trade, there would be an adequate supply of suitable tonnage to carry oil in that trade even if other older tankers are scrapped and if no new tankers are built.

If the four VLCCs were removed from the domestic trade, a shortage of the most suitable tonnage in the Alaska-Panama trade would occur, necessitating the entrance of smaller, less suitable tankers in that trade, and would also kikely result in those VLCCs being laid up, since they are unable to compete in the foreign trade (see Section II of this proposed rule).

In conclusion, as far as can reliably be foreseen, the continued employment in the Alaskan oil trade of the four VLCCs that repaid CDS would benefit the U.S. domestic waterborne commerce by providing vessels that are most suitable for the Alaska-Panama oil trade and by providing an employed well-balanced merchant marine. The following other benefits would flow: The Treasury would retain the CDS repaid amount ($142 million), the shipping public would receive transportation savings (estimated $664–674 million) and the State of Alaska would earn revenues from reduced tanker rates (estimated $186–189 million). It is not clear that there would be any negative impact on the domestic fleet by allowing such repayment. It is recognized that 12 tankers were in lay-up in February and with their lay-up, the seamen to operate them were unemployed. This is only six percent of the total U.S.-flag domestic tanker fleet and provides a needed reserve for peak demand.

E. Safety of the VLCCs.

Allowing the four VLCCs to remain in the domestic trade would also further the goal of section 101 of the Act to encourage the development of a fleet composed of the "safest" vessels. As is shown in the Environmental Assessment prepared for this proposed rule, these VLCCs are among the safest tankers, in terms of environmental risks. The change in oil spills risk for the ANS fleet is expected to continue to improve as more VLCCs and other large tankers replace, where permitted by navigation channel depths, smaller tankers. If the four VLCCs were not allowed to remain in the domestic trade, a tonnage shortfall could cause a greater oil spill risk if additional small vessels such as barges were to be employed to compensate for the shortfall.

II. The Foreign Trade

One of the goals of the Act is to encourage the development and maintenance of a merchant marine sufficient to carry "a substantial portion of the waterborne export and import foreign commerce of the United States . . ." 46 U.S.C. 1101(a). The Court of Appeals criticized the previous CDS repayment rule for its "dubious proposition that the fleet will remain able to carry 'a substantial portion' of foreign commerce . . ." *ITOC* V. *Dole,* slip op. at 11.

The Court noted in a footnote to its decision overturning the prior CDS rule:

> It may be, of course, that present conditions in the world shipping market make it impossible for the Secretary to find a way to meet all of the statutory objectives. If this is a problem, she should discuss it frankly and directly when she considers which measures to adopt in light of the objectives explicitly set out in the Act. *Id.* at 13–14, n. 4.

While this proposed rulemaking would provide a domestic tanker fleet that is (1) sufficient to carry the domestic waterborne commerce of the

[6] Even without the present rulemaking, these vessels would be allowed to enter the domestic trade at the end of their 20 year useful life. Thus, the effects of this rulemaking would expire in the mid to late 1990s.

United States and (2) composed of the "best equipped, safest, and most suitable types of vessels," MARAD acknowledges that it would have no effect on the U.S.-flag share of the water-borne export and import bulk foreign commerce of the United States.

The U.S.-flag foreign trade tanker fleet currently consists of 26 CDS-built tankers totaling three million deadweight tons, including six VLCCs and two ULCCs. (This excludes the four VLCCs that are the subject of this rulemaking and three CDS-built integrated tug-barges, but includes two CDS-built ore-bulk-oil carriers built with CDS.) This tonnage is insufficient to carry a substantial portion of the bulk foreign commerce. The six CDS-built VLCCs and two ULCCs (ultra large crude carriers) are currently laid up. Only one of the CDS-built tankers under 100,000 DWT is laid up. Seven of the tankers are employed in the foreign trade, while the remaining 12 tankers are employed under charter to the Military Sealift Command (6) or are employed in the preference trades (6) carrying Strategic Petroleum Reserve oil.

While the intent of MARAD's CDS and ODS programs was to provide a basis for a U.S.-flag fleet that is sufficient to carry a substantial portion of our bulk import and export trade, the assumptions of those programs were not met for VLCC tankers and most of these tankers built under the 1970 program are not competitive in the international market, as evidenced by the lay-ups. Moreover, even with the benefit of CDS, the capital costs of CDS-built VLCCs exceeds those of comparable foreign-built tankers. In addition, even the provision for full ODS could not offset the cost disadvantages of operating U.S.-flag tankers in the foreign trades, let alone address the capital cost disadvantages faced by these carriers.

The United States currently imports approximately 6.0 million barrels per day of crude oil and refined product, of which only three percent is carried on U.S.-flag tankers. Furthermore, a substantial portion of our crude oil imports—approximately 45 percent—are received from nearby sources including Canada, Mexico, Venezuela and the Caribbean region. The *CDS*-built VLCCs are unsuitable for these nearby import trades. (The CDS-built VLCCs are more suitable for long-haul voyages; see section 1 above). Approximately 32 percent of U.S. crude oil imports are received from the distant Arabian Gulf and North Sea regions for which VLCCs would be suitable. In contrast, ten years ago U.S. crude oil and refined product imports averaged 8.8 million barrels per day. Only 14 percent of our crude oil imports were received from nearby sources while over 40 percent of our oil imports were received from the Arabian Gulf and North Sea regions.

During the last year, there has been an increase in oil exports from the Arabian Gulf region and a corresponding rise in demand for VLCCs in the international trade. Despite this increase it is unlikely that the U.S.-flag share of U.S. oil imports would increase, due to an oversupply of tonnage in the world tanker fleet.

As of January 1987, the world fleet contained over 235 million deadweight tons, of which approximately 200 million deadweight tons (85 percent) were actively employed. The remaining 35 million deadweight tons (15 percent) were idle; however, 30 million deadweight tons were in the over 200,000 DWT size class. The amount of idle capacity in the over 200,000 DWT size class represents more than 26 percent of the available tonnage in that class. Therefore, given the relative higher operating costs for U.S.-flag tankers and the amount of idle tonnage over 200,000 DWT in the world fleet, it is very likely that the four VLCCs that are the subject of this rulemaking would be laid up if they are required to leave the domestic trade, with loss of jobs to Jones Act seamen, or possibly scrapped.

In fact, of the nine VLCCs and two ULCCs built with CDS under the 1970 program, none has had any significant employment in the foreign commercial trades, other than occasional shipments of oil to the Strategic Petroleum Reserve, which are reserved to U.S.-flag carriage. The *Bay Ridge,* which repaid its CDS in 1980, has been operating actively in the domestic trade since 1980. The other three VLCCs have been operating in the domestic trade regularly under six month waivers under Part 250 (a total of 17 times since 1978). Thus, the deployment of these four VLCCs to the domestic trade would have no impact on U.S.-flag tanker presence in foreign trades. Finally, should world market conditions even reach the point where U.S.-flag VLCCs could be employed in the U.S. foreign or foreign-to-foreign trades, VLCCs that have continued to be active in the domestic trade would be much more readily available to the foreign fleet than vessels that are laid up and wasting or scrapped.

III. The Naval Auxiliary

One of the objectives of the Act is to foster the development of a merchant marine fleet "capable of serving as a naval and military auxiliary in time of war or national emergency, ..." 46 U.S.C. 1101(b).

In its comments on the prior CDS rule, the Defense Department expressed concern over the security implications of losing militarily-useful (i.e., product) tankers as a result of CDS repayment. MARAD has considered the effect on the naval auxiliary of allowing the four VLCCs to remain in the domestic trade (see Regulatory Impact Analysis). Market conditions and statutory requirements have contributed to a reduction in the number of U.S.-flag product tankers, including a declining upcoast (U.S. Gulf/East Coast) petroleum trade (the principal market for U.S.-flag product tankers), the opening of the Trans-Panama Pipeline in 1982, and the anti-pollution standards of the Port and Tanker Safety Act (PTSA).

As a result of these factors, over a three year period for 1984 to 1986, 41 tankers, of the type considered highly military useful, were scrapped (see Regulatory impact Analysis, Appendix 1). All had exceeded their statutory life of 20 years (see Regulatory Impact Analysis, Appendix 1). The average age of these tankers was 34 years. Further, the 1978 Port and tanker Safety Act (PTSA) set certain anti-pollution requirements for tankers entering United States waters. By January 1, 1986, vessels between 20,000 and 40,000 DWT were required to have certain anti-pollution systems to prevent the discharge of oil-tainted water. To comply with the PTSA requirements, tanker owners had the option of retrofitting existing systems, reducing load lines (so as to carry less than 20,000 DWT), using port reception facilities to dispose of oily water, or scrapping ships. Due to the cost of retrofitting and resulting loss of cargo capacity, and the inherent limitations of reducing load lines or using port reception facilities to discharge oily water, many tanker owners scrapped their older, less efficient vessels. The PTSA served to speed up the natural process of scrapping that occurs when tankers exceed their useful life.

Of these 41 that were scrapped, 25 were scrapped in 1984, nine in 1985, and seven in 1986. The vast majority of those lacked some or all of the anti-pollution features required by the PTSA.

These figures indicate that the scrapping that has occurred in the past three years is not attributable to CDS repayment but rather to the age of the vessels, their inability to economically retrofit to satisfy PTSA requirements and poor market conditions. Since the

effective date of the PTSA (January 1, 1986), the number of product tankers scrapped has declined. MARAD believes that this decline will continue, since many older, more inefficient tankers have now been scrapped. In addition, since the enactment of the PTSA, a number of new product tankers have been built.

Further, any effect that the four VLCCs would have on the militarily-useful tankers would be indirect, unlike the above factors. VLCCs and these smaller tankers generally do not compete in the same trades. As discussed above, VLCCs have historically served the Alaskan-Panama trade, and smaller tankers serve the Panama Gulf/East Coast trades. While a mix of vessels serve the West Coast, the four VLCCs have not entered that trade. Thus, any effect the VLCCs may have on the smaller tankers would be through an indirect displacement. That is, the VLCCs, being more cost-effective, may "bump" other large tankers that could serve the Alaska-Panama trade. In turn, these large tankers could operate in the West Coast and Panama/Gulf trade, picking up oil that could have been carried by smaller tankers. A trend in this direction is indicated by Table 111–2 in the Regulatory Impact Analysis. However, such "bumping" effects are much more remote than the effects of the PTSA, the Trans-Panama Pipeline, and declining market conditions, over which MARAD has no control.

Moreover, the current goal of the Navy is to increase the number of tankers in the Ready Reserve Force from eight to twenty by the year FY 1992. Even if there were a direct corrollary to CDS repayment and the 12 tankers laid up in February 1987, the Navy has the opportunity to purchase those vessels for their military usefulness at such time as they became commercially unattractive.

Based solely upon these objectives of section 101 of the Act, the Secretary concludes that the CDS repayment rule proposed herein furthers those objectives. The four VLCCs would increase the most suitable U.S. domestic fleet with minimal Impact on the existing fleet, and they are not expected to have a significant impact on carriage of U.S. foreign commerce, U.S. shipyard construction, or the U.S. Naval auxiliary capacity. Their retention in the Jones Act fleet will also result in $142 to the U.S. Treasury for CDS repayment, transportation savings to the shipping public and increased revenues for the State of Alaska.

IV. Shipyards

One of the objectives of the Act is to encourage the development of a merchant marine fleet "supplemented by efficient facilities for shipbuilding and ship repair." While this proposed rulemaking would not actively promote this goal, it also would not have a significant adverse effect on U.S. shipbuilding. MARAD acknowledges that future shipbuilding prospects with or without this proposed rule do not look positive. Even without CDS repayment, the growth prospects for the domestic petroleum trades are not sufficient to require the construction of additional tanker capacity.

No orders for the construction of unsubsidized tankers over 100,000 DWT were placed between April 1976 and August 1984. On August 27, 1984, EXXON placed an order for construction of two 209,000 DWT tankers in the United States for employment in the ANS trade. Since then, no orders have been placed to build unsubsidized tankers over 100,000 DWT.

Two foreign-flag tankers over 100,000 DWT were rebuilt in the United States for the ANS crude oil trade in 1981 and 1983 under the Wrecked Vessel Act (46 U.S.C. 14). Under this Act, foreign-built vessels that are wrecked off the U.S. coast are eligible to enter the U.S. domestic trade provided the vessel is purchased by a U.S. citizen and rebuilt in the United States at a cost that is at least three times the appraised salvage value.

The first vessel, the Overseas Boston (123,700 DWT), was rebuilt in 1981 and the second vessel, the Ogden Columbia (136,000 DWT), was rebuilt in 1983. Due to the existing capacity in the domestic trade and the predicted growth patterns in the petroleum trade, allowing the four CDS-built VLCCs to remain in the domestic Jones Act fleet permanently will have little effect on the amount of domestic tanker construction.

V. Other Objectives of the Act

While section 101 of the Act establishes the general objectives of the Act, other parts of the Act give more specific guidance on interpretation and implementation of these goals. The Act explicitly and implicitly establishes other policy goals in furtherance of the maintenance and deveplopment of the U.S. merchant marine fleet. Among these goals, mentioned in the prior CDS final rule (50 FR 19170), are efficiency and competition. Each of these goals has been recognized by the courts as vaild policies for promoting the U.S. merchant marine fleet.

A. Efficiency

The goal of efficiency of the fleet is mentioned throughout the Act. Among the express goals of section 101 is that the merchant marine shall be composed of "suitable" vessels manned by "efficient" crews. Certainly, the idea of "suitable" vessels should encompass efficiency as a principal component.

The goal of efficiency is particularly important in the CDS program, which is designed to produce vessels of "high transport capability and productivity." Merchant Marine Act, 1936, as amended, section 501 (46 U.S.C. App. 1151). Other provisions in the Act are intended to promote fleet modernization. Under section 213, the Secretary is required to report to Congress annually on the scrapping of old vessels, and the relative cost of ship construction and reconditioning in U.S. shipyards. The capital construction reserve fund was established in section 511 to promote construction or acquisition of new vessels. The Secretary's authority to acquire obsolete vessels for an allowance of credit under section 510(b) is intended "to promote construction of new, safe, and efficient vessels to carry the domestic and foreign waterborne commerce of the United States. . . ."

While the Act appears to clearly promote the policy of efficiency, the Department of Transportation authorization statute further declares it to be an overriding purpose that national transportation policies and programs be "conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent there with. . . ." 49 U.S.C. 1101. Any ambiguity in the Merchant Marine Act regarding the goal of promotion of efficiency is resolved in favor of that goal through the purposes and policies established in the Department's statute.

In addition to these explicit statutory provisions promoting efficiency of the U.S. merchant marine fleet, several recent court decisions have affirmed that one objective of the Act is to encourage modernization and efficiency. For example, the Supreme Court's decision confirming the Secretary's statutory authority to grant permanent release to vessels under *CDS* restrictions found that a basic goal of the Act was to encourage the maintenance of an "effective merchant marine" with a "fleet [that] was to be modern and efficient." *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, 444 U.S. 572, 584 (1980). Further, the DC Circuit recently described the first goal of the Act as promoting "a well-equipped and efficient merchant fleet." *American Trading Transportation Co.* v. *United States*, 791 F.2d 942, 944 (D.C. Cir. 1986); *see also Sea-Land* v. *Dole*, 723 F.2d 975, 976 (D.C. Cir. 1983).

The above statutory provisions and judicial interpretations strongly support the goal of promoting efficiency and

modernization of the U.S. merchant marine fleet. These goals would be furthered by this proposed rulemaking, which will allow the four VLCCs, which are among the most efficient U.S. tankers in the fleet, to remain active in the domestic trade.

B. Competition

While the Act does not explicitly list competition as one of its goals, the promotion of competition in the foreign and domestic trades is implicit in the Act. The Act's ODS and CDS programs are intended to give the U.S. merchant marine fleet certain financial resources to compete with lower-cost foreign fleets while not guaranteeing any profit. In particular, Congress made this objective clear in enacting the Merchant Marine Act of 1970, which extended those programs to the unregulated bulk trades. *See* Merchant Marine Act, 1936, 603(b) 46 U.S.C. 1173(b); H. Rep. No. 1073, 91st Cong., 1st. Sess., 38 (1969). The Jones Act trade does not receive such financial assistance, but is insulated from foreign competition by the Act's bifurcation of the foreign and domestic trades. That is, the Act restricts competition in the Jones Act trade only to the extent necessary to protect unsubsidized U.S. operators from the benefits of the Act's financial assistance programs (such as ODS and CDS) which assist the U.S. foreign trade vessels in competing against low-cost foreign-flag competition. In the domestic trade, the Secretary has a duty "to minimize interference with the free market forces normally at work. . . ." *ITOC* v. *Lewis, supra*, 690 F.2d at 917.

In its seminal case on the relation between the foreign and domestic trades, the DC Circuit stated that "competition is not 'unfair' within the meaning of the Act when it does not involve diversion of money to unsubsidized domestic operations from subsidized foreign operations, to the disadvantage of an unsubsidized operator. Congress plainly did not intend to prevent that sort of competition." *Pacific Far East Line, Inc.* v. *Federal Maritime Board*, 275 F.2d 184, 186 (D.C. Cir. 1960). Other courts have likewise recognized the overriding public policy in favor of competition in the domestic trade and in national transportation policy. *See e.g., Matson Navigation Co.*, v. *Connor*, 258 F. Supp. 144, 158 (N.D.Cal. 1966), *aff'd per curiam*, 394 F.2d 514 (9th Cir. 1968); *Bowman Transportation, Inc.*, v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 198–99 (1974).

Finally, the Supreme Court made clear its preference for fair competition (as opposed to regulated entry under six month permissions) in its decision confirming the Secretary's authority to accept permanent repayment in *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.* 444 U.S. 572, 589–90 (1980):

> Section 506 . . . permit[s] a vessel that enjoys the benefits of CDS to operate outside the foreign market only in narrow circumstances, generally upon a highly discretionary administrative decision, and no more than six months a year. And we have no doubt that it would be flatly inconsistent with one congressional intent were the Secretary or this court to conclude that a temporary release not meeting these conditions was proper. But a permanent release upon full repayment is quite different. If irrevocably locates the vessel in the unsubsidized fleet and, thus, poses no danger of a supercompetitor skimming the cream from each market. It creates no long-term instability. And it confers no windfall. On the contrary, at least where repayment of the CDS includes some amount reflecting capital costs which would have been incurred had no subsidy been available, such a transaction merely permits a once subsidized vessel to enter the domestic trade on a footing equal to that of vessels already in that trade. It was not the purpose of the Act to prohibit such entry. . . .

Thus, to the extent that the capacity allowed to enter the domestic trade under CDS repayment would have been allowed to participate in the trade under six month permissions, allowing total CDS repayment therefore would necessarily be consistent with the "purpose of the Act" *Id.*

In fact, where the Secretary issued the *NPRM* on total CDS repayment in January 1983, the full time equivalent of three CDS built VLCCs had been operating in the trade under six month permissions. Thus, allowing total repayment for three VLCCs under that rulemaking is squarely within the Supreme Court's holding.

VI. Alternatives

MARAD has considered three alternatives in preparing this rulemaking. The first is to maintain the *status quo*, i.e., to allow the four VLCCs to remain in the domestic trade. The costs and benefits of this alternative have been discussed at length in this statement, and in the Regulatory Impact Analysis. Further costs, evaluated in the Regulatory Impact Analysis, include the recent Title XI defaults of three VLCCs that were previously in the domestic trade under six-month waivers, and partial defaults of two other CDS-built VLCCs (*Stuyvesant* and *Bay Ridge*). These costs were not necessarily attributable to CDS repayment and in any event are irreversibly expended at this time (i.e., returning the four VLCCs to the foreign trade would not recover this money). The total default cost to the government has been $137.5 million.

Another relevant consideration is the effect on the existing Jones Act (i.e., domestic) fleet. As of February 19, 1987, twelve Jones Act tankers were laid up (totaling approximately 650,000 DWT). On the other side of the ledger, if CDS repayment is not allowed for the four VLCCs, they are likely to be laid up (approximately 705,000 DWT).

MARAD believes that the suitability of the four VLCCs for the Alaska-Panama trade outweights any possible disadvantages. Of the twelve tankers that are laid up, three tankers (totaling 146,000 DWT) are over 20 years old. The remaining nine tankers include the one tanker (the *Prince William Sound*, 123,400 DWT) and eight smaller tankers that could serve in the *ANS* trade, although at a much higher cost per ton than VLCCs currently operating in that trade (see Regulatory Impact Analysis). For example, the cost of operating a 50,000 DWT tanker in the Valdez-Panama trade is approximately, $25.00 per ton, compared to $9.19 per ton for a 265,000 DWT VLCC operating in the same trade. Further, as noted above, larger tankers are more suitable than smaller tankers from an environmental standpoint because they make fewer voyages and port calls than smaller tankers to carry the same amount of oil, thus reducing the risk of collisions and oil spills (see Environmental Assessment).

A second alternative considered would be for MARAD to do nothing, i.e., to allow the rule to be vacated as of July 16, 1987, and for the three VLCCs to leave the domestic trade, and to consider the *Bay Ridge* separately. The costs of doing nothing would be a shortage of the most suitable tonnage for the Valdez-Panama trade and the likely lay-up of the three VLCCs that repaid CDS under the 1985 rule. Other costs of this alternative would be the loss to the government of CDS repayments of $105.8 million from those three VLCCs, the reduction of Alaska state revenues due to higher transportation costs in later years, and the loss of transportation savings to the shipping public.

The benefits of this alternative could be reduced government loan exposure risk on existing Jones Act tankers and the possibility of some of the laid up domestic tankers operating in the *ANS* trade. However, due to the age and small size of most of those tankers, they would be unsuitable for the Valdez-Panama trade. Further, only six percent of the domestic tanker fleet is laid up. A

six percent lay-up is a reasonable reserve for covering temporary losses from the active fleet due to casualties (three in 1986), surveys and repairs, as well as seasonal increases on the upcoast petroleum movements.

Under this second alternative, shipbuilding demand for new crude tankers would still be minimal, if any, due to the high cost of U.S. shipbuilding, the unlikely availability of future CDS funds due to budget constraints, and the predicted future decline in the volume of crude carried in the Alaska-Panama trade.

The third alternative considered would provide for other U.S.-flag tanker owners to repay CDS in return for unrestricted domestic trading privileges. Under this approach, those vessel owners with the best prospects for employment would likely choose to repay within the specified time period. Unrestricted repayment would reduce the need for federal issuance of temporary permission to enter the ANS trade. Fiscal benefits could also be the greatest under this alternative. However, it is unlikely that any more vessels would repay under this alternative, since only three repaid when the window was open for one year and two EXXON 209,000 DWT Jones Act tankers have recently delivered. This alternative would cause the most disruption to the Jones Act as there would be uncertainty in the market. Shipyard demand for new crude tankers would remain at a minimal or non-existent level.

E.O. 12291, Statutory Requirements and DOT Procedure

The Maritime Administrator has determined that this rule is major under the criteria of Executive Order 12291. Pursuant ot the Department of Transportation's Regulatory Policies and Procedures (February 26, 1979), this rule is also considered to be "significant" because it concerns a matter on which there is substantial public interest.

The Maritime Administrator certifies that it would have no significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) The companies owning and chartering the four VLCCs at issue, and companies owning or chartering tankers possibly affected by the rulemaking in the foreign and domestic trades, are either large oil companies or large independent shipping companies.

A draft Regulatory Impact Analysis has been prepared and is available for public review and copying in the Docket (R–110) in the Office of the Secretary, Maritime Administration (room 7300). It discusses the important economic aspects of this proposed rule.

An Environmental Assessment of the proposed rule has also been prepared, and may be inspected at the Office of the Secretary, Maritime Administration, room 7300. The Environmental Assessment concludes that the effect of the proposed rule would be that greater quantities of ANS oil would be transported in VLCCs than in smaller vessels, fewer total trips would be made by a smaller number of vessels, the risk of accidental oil spill would be reduced as the number of trips decreases. In addition, the tankers which have repaid CDS include a number of safety and environmental features required by statute. Overall, the risk to the environment would be reduced with the proposed rule as compared to without it. On the basis of the environmental assessment, the Maritime Administration has tentatively concluded that the proposed rule would not result in a significant environmental impact to the human environment.

List of Subjects in 46 CFR Part 276

Grant programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

PART 276—[AMENDED]

It is proposed to amend 46 CFR Part 276 as follows:

1. The authority citation for Part 276 continues to read as follows:

Authority: Secs. 204(b), 207, 506, and 714, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1117, 1156 and 1204) Pub. L. 86–518 (74 Stat. 216); Reorganization Plans No. 21 of 1980 (64 Stat. 1273) and No. 7 of 1981 (75 Stat. 840), as amended by Pub. L. 91–469 (84 Stat. 1036); and Dept. of Commerce Organization Order 10–8 (36 FR 19707, July 23, 1973), unless otherwise noted.

2. 46 CFR 276.3 is revised to read as follows:

§ 276.3 Total Repayment

(a) The Maritime Administration reaffirms the allowance of the irreversible total repayment of unamortized construction-differential subsidy (CDS), with interest, and rescission permanently of the domestic trading restrictions related to the grant of CDS for tankers of any deadweight tonnage for applications and approval between June 6, 1985 and June 5, 1986, in accordance with the terms and conditions of subsection (b). The approved applications were for the *Arco Independence, Arco Spirit* and *Brooklyn.*

(b) *Repayment terms.* The full repayment amount consists of the unamortized CDS, as determined by the Maritime Administration, with compounded interest on that amount. The interest rate is the same as the long-term interest rate the owner obtained, or would have obtained if long-term debt financing had been used, in financing the owner's portion of the tanker. Unless the Maritime Administrator determined that using interest rates other than long-term bond rates was justified, such rates are used. If more than one long-term bond was issued to finance the owner's portion of a specific tanker, or if one or more of such bonds has more than one rate (such as a serial bond) an average interest rate is computed weighted by the proportion of each bond par value to the total par value of all long-term bonds issued to finance the owner's tanker. The interest payable on the unamortized CDS is computed by continuous compounding of the interest until the day of repayment. For purposes of this paragraph, "long-term bond rates" are either actual Title XI bond rates on a specific owner's tanker or the Title XI long-term bond rate at the time the tanker's statutory life began.

(c) The Maritime Administration reaffirms the allowance of the irreversible total payment of unamortized construction-differential subsidy with interest and recission permanently of the domestic trading restrictions relating to the grant of CDS for the *Bay Ridge,* which repaid on November 1980.

Dated: April 10, 1987.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 87–8472 File 4–14–87; 8:45 am]

BILLING CODE 4910–61–M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 87–7]

Implementation of the Equal Access to Justice Act in Commission Proceedings

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to adopt rules implementing the Equal Access to Justice Act, as revised, for its formal adjudicatory proceedings. These rules will provide for the award of attorney fees and other expenses to parties who

prevail over the Federal Government in certain administrative proceedings at the Commission and in certain court proceedings involving the Commission.

DATE: Comments due on or before May 15, 1987.

ADDRESS: Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act ("the Act"), Pub. L. 96-481, 94 Stat. 2325, was reauthorized and amended by Pub. L. 99-80, 99 Stat. 183, on August 5, 1985.

On May 6, 1986, the Administrative Conference of the United States issued final revised model rules ("Model Rules") for Government agencies to follow in implementing the Act. 51 FR 16659 (May 6, 1986).

The Act and the Model Rules provide for the award of attorney fees and other expenses to parties who prevail over the Federal Government in certain administrative proceedings and in certain court proceedings.

The Federal Maritime Commission, on March 3, 1987, published final rules governing the award of attorney fees in certain reparation proceedings under section 11 of the Shipping Act of 1984 (46 U.S.C. app. 1710), to become effective on April 2, 1987. See Attorney's Fees in Reparation Proceedings, Docket No. 86-27, 52 FR 6330, (March 3, 1986). The Commission is now proposing a new Subpart V to its Rules of Practice and Procedure, Part 502 of Title 46 of the Code of Federal Regulations, to separately implement the Equal Access to Justice Act in its formal adjudicatory proceedings and to follow, where applicable, the Model Rules.

Because the Model Rules provide for an "Answer to application" (§ 315.302), within 30 days, and also a "Reply" to such answer (§ 315.303), the Commission, in adopting the scheme of the Model Rules, is amending § 502.74 of its Rules of Practice and Procedure (46 CFR Part 502) to provide an exception to the general prohibition of a "reply to a reply," and also to the requirement that replies are due within fifteen days of service.

Proposed new Subpart V (§§ 502.501-502.503) closely tracks the Model Rules, except as follows:

In the proposed rule, the abbreviation used for the Equal Access to Justice Act is "EAJA" throughout, to avoid confusion with another statute referred to in various Commission's regulations as "the Act."

Where applicable, "the Federal Maritime Commission" or "the Commission" is used instead of "the agency." The term "the agency" is retained in the proposed rules where it refers to another U.S. Government agency that may be a party to a Commission proceeding.

Due to the structure of the Commission's Rules of Practice and Procedure describing the various types of proceedings and the fact that certain types may not always fall within the definition of "adjudications" under 5 U.S.C. 554, we have retained the Model Rules' generic description of proceedings covered by the proposed rule in § 502.501(c)(1), but have not attempted to describe in detail the specific proceedings covered. We anticipate that the applicability to certain cases will be decided better on an ad hoc basis and, as § 502.501(c)(2) provides, the failure to identify by rule a type of proceeding as an adversary adjudication will not preclude the filing of an application for attorney's fees and, in the appropriate situation, the award of such fees.

Similarly, while § 502.501(f) limits attorney's fees to $75.00 an hour, with adjustments, as set forth in the Model Rules, a particular maximum cannot at this time be set for expert witnesses who can receive "the highest rate" at which the Commission pays expert witnesses at the time. Again, this rate will be determined by case-law precedent as it develops and with reference to the maximum hourly rate for attorney's fees. Also, we have not thought it necessary to include § 315.107 of the Model Rules which provides for petitions for rulemaking to increase the maximum hourly rate under special circumstances, such as an increase in the cost of living. Subpart D, "Rulemaking," of the Commisison's Rules of Practice and Procedure (§§ 502.51-502.55) already provides for rulemaking petitions.

The Model Rules, in prescribing procedures for considering an application for legal fees, use the terms "application" (Subpart C, §§ 315.301, et seq.), "Answer" (§ 315.302), and "Reply" (§ 315.303). To avoid confusion and to be consistent with terminology elsewhere in the Commission's Rules of Practice and Procedure, including the new rule on Attorney's Fees in Reparation Proceedings in § 502.254, the proposed rule substitutes the terms "Petition" (§ 502.503, et seq.), "Reply" (§ 502.503(b)), and "Response" (§ 502.503(c)), respectively.

The adjudicative officer, with authority to hold further proceedings and initially decide applications for fees under EAJA, will be an Administrative Law Judge of the Commission, as provided for in § 502.503(a)(2), and, while not specifically mentioned in the proposed rule, "agency counsel" will ordinarily be Hearing Counsel of the Commission, when "the agency" against which an award of legal fees is sought is the Federal Maritime Commission.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193 (February 27, 1981).

The Chaiman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule, if adopted, will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—[AMENDED]

Therefore, for the foregoing reasons, Part 502 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 46 U.S.C. app. 817, 820, 821, 826, 841, 1114(b), 1705, 1707-1711, 1713-1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Paragraph (a) of § 502.74 is revised to read as follows:

§ 502.74 Replies to pleadings, motions, applications, etc.

(a)(1) Except as provided under Subpart V of this part, a reply to a reply is not permitted.

(2) Except as otherwise provided respecting answers (§ 502.64), shortened procedure (Subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), replies to petitions for attorneys fees under the Equal Access to Justice Act (§ 502.503(b)(1)), and the documents specified in paragraph (b) of this section, any party may file and serve a reply to any written motion, pleading, petition, application, etc., permitted under this part within fifteen (15) days after the date of service thereof, unless a shorter period is fixed under § 502.103.

* * * * *

3. Subpart V, containing § 502.991, is redesignated as "Subpart W."

4. A new Subpart V is added to read as follows:

Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings

Sec.
502.501 General provisions.
502.502 Information required from applicants.
502.503 Procedures for considering applications.

Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings

§ 502.501 General provisions.

(a) *Purpose.* The Equal Access to Justice Act, 5 U.S.C. 504 ["EAJA"], provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings [called "adversary adjudications"] before the Federal Maritime Commission ["the Commission"]. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rule in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When EAJA applies.* EAJA applies to any adversary adjudication:

(1) Pending or commenced before the Commission on or after August 5, 1985;

(2) Commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 502.502 of this subpart, has been filed with the Commission within 30 days after August 5, 1985; or

(3) Pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

(c) *Proceedings covered.* (1)(i) EAJA applies to adversary adjudications conducted by the Commission under this part. These are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of any agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding.

(ii) Any proceeding in which the Commission may prescribe a lawful present or future rate is not covered by the Act.

(iii) Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications."

(2) The Commission's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution is proceedings on the application.

(3) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(d) *Eligibility of applicant.* (1) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this section and § 502.502.

(2) The types of eligible applicant are:

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act [12 U.S.C. 1141j(a)] with not more than 500 employees; and

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(3) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of proceeding was initiated.

(4) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "solo owner of an unincorporated business" if the issues of which the applicant prevails are related primarily to personal interests rather than to business interests.

(5) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(6) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(7) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(e) *Standards for awards.* (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on agency counsel.

(2) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(f) *Allowable fees and expenses.* (1) Awards will be based on rates customarily charged by the persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) No award for the fee of an attorney or agent under this subpart may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if

the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(i) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

(g) *Awards against other agencies.* If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 502.502 Information required from applicants.

(a) *Contents of petition.* (1) An application for an award of fees and expenses under EAJA shall be by petition under § 502.69 of this part, shall clearly indicate that the application is made under EAJA, and shall identify the applicant and the proceeding (including docket number) for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(2) The petition shall also include a statement that the applicant's net worth does not exceed $2 million [if an individual] or $7 million [for all other applicants, including their affiliates]. However, an applicant may omit this statement if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act [12 U.S.C. 1141j(a)].

(3) The petition shall state the amount of fees and expenses for which an award is sought.

(4) The petition may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(5) The petition shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) *Net worth exhibit.* (1) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its petition a detailed exhibit showing the net worth of the applicant and any affiliates [as defined in § 502.501(d)(6) of this subpart] when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(2) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act under §§ 503.31–503.43 of this chapter.

(c) *Documentation of fees and expenses.* The petition shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicate officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(d) *When a petition may be filed.* (1) A petition may be filed whenevr the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later then 30 days after the Commission's final disposition of the proceeding.

(2) For purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that

adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlyng merits of the case have been finally determined pursuant to the appeal.

§ 502.503 Procedures for considering petitions.

(a) *Filing and service of documents.* (1) Any petition for an award or other pleading or document related to a petition shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 502.502(b)(2) (confidential financial information).

(2) The petition and all other pleadings or documents related to the petition will be referred to an Administrative Law Judge to initially decide the matter as adjudicative officer

(b) *Reply to petition.* (1) Within 30 days after service of a petition, counsel representing the agency against which an award is sought may file a reply to the petition. Unless counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file a reply within the 30-day period may be treated as a consent to the award requested.

(2) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing a reply for an additional 30 days, and further extension may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(3) The reply shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the reply is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Response to reply.* Within 15 days after service of a reply, the applicant may file a response. If the response is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the response either supporting affidavits or a request for further proceeding under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on a reply, within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded in accordance with the rules of this subpart pertaining to settlement. If a prevailing party and agency counsel agree on a proposed settlement of an award before a petition is filed, the petition shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Decision.* The adjudicative officer shall serve an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reason for the allocation made.

(h) *Commission review.* Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with § 502.227 of this part. If neither the applicant nor agency counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* (1)(i) An applicant seeking payment of an award shall submit to the comptroller or other disbursing officer of the paying agency a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

(ii) The agency will pay the amount awarded to the applicant within 60 days.

(2) Where the Federal Maritime Commission is the paying agency, the application for payment of award shall be submitted to:

Office of Budget and Financial Management, Federal Maritime Commission, Washington, DC 20573.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-8380 Filed 4-14-87; 8:45 am]

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46 CFR Parts 502 and 503

[Docket No. 87-8]

Filing of Comments Pertaining to Agency Meetings

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission is proposing amendments

to its Rules of Administrative Practice and Procedure and its Sunshine Act provisions, which would establish a cutoff date for filing of comments, information, etc. on matters scheduled for consideration at an agency meeting.

DATE: Comments due on or before May 5, 1987.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: Public announcement of agency meetings is made by the Secretary, Federal Maritime Commission, pursuant to § 503.82 of Title 46 CFR. The announcement, which normally is made no later than one week prior to the scheduled meeting date, includes certain information, as more particularly set forth in § 503.82(d), and includes the subject matter of the meeting. Often, such announcement prompts last minute filings by outside interested persons regarding items scheduled for Commission consideration. Usually, these filings address matters for which a specific filing deadline was not previously established, but on occasion have also occurred on matters which were subject to a since past deadline. These filings are sometimes made in an attempt to update information previously furnished. Other times they appear to be an attempt to get in the "last word." In some cases filings have been received by the Office of the Secretary as late as the morning of the scheduled Commission meeting.

The late filing of comments creates two difficulties. First, they may not allow the Commission sufficient time to properly review the additional information prior to its consideration of the item at the Commission meeting. Second, filings may also unfairly preclude any opportunity for response by another interested party where one may be warranted. The proposed rule would generally prohibit late filings and thereby provide for a more orderly and thorough consideration of information pertaining to a particular matter before the Commission.

For the above reasons, the Commission proposes to amend § 503.82 of Title 46 CFR by inserting a provision which would establish the date of the public announcement of the agency meeting as the cutoff date for receipt of comments on a particular item to be discussed at that meeting. Section 502.2 (Subpart A—General Information) would also be amended to provide an appropriate cross-reference to the amendment in § 503.82. The Commission is also taking this opportunity to clarify the language and structure of § 502.2. No substantive amendment, other than the provision subject to this proposed rulemaking, has been made to § 502.2.

It is also recognized that there may be instances where a late filed comment or information is crucial to a reasoned consideration of a particular agenda item. Therefore, the proposed rule provides that the Commission may, in its discretion accept, for exceptional circumstances shown, a filing submitted subsequent to the announcement of the scheduling of the agency meeting. The Commission intends, however, that the granting of such permission would be the clear exception and not the norm.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

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

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or

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

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to Parts 502 and 503 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Parts 502, 503

Administrative practice and procedure, Sunshine Act.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716(a), Parts 502 and 503 of Title 46, Code of Federal Regulations, are proposed to be amended as follows:

Part 502—[Amended]

1. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707–1711, 1713–716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.2 is amended by adding a new paragraph (d) and clarifying the language in this section. The section is revised to read as follows:

§ 502.2 Filing of documents; hours; mailing address.

(a) For purposes of filing of documents with the Commission, the hours of the Commission are from 8:30 a.m. to 5:00 p.m., Monday to Friday, inclusive.

(b) Except for exhibits filed pursuant to § 502.118(b)(4), all documents required to be filed in, and correspondence relating to proceedings governed by this part should be addressed to "Secretary, Federal Maritime Commission, Washington, DC 20573–0001."

(c) Documents relating to any matter pending before the Commissioners for decision or to any matter likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this part, shall similarly be filed with the Secretary, Federal Maritime Commission. Such documents should not be filed with or separately submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(d) No filings relating to matters scheduled for a Commission meeting will be accepted by the Secretary if submitted subsequent to public announcement of the particular meeting, except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances. (See section 503.82(e) of this chapter.) [Rule 2 1]

PART 503—[AMENDED]

3. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

4. Section 503.82 is amended by adding a new paragraph (e) to read as follows:

§ 503.82 Public announcement of agency meeting.

* * * * *

(e) No comments or further information relating to a particular item scheduled for an agency meeting will be accepted by the Secretary for consideration subsequent to public announcement of such meeting; except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-8381 Filed 4-14-87; 8:45am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-76, RM-5686]

Radio Broadcasting Services; Sedona and Flagstaff, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by American Aircasting Corp., licenses of Station KQST(FM) (Channel 261A), Sedona, AZ, seeking the substitution of Class C Channel 275 for Channel 261A and modification of its license accordingly. Also, at petitioner's request, we propose to substitute Channel 261C2 for 275C2 at Flagstaff, AZ to accommodate the requested upgrade of Station KQST(FM).

DATES: Comments must be filed on or before May 28, 1987, and reply comments on or before June 12, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John A. Borsari, Esq. and David A. La Furia, Esq., John A. Borsari and Associates, 900 17th St., NW, 9th Flr., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-76, adopted March 27, 1987, and released April 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8411 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-61; RM-4970]

Radio Broadcasting Services; Valley Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Eric R. Hilding to allot Channel 259A to Valley Springs, CA, as that community's first local FM service, for petitioner's failure to provide a technical showing, as requested, regarding an available site for the provision of city grade service. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 86-61, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8412 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-77, RM-5213]

Radio Broadcasting Services; Baldwin, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Radio Representatives, Inc. requesting that Channel 227A be allocated to Baldwin, Florida, as a first local FM service.

DATES: Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Norwood J. Patterson, Radio Engineering Company, P.O. Box 420, Santa Ynez, California (934601) (Engineering Consultant).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rule Making, MM Docket No. 87–77, adopted February 23, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–8413 Filed 4–14–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–81, RM–5538, RM–5610, RM–5658]

Radio Broadcasting Services; Los Ranchos de Albuquerque, Los Alamos and Corrales, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on mutually exclusive petitions by Dorothy D. Davis to allocate Channel 294A to Los Ranchos de Albuquerque, NM, as the community's first local FM service and by Los Alamos FM Broadcasters to substitute Class C or C1 Channel 294 for Channel 296A at Los Alamos and to modify its permit for Station KBOM to specify the higher powered channel. The Commission also proposes to allocate Channel 236A to Corrales, New Mexico, in lieu of Channel 294A, as requested by LV Broadcasting Associates. In accordance with § 1,420(g) of the Rules, no additional expressions of interest in use of Channel 294 at Los Alamos will be accepted. Channel 294A can be allocated to Los Ranchos de Albuquerque, with a site restriction of 5.2 kilometers (3.2 miles) northeast to avoid a short-spacing to Station KLQS, Channel 296A, Armijo, New Mexico. Channel 294 can be allocated to Los Alamos, NM, with a site restriction of 25.2 kilometers (15.7 miles) north to protect KBOM's desired Lobato Mesa site. Channel 236A can be allocated to Corrales without a site restriction.

DATES: Comments must be filed on or before June 1, 1987, and reply comments on or before, June 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Ms. Dorothy D. Davis, 1217 Valencia Drive, NE, Albuquerque, NM 87110 (Petitioner for Los Ranchos de Albuquerque); David Tillotson, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to petitioner for Los Alamos); and Ashton R. Hardy, James J. Popham, and Gregory H. Guillot, Hardy & Popham, 700 Camp Street, New Orleans, Louisiana 70130 (Counsel) to LV Broadcasting Associates).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–81, adopted March 13, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purcahsed from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–8414 Filed 4–14–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–79, RM–5642]

Radio Broadcasting Services; Block Island, RI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Kolleen Dodge to allocate Channel 240A to Block Island, Rhode Island, as the community's second local FM service. Channel 240A can be allocated to Block Island in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

DATES: Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Dodge, President, Harvest Broadcasting Services, Box 105FM, Hinsdale, NH 03451 (Consultant to petitionee).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–79, adopted Feb. 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8416 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-80, RM-5583]

Radio Broadcasting Services; Kingstree, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to substitute Channel 255C2 for Channel 252A at Kingstree, SC, at the request of Davidson Communications, Inc. At its request, the Commission proposes to modify its license for Station WWKT-FM to specify the higher powered channel. Channel 255C2 can be allocated with a site restriction of 5.4 kilometers (3.3 miles) southwest contingent upon Station WZFX, Channel 256 at Whiteville, NC, being licensed at its construction permit site with the specified Class C1 facilities. The petition of Ocean Communications to substitute Channel 252C2 for Channel 249A at Georgetown, SC, and modify its license for Station WGMB, which is contingent upon the outcome of this proceeding, will be the subject of a separate Notice of Proposed Rule Making.

DATES: Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel on consultant, as follows: Davidson Communications, Inc., Radio Station WWKT-FM, P.O. Box 1125, Kingstree, SC 29556 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-80, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8417 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-287, RM-5553]

Radio Broadcasting Services; Ulysses, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Donna M. Venetz to allocate Channel 268A to Ulysses, Pa., as the community's first local service. Petitioner is requested to furnish additional data showing that Ulysses is a "community" for allotment purposes. Channel 268A can be allocated to Ulysses in compliance with the Commission's minimum distance separation requirements, without the imposition of a site restriction. Canadian concurrence is required since Ulysses is located within the border area.

DATES: Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donna M. Venetz, 512 O'Connor Place, Scranton, Pennsylvania 18505 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 86-287, adopted March 6, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to ths proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commisison.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-8415 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

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

Forms Under Review by Office of Management and Budget

April 10, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of reponses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Animal and Plant Health Inspection Service

Orobanche ramosa Mail Survey
PPQ 112
Annually
Farms; 200 responses; 100 hours; not applicable under 3504(h)
Thomas Flanigan (301) 436–8295

Reinstatement

- Agricultural Stabilization and Conservation Service

Part 1421—General Regulations Governing Price Support for the 1978 and Subsequent Crops
CCC–156, 614, 638, 665, 666, 666-Honey, 678–2, 679, 681, 681–1, 685, 686, 687–1, 699, KC–350, UCC–1, UCC–3
On occasion
Farms; 699,801 responses; 174,950 hours; not applicable under 3504(h)
Lynda Flament (202) 447–4229

- Forest Service

Northeastern Ownership Study
On occasion
Individuals or households; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,033 reponses; 490 hours; not applicable under 3504(h)
Thomas W. Birch (215) 461–3037

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 87–8451 Filed 4–14–87; 8:45 am]
BILLING CODE 3410-01-M

Office of International Cooperation and Development; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet from 1:30 p.m. to 4:00 p.m. on Thursday, April 30, 1987 and from 8:30 a.m. to 3:30 p.m. on Friday, May 1, 1987. The meeting will commence in Room 104–A, Administration Building, U.S. Department of Agriculture for welcoming remarks and a plenary session to discuss issues of concern of the entire Council. The agenda for the opening plenary session includes: Briefing on last year's activities, guidelines on members' involvement in projects, restructuring the committees, and other Council business.

The meeting will resume at 8:30 a.m. on Friday, May 1, with individual sessions according to functional committees: "Transportation and Infrastructure" will meet in Room 5219 South Building; "Production, Processing, and Marketing" will meet in Room 1333 South Building; "Agribusiness Investment/Trade Project Facilitation" will meet in Room 3056 South Building; "Government Policies/Business Climate" will meet in Room 3109 South Building. The agenda for these sessions will include: (1) Review of last year's activities, where appropriate; (2) Presentations on topics pertaining to function of the committee; and (3) Development of recommendations for next year's activities. The Council will reconvene in a closing plenary session in Room 104–A Administration Building at 1:45 p.m. Co-chairmen Mr. M. D. McVay and Under Secretary Daniel G. Amstutz will preside. The committees will report their recommendations for the approval of the entire Council. The approved recommendations will be presented by the Co-Chairmen to Secretary Richard E. Lyng.

The meeting will be open to the public and is contingent upon the timely reestablishment of the Council.

Comments may be submitted to Dr. Joan S. Wallace, Administrator of the Office of International Cooperation and Development, up to noon on April 27, 1987. Further information may be obtained by calling Private Sector Relations Division, Office of International Cooperation and Development, (202) 653–7873.

Joan S. Wallace,
Administrator, Office of International Cooperation and Development.
[FR. Doc. 87–8449 Filed 4–14–87; 8:45 am]
BILLING CODE 3410-DP-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 353]

Approval for Expansion of Foreign-Trade Zone No. 22, Kankakee County, IL, Adjacent to the Chicago Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the

Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Illinois International Port District, formerly the Chicago Regional Port District, Grantee of Foreign-Trade Zone No. 22, Chicago, has applied to the Board for authority to expand its general-purpose zone to include two sites in Manteno Township, Kankakee County, Illinois, adjacent to the Chicago Customs port of entry;

Whereas, the application was accepted for filing on May 15, 1986, and notice inviting public comment was given in the **Federal Register** on June 6, 1986 (Docket No. 17–86, 51 FR 20684);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Chicago area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and the approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone plan in accordance with the application filed May 15, 1986. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 9th day of April 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–8458 Filed 4–14–87; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 354]

Resolution and Order Approving the Application of the City of Flint, for a Foreign-Trade Zone and Subzone in Michigan

Proceeding of the Foreign-Trade Zones Board, Washington, DC.

RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the City of Flint, Michigan, filed with the Foreign-Trade Zones Board (the Board) on May 15, 1985, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Flint, Michigan, and a special-purpose subzone for the General Motors Corporation's automobile manufacturing plant in Flint, within the Saginaw/Bay City/Flint Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board Washington, DC.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone and Subzone in Flint, MI

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Flint, Michigan (the Grantee), has made application (filed May 15, 1985, Docket No. 11–85, 50 FR 21638) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Flint, Michigan, including a manufacturing operation for Cirtek Corporation, and a special-purpose subzone for the General Motors Corporation automobile manufacturing plant in Flint, within the Saginaw/Bay City/Flint Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and.

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 140 and Subzone No. 140A at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone and subzone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations other than the two mentioned in the application, and the Grantee shall notify the Board for approval prior to the commencement of any other manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, maintenance of said zone and subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army

District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 3rd day of April 1987, pursuant to order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-8460 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 355]

Resolution and Order Approving the Application of the County of Monroe, for a Foreign-Trade Zone in New York

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the County of Monroe, New York, filed with the Foreign-Trade Zones Board (the Board) on January 4, 1984 (Docket 1–84) and amended on September 12, 1986 (Docket 30–86), requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Monroe County, New York, within the Rochester Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board, Washington, DC

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in Monroe County, NY

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the County of Monroe, New York (the Grantee), has made application (filed January 4, 1984, Docket No. 1–84, 49 FR 1261, and amended on September 12, 1986, Docket No. 30–86, 51 FR 34478) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Monroe County, New York, within the Rochester Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all intested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 141 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board of approval prior to the commencement of any manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable thereof.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 2nd day of April 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-8459 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Baptist Hospital Inc., et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00

P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–081. Applicant: Baptist Hospital Inc., 2000 Church Street, Nashville, TN 37236. Instrument: Lithotripter. Manufacturer: Dornier Medical Systems Inc., West Germany. Intended Use: The instrument is intended to be used for treating kidney stone disease. Application Received by Commissioner of Customs: December 13, 1985.

Docket No.: 86–292.Applicant: Wuesthoff Memorial Hospital, 110 Longwood Avenue, Rockledge, FL 32955. Instrument: Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended Use: The instrument is intended to be used for studies of kidney stones, the kidney and surrounding muscle tissue, gall bladder stones, the gall bladder and surrounding tissue. Investigations will be conducted to expand knowledge of shockwave technology, particularly in its ability to reduce the morbidity and mortality that is experienced via open surgery to the urinary tract as well as the biliary tree. In addition, the instrument will be used to provide hands-on instruction in and application of the lithotripter. Application Received by Commissioner of Customs: July 24, 1986.

Docket No.: 86–297R. Applicant: Northwestern University, Department of Biochemistry, Molecular Biology and Cell Biology, 2153 Sheridan Road, Evanston, IL 60201. Instrument: Circular Dichroism Spectropolarimeter, Model J–600. Manufacturer: Jasco, Japan. Original notice of this resubmitted application was published in the **Federal Register**: August 21, 1986.

Docket No.: 87–039R. Applicant: Colorado State University, Fort Collins, CO 80523. Instrument: Stopped-Flow UV–VIS Spectrophotometer, Model SF–41S/SU–40A. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register**: December 11, 1986.

Docket No.: 87–136. Applicant: Rhode Island Hospital, 593 Eddy Street, Providence, RI 02902. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument is intended to be used for studies of basement membrane of capillaries in the renal glomerulus. Investigations will be conducted to assess the effect of a modulator of the immune system on the thickness, filtration characteristics and charge characteristics of the glomerular basement membrane in normal and in diseased (autoimmune) mice. Application Received by Commissioner of Customs: March 20, 1987.

Docket No.: 87–137. Applicant: Wellesley College, Wellesley, MA 02181. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used for educational purposes in a number of courses which will provide hands-on experience for research students. In addition, the instrument will be used for the following research objectives:

(1) Continued studies of the results of chronic, continuous treatment of adult rats with the beta-adrenergic blocking agent propranolol,

(2) The morphological localization of enzymes in cyanobacterial cells,

(3) Further experimentation of isolated cyanobacterial plasmids,

(4) Fine structural analysis of the cell envelope of a mutant strain of cyanobacteria,

(5) Analysis on intact chloroplasts and chloroplast subfractions in an effort to identify significant protein-protein cross-linking reagents,

(6) Investigate the sequence of events involved in the early stages of nodule development usng specific *Rhizobium* mutants,

(7) Studies designed to develop methods for use in the vertebrate retina, to map potential interactions between two neurotransmitter systems at the ultrastructural level,

(8) Visualization of the heteroduplexes between cDNA coding for interluekin-1 (IL–1) beta and the corresponding genomic sequence to demonstrate the intron-exon organization determined by DNA sequencing,

(9) Determination of the cellular sites of IL–1 beta protein processing and transport by immunogold localization.

Application Received by Commissioner of Customs: March 20, 1987.

Docket No.: 87–138. Applicant: Medical College of Wisconsin, Department of Pathology, 8700 West Wisconsin Avenue, Milwaukee, WI 53226. Instrument: Electron Microscope, Model EM 10/CA. Manufacturer: Carl Zeiss Inc., West Germany. Intended Use: The instrument is intended to be used to conduct the following collaborative studies:

(1) Retrospective study of focal glomerulosclerosis and hyalinosis,

(2) Ultrastructural and immunocytochemical studies of pituitary tumors,

(3) Intrinsic nerves and regulation of small bowel motility and

(4) Studies of crystal deposition disease.

Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–139. Applicant: University of Illinois at Chicago, Department of Biological Sciences, Taylor & Halsted Streets, Chicago IL 60680. Instrument: Electron Microscope, Model JEM–1200 EX/SEG/DP. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to examine a variety of cells and cell extracts which include epidermal cells of amphibians, unicellular algae and protozoa and cockroach neurons. The objectives pursued during the course of these investigations include:

(1) Following the pathways taken by proteins destined for different regions of the cell.

(2) Identifying similarities and differences in related mouse species at the DNA level.

(3) Relating the distribution of contractile-like proteins with specific cell compartments in protozoa.

(4) Resolving the tissue distribution and timing of keratin synthesis during amphibian skin development.

The instrument will be used primarily as a research and teaching instrument for graduate students, postdoctoral fellows, faculty and staff. Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–140. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Magnetic Field-sensor Coil Eye Movement Monitoring Instrument, Model 3000. Manufacturer: Skalar Instrumenten B.V., The Netherlands. Intended Use: The instrument will be used to study human eye movement in order to investigate (1) the visual, cognitive and motor factors that determine oculomotor patterns, and (2) the effect of oculomotor patterns on performance of visual tasks. Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–141. Applicant: Los Angeles County-Olive View Medical Center, 7533 Van Nuys Boulevard, Van Nuys, CA 91405. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument is intended to be used for studies of specimens obtained by fine needle aspiration or by surgery by colloidal gold linked antibody method to identify the virus within lymphoid tissue. Following identification of the virus within the tissue and its

localization, studies can be done to relate the virus with its various serologic concentrations so that clinical application of this knowledge can be applied. Another research purpose will include a program directed to develop procedures to make ultrastructural studies of aspirate rapidly and economically available. In addition, the instrument will be used in the educational program at the Medical Center. Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–143. Applicant: Indiana University Medical Center, Department of Pathology, 926, W. Michigan Street, Indianapolis, IN 46223. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used to study a variety of biological tissue samples. Experimental research concerning the following will be conducted:

(1) The effects of various drugs on the morphology of Pneumocystis carinii.

(2) Transendothelial migration of leukemic cells.

(3) Basal lamina ultrastructure in various disease states.

(4) The relationships between the microflora and epithelium of the intestines.

(5) The retrospective studies into the morphology of numerous diseases.

The instrument will also be used to teach residents how to use the electron microscope to obtain information pertaining to various preneoplastic and neoplastic disease entities. Application Received by Commissioner of Customs: March 26, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–8462 Filed 4–4–87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Tennessee et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 87–126. Applicant: University of Tennessee, Department of Chemistry, 575 Buehler Hall, Knoxville, TN 37996–1600. Instrument: Quadrupole Update for Mass Spectrometer, Manufacturer: VG Analytical Instruments Ltd., United Kingdom. Intended Use: The instrument is an accessory to an existing mass spectrometer which will be used to determine the structure of ions that have been analyzed as to exact mass by the mass spectrometer. The accessory will also be used for structural analysis of each component of complex mixtures in support of most of the research described in the application for the mass spectrometer. In addition, the accessory will be used for educational purposes in various chemistry courses. Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–128. Applicant: Northwestern University Medical School, Cell Biology and Anatomy Department, 303 E. Chicago Avenue, Chicago, IL 60611. Instrument: Electron Microscope, Model JEM–1200EX. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for the study of the ultrastructure of white blood cells, cells derived from blood vessels, tumor cells and kidney tissues. Most specimens studied will be of biological origin, some from experimental animals, some from normal humans and some from patients with pathological disorders. In addition, the instrument will be used on a one-to-one basis in the training of medical and graduate students and residents and fellows. Application Received By Commissioner of Customs: March 12, 1987.

Docket No.: 87–129. Applicant: Duke University, Eye Center, Box 3802–200, Durham, NC 27710. Instrument: Electron Microscope, Model JEM–1200EX. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for the study of the ultrastructure of normal and diseased ocular tissue from experimental animals and patients with eye diseases. In addition, the instrument will be used on a one-to-one basis in the training of medical and graduate students and ophthalmology residents and fellows. Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–130. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: FTI Spectrophotometer, Model DA3.26. Manufacturer: Bomem Inc., Canada. Intended Use: The instrument is intended to be used for a wide range of studies of the optical properties of semiconductors including the following:

(1) Energy levels of shallow donor and acceptor impurities in silicon, germanium and a novel new class of materials commonly called diluted magnetic semiconductors,

(2) Linewidths of these levels,

(3) Excitons and internal transitions in DMS and GaAs-A1GaAs superlattices in the visible region and

(4) Ramam scattering.

Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–131. Applicant: Scripps Clinic and Research Foundation, 10666 N. Torrey Pines Road, La Jolla, CA 92037. Instrument: Electron Microscope, Model CM 12 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument is intended to be used for electron crystallographic studies of the following biological specimens: gap junctions, nicotinic acetylcholine receptor, nuclear pore complex and actin and myosin. These studies are important to the understanding of many fundamental aspects of cell and tissue function, e.g. cell-cell communication, transmission of nerve impulses, nucleocytoplasmic exchange, muscular contraction and cell locomotion. In addition, the instrument will be used to provide training in the use of electron microscope as a research instrument. Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–132. Applicant: North Carolina State University, Department of Textile Chemistry, Box 8302, Raleigh, NC 27695–8302. Instrument: Diameter Monitor, Model 460A/Z. Manufacturer: Zimmer Ohg, West Germany. Intended Use: Research involving the investigation of the production of high-strength fibers using polyethylene terephthalate and liquid crystal polyester along with high take up speeds and a new spinnerette design. Application Received by Commissioner of Customs: March 16, 1987.

Docket No.: 87–133. Applicant: U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Oscilloscope, Model #7250. Manufacturer: Intertecnique, France. Intended Use: Measurement of fast electron transfer reactions. Organic molecules are synthesized with two electron-accepting groups held a fixed distance apart by rigid molecular spacers. Electrons are attached to the molecules using pulse radiolysis. Rates

of electron transfer from one group to the other are measured as a function of distance between the reacting groups, energy differences and molecular structure. Experiments will be conducted to learn scientific principles underlying photosynthesis and possible man-made devices for capture and storage of solar energy. Application Received by Commissioner of Customs: March 19, 1987.

Docket No.: 87-135. Applicant: University of Arizona, Arizona Research Laboratory, Division of Neurobiology, 603 Gould-Simpson Science Building, Tucson, AZ 85721. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for studies of the ultrastructure of nerve cells, muscle cells, and intercellular contacts among such cells. Specimens will be from experimental animals, tissue cultures and other research sources. In addition, the instrument will be used to train graduate students and postdoctoral fellows in ultrastructural methodology. Application Received by Commissioner of Customs: March 19, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-8461 Filed 4-14-87; 8:45am]

BILLING CODE 3510-DS-M

[A-489-602]

Acetylsalicylic Acid from Turkey: Preliminary Determination of Sales at Less Than Fair Value

ACTION: International Trade Administration, Import Administration, Department of Commerce.

AGENCY: Notice.

SUMMARY: We have preliminarily determined that acetylsalicylic acid (aspirin) from Turkey is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 23, 1987.

EFFECTIVE DATE: April 15, 1987.

FOR FURTHER INFORMATION: Contact John J. Kenkel (202-377-3530) or John R. Brinkmann (202-377-3965), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that aspirin from Turkey is being, or is likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 31, 1986, we received a petition in proper form filed by Monsanto Company, on behalf of the U.S. Industry producing aspirin. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on November 20, 1986 (51 FR 43062, November 28, 1986), and notified the ITC of our action.

On December 15, 1986, the ITC determined that there is a reasonable indication that imports of aspirin from Turkey are materially injuring a U.S. industry (U.S. ITC Pub. No. 1926, December 1986).

On January 20, 1987, questionaires were presented to Atabay Kimya Sanayi ve Ticaret (Atabay) and Proses Kimya Sanayi ve Ticaret (Proses), exporters which account for at least 60 percent of the exports of the subject merchandise from Turkey to the United States.

On March 4, 1987, we received a questionaire response from Atabay. Proses did not respond. We found that Atabay's questionaire response was sufficient.

On March 13, 1987, petitioner alleged that the home market prices for aspirin were below the cost of production. We compared petitioner's data to Atabay's home market prices, net of transportation costs. We found that all sales were above the costs alleged by the petitioner. Therefore, we have determined that this cost allegation is insufficient.

We verified Atabay's response on March 27 through 31, 1987.

Scope of Investigation

The product covered by this investigation is acetylsalicylic acid (aspiring), containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and its not in tablet, capsule or similar forms for direct human comsumption. This product is currently classified under item 410.72 of the *Tariff Schedules of the United States* (TSUS).

Fair Value Comparisons

Because Atabay and Proses accounted for at least sixty percent of all exports of the subject merchandise from Turkey, we limited our investigation to them. To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. Since Proses did not respond, we made comparisons only on the sales of Atabay during the period of investigation, May 1 through October 31, 1986. For Proses we used the best information available which was the information contained in the petition.

United States Price

As provided in section 772(b) of the Act, we based the United States price on purchase price because the merchandise was sold to unrelated purchasers prior to the date of importation in the United States. In this case the merchandise was sold to a trading company in Turkey. At the time of sale to the trading company, Atabay was aware that the merchandise was destined for shipment to the United States. Atabay sends two invoices to the trading company, the sum of which reflects the total price of the merchandise. Terms of sale to the trading company were C & F United States port.

From the total C & F price we made deductions for ocean freight, brokerage and handling and foreign inland freight.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign

market value for aspirin on sales to unrelated customers in the home market. In accordance with section 773(a)(1)(B) of the Act, we determined that there were sufficient home market sales of such or similar merchandise to be used as a basis for determining foreign market value for aspirin.

We made deductions from the home market C & F prices for inland freight. The value added tax was not included in the price of the aspirin in either market, therefore, we did not adjust for it. We made adjustments to account for differences in the credit expenses for the merchandise in each market and for bank charges incurred on sales to the United States in accordance with section 353.15 of the Commerce Regulations. Since we could not tie U.S. sales to any specific loans, we used the average compound interest rate on short-term loans in Turkish lira in order to calculate a credit cost in each market.

Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York as the official exchange rates, but no certified rates were available for Turkey. Therefore, in place of the official certified rate, we used the rates published by the International Monetary Fund, as the best information available.

Verification

As provided in section 776(a) of the Act, we verified all information provided by Atabay in making this determination using standard verification procedures, including examination of relevant information on selected sales.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of aspirin from Turkey that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.**

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, as shown in the table below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	*Weighted-average margin percentage*
Atabay Kimya Sanayi ve Ticaret	28.49
Proses Kimya Sanayi ve Ticaret	38.60
All others	33.55

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 7, 1987, at the U.S. Department of Commerce, Room 1851, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 30, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 9, 1987.

[FR Doc. 87-8457 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 70113-7013]

Financial Assistance for Research and Development Projects To Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico

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

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year 1987, Marine Fisheries Initiative (MARFIN) funds are available to assist persons in carrying out research and development projects which optimize the use of a U.S. Gulf of Mexico fishery involving the U.S. fishing industry (recreational or commercial) including but not limited to harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

DATE: Applications must arrive in the NMFS Office given below by June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Donald R. Ekberg, Southeast Regional Office, 9450 Koger Blvd., National Marine Fisheries Service, St. Petersburg, Florida 33702; Telephone: 813-893-3720.

SUPPLEMENTARY INFORMATION:

Classification

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Commerce Department guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB clearance No. 0648–0175) under the provisions of the Paperwork Reduction Act. This program is subject to the provisions of Executive Order 12372.

I. Introduction

Section 304(e) of the Magnuson Act (16 U.S.C. 1854(e)) authorizes the Secretary to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriation Act of 1987 (Pub. L. 99–591) makes funds available to the Secretary of Commerce for fiscal year 1987. This solicitation makes available approximately $2.0 million for financial assistance under the MARFIN program to enhance the use of fishery resources in the Gulf of Mexico. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

II. Funding Priorities

Fisheries research and development proposals should be related to one or more of the priority areas listed below (in no rank order):

1. *Shrimp.* (1) Development of improved gear efficiency, on-board handling, grading, sorting and preservation methods, (2) regulatory impact analyses, (3) economic evaluation of alternative harvesting, handling, and processing systems, (4) production of domestic bait shrimp in controlled environments, and (5) synthesis of information from available literature relating shrimp production to environmental conditions.

2. *Menhaden.* (1) Economic enhancement of products, (2) larval survival, (3) prey predator relationships, and (4) regulatory impact analysis.

3. *Coastal Pelagics.* (1) Improved estimates of king and spanish mackerel year-class strengths and harvest levels, (2) identification of king and spanish mackerel management units, (3) forecast king and spanish mackerel trends in abundance, (4) regulatory impact analyses, (5) determination of recreational fishing participation, and (6) fishing strategies to harvest blue runners, little tunny, and related species.

4. *Reef Fish.* (1) Competition between commercial and recreational fishermen and methods to solve problems, (2) Florida gulf charter and party boat study of the structure and economics of the recreational paying passenger vessel fleet, (3) regulatory impact analysis, (4) identification of reef fish management units, and (5) improved estimates of reef fish year class strengths and harvest levels.

5. *Coastal Herrings.* (1) Handling and processing on-board as well as shoreside methods, (2) exploratory fishing and gear development, (3) economic analysis of harvesting, handling, and processing systems, (4) regulatory impact analysis, and (5) predator-prey relationships—particulary recreational and commercial impacts.

6. *Ocean Pelagics.* (1) Economic analysis of harvesting, handling, and processing systems, and (2) regulatory impact analysis.

7. *Marine Mollusks.* (1) Squid harvesting and on-board handling, and (2) squid product preparation.

8. *Crabs and Lobsters.* (1) Determine safe harvest potential, handling and processing techniques for deepwater crab, and (2) develop limited access system for stone crab fishery.

9. *Bottomfish.* (1) Assess impact impact of trawl selectivity modifications on bottomfish stocks, (2) determine yield potentials, stock estimates, and life history Gulf butterfish, and (3) assessment of international trade barriers.

10. *Marine Mammals and Endangered Species.* (1) Seasonal distribution and abundance of sea turtles in the Gulf of Mexico

11. *Estuarine Fish.* (1) Stock assessment and identification (occurrence of separate stocks) of red drum, (2) identification of safe levels of mullet exploitation and economic assessment of the mullet fishery including seasonality, location, and dependence on other species such as trout and drum, (3) improve estimates of year-class strengths and catch of red and black drum, (4) enhance knowledge of red drum life history including age and length and mortalities, (5) fishery independent assessment of red drum, (6) vessel support for fishery independent surveys of offshore stocks of red drum, (7) social and economic analysis in support of fisheries management, (8) regulatory impact analysis, and (9) determination of recreational fishing participation.

12. *General.* (1) Develop population models using both commercial and recreational efforts plus other significant factors, (2) conduct social and economic research applicable to all Gulf of Mexico fisheries, and (3) stock identification using state-of-the art techniques.

III. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, etc.

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less than 75 percent of the interest in the entity or, in the case of non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (i) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

Continued

B. Amount an Duration of Funds

Under this solicitation for fiscal year 1987 the NMFS will have an estimated $2.0 million available to fund fishery research and development projects. Although grants or cooperative agreements will generally be awarded for a period of 1 year, multi-year projects may be approved. Once approved multi-year projects would not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives are met during the prior year. Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available. Funding for successful applications generally will be provided by July 14, 1987.

C. Cost-Sharing Requirements

Cost sharing is not required for the MARFIN project. However, cost sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to enhancing the use of Gulf of Mexico fishery resources and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by line item with appropriate justification. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be submitted in the following format:

1. *Cover Sheet.* An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Office, or Department of Commerce's Central Administrative Support Center (CASC); addresses are set forth at Section E., Application Submission.

2. *Project Sumamry.* Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing).

c. Project duration: (beginning and ending dates).

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Project objective.

g. Summary of work to be performed. For continuing projects the applicant is to briefly describe progress to date in addition to work proposed with the additional funds.

h. *Total Federal funds requested.* (For multi-year projects, identify each year's requested funding amount plus total amount with percentage of project costs).

i. Project costs to be provided from non-Federal Government sources (for multi-year projects, identify each year's requested funding amount plus total amount with percentage of project costs).

j. Total project costs.

3. *Project Description.* Each project within the application must be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will not guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

a. *Identification of Problem(s).* For new projects describe how existing conditions prevent the full use of Gulf of Mexico fishery resources. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishery resources.

b. *Project Goals and Objectives.* State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. *Need for Government Financial Assistance.* Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe the level of participation required in the project(s) by NOAA or other Government and non-Government entities.

e. *Federal, State, and Local Government Activities.* List any existing Federal, State, or Local government programs or activities, including State Coastal Zone Management Plans, Sea Grant, SEAMAP, 88–309, and Cooperative Statistics this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline.* Describe the work to be performed during the project starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones must be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the applications for funding and will return it to the applicant.

g. *Project Management.* Describe how the project will be organized and managed. List all persons, directly employed by the applicant, who will be involved in the project, their qualifications, and their level of involvement in the project. If any tasks will be conducted through subcontracts, procurement standards contained as Attachment 0 to OMB Circular A–102 for state and local Governments and Indian Tribes and Attachment 0 to OMB Circular A–110 for institutions of higher education, hospitals, and other Nonprofit Organizations are to be followed. Attention of applicants is directed specifically to those requirement which must be approved by the Grants Officer.

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. The NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

h. *Monitoring of Project Performance.* Identify who will participate in monitoring the project.

i. *Project Impacts.* Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

j. *Evaluation of Project Impacts.* The applicant is required to provide an evaluation of project accomplishments. Describe the methodology or procedures to be followed to determine, as appropriate, technical or economic feasibility, to evaluate consumer acceptability, or to quantify the impact of the project in promoting increased landings, production, sales exports, product quality, safety, or other measurable factors.

k. *Project Costs.* Itemized costs for the following must be provided: (1) personnel salaries by position title, (2) total personnel benefits, (3) consultant and contract services, (4) travel, (5) space costs and rentals, and (6) other costs. A standard budget form is available from the offices listed in Section E. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, applicants submitting multi-year projects must identify costs in the initial submission for each year of the project. Ordinarily, funds will not be granted for the purchase of capital equipment. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget the applicant must describe briefly the basis for estimating the value of any matching funds derived from in kind contributions.

4. *Project Consolidation.* Applicants may submit two or more related projects under one proposal but must identify project costs including administrative costs, separately for each individual project.

5. *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries use may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. *Deadline.* The NMFS will accept applications for funding under this program between April 15, 1987 and June 1, 1987. An application will be accepted if the application is received by the office listed below on or before June 1, 1987 (6 pm EST).

2. *Submission of Applications to the NMFS.* Applications are not to be bound in any manner. Any application not fully disclosing all information called for herein, will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the address set forth below: Regional Director, Attn: D. Ekberg, National Marine Fisheries Service, Duval Bldg., 9450. Koger Blvd., St. Petersburg, Florida 33702, Telephone No.: (813) 893–3142.

Questions of an administrative nature should be referred to: NOAA RAS/CC31, Attn: Jean West, Central Administration Support Center, Federal Bldg., Room 1758, 601 East 12th Street, Kansas City, Missouri 64106, Telephone No.: (816) 374–7267.

Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will evaluate the project(s) contained in the application in consultation with the MARFIN Board, representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, public and private research and development organizations, and other fisheries interests, as necessary. NMFS will make project descriptions available for review as follows:

1. Public review and comment.

Applications may be inspected at the National Marine Fisheries Service Regional Office in St. Petersburg, FL from June 1, 1987 to June 8, 1987.

2. Consultation with members of the MARFIN Board. Applications will be reviewd by the MARFIN Board, which is made up of members from NMPS, Sea Grant Advisory Program, commercial industry, recreational industry, Gulf Fishery Management Council, Gulf and South Atlantic Fisheries Development Foundation, Inc., Gulf States (FL, AL, MS, LA, TX), and the Gulf States Marine Fisheries Commission.

3. Consultation with members of the fishing industry. The NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

4. Consultation with Government agencies. Applications will be reviewd in consultation with the NMFS Southeast Research Center and Utilization Laboratories, CASC Grants Officer and, as appropriate, Department of Commerce and other federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Councill activities.

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will provide point scores on proposals based on the following evaluation criteria:

IV. Evaluation Criteria

a. Adequacy of research/development/demonstration for enhancing Gulf of Mexico marine fisheries resources possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing the use of Gulf of Mexico marine fisheries resources (25 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

After the technical evaluation, the MARFIN Board will rank the projects filed, considering the significance of the problem addressed in the project along with the technical evaluation and need for funding. This evaluation and ranking will enable NMFS to determine the appropriate level of funding for each project.

B. Funding Awards

After projects have been evaluated, the MARFIN Board will develop recommendations for project funding. They will submit the recommendations to the MARFIN Program Coordinator in the NMFS Southeast Regional Office for review who will determine the number of projects to be funded based on the recommendations provided, and the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant and NOAA/NMFS Program and grants management representatives. The Department of Commerce (DOC) will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by CASC Grants Officer. Projects may not be initiated until a notice of award document is received from the Grants Officer.

V. Administrative Requirements

A. Obligations of the Applicant

An Applicant must—

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all acitivities for which funds are awarded, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representative. NMFS may provide a proportionate share of funds as part of the financial award to pay for an audit.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within thirty days after the end of each calendar quarter to the individual specified as the program officer in the funding agreement. The content of these reports will include, at a minimum:

a. a summary of work conducted which includes a description of specific accomplishments and milestones achieved. NMFS will provide a summary format to standardize tracking of milestone achievements and budget plans;

b. the degree to which goals or objectives were achieved as originally projected;

c. where necessary, the reasons why goals or objectives are not being met; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

6. If a project is funded, submit an original and 2 copies of a final report within 90 days after completion of each project. The report must describe the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments and be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

7. If a project is funded by grant or cooperative agreement, comply with Office of Management and Budget (OMB) Circulars, and Department of Commerce, and NOAA policies. Circulars will be provided to all awardees.

8. Submit two copies of all publications or reports printed with grant funds to the Grants Officer. Any publication printed with Grant funds must identify NOAA as the funding source and must identify the grant award number.

B. Obligations of the National Marine Fisheries Service

The NMFS will—

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects;

2. Provide advice, through the NMFS Southeast Regional Office to inform applicants of NMFS fisheries development policies and goals.

3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

C. CASC Grants Officer Responsibility

The CASC Grants Officer is responsible for the administrative processing of NOAA federal assistance awards. Questions from the recipient of an administrative nature will be referred to the Grants Office. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable local, State and Federal Laws.

This program is not included in the Catalogue of Federal Domestic Assistance.

Authority: 16 USC 1854.

Dated: April 10, 1987.

James E. Douglas, Jr.

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service

[FR Doc. 87–8337 Filed 4–14–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: National Marine Fisheries Service, Southwest Fisheries Center, (P77#27)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: National Marine Fisheries Service, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research.

3. Summary of Activity: 75 harbor seals (*Phoca vitulina*) will be captured, tagged, marked and released over a 3-year period.

4. Location of Activity: Coastal waters off San Miguel and Santa Rosa Islands.

5. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, 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.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

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

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: April 8, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation; National Marine Fisheries Service.

[FR Doc. 87–8338 Filed 4–14–87; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit: Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, and Dr. William T. Doyle (P20H)

Notice is hereby given that the Applications have applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicants:

Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, and Dr. William T. Doyle.

University of California, Institute of Marine Sciences, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, California 95060.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Spinner dolphins (*Stenella longirostris*) unspecified number.

4. Type of Take: Potential harassment during a 3-year behavioral study involving observations from a surface vessel operating inside Kure Atoll. The taking of dead dolphins found floating or beached for examination, measurement and specimen materials.

5. Location of Activity: Hawaii, Kure Atoll.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, 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 Applicants 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 by interested persons in the following offices:

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

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

April 8, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–8339 Filed 4–14–87; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent to Grant Exclusive Patent License; G.D. Searle & Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to G.D. Searle & Company, having a place of business in Skokie, IL, an exclusive right in the United States to manufacture, use, and sell products embodied in the inventions entitled "Opioids—Total Synthesis," U.S. Patents 4,368,326, 4,410,700, 4,521,601, 4,556,712 and 4,613,668. The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended 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 intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

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

[FR Doc. 87–8400 Filed 4–14–87; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Roberts Laboratories

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories having a place of business in Eatontown, NJ, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "New Chemotherapeutic Analogs" U.S. Patent Application Serial Number 6–896,262. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended 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 intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

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

[FR Doc. 87–8399 Filed 4–14–87; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Federal Republic of Brazil, Effective April 1, 1987

Correction

April 10, 1987.

The second paragraph in the letter to the Commission of Customs published on March 26, 1987 (52 FR 9684), should be corrected to read as follows:

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Brazil, which have been exported to the United States during the period which began on April 1, 1986 and extends through March 31, 1987, shall, to the extent of any unfilled balances, be charged against the restraint limits established for that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-8454 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan

April 10, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 15, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Texile Agreement of February 6, 1987 between the Governments of the United States and Japan, establishes, among other things, a group limit for categories 330-354, 359, 431-448, 459, 630-654 and 659 (Group I), and within that, specific limits for Categories 331/631, 333, 334, 335, 337, 338, 339, 340, 341/641, 342/642, 347/348, 350, 410, 435, 442, 444, 448, 634, 644, 645/646, 648, 659-C (coveralls, etc.) and 659-I (infant sets).

Also, among other things, there is a group limit for Categories 300-320, 360-369, 400-429, 464-469, 600pt., 603-605, 610-627 and 665-670 (Group II), and within Group II a subgroup for Categories 310-320, and within the subgroup on Categories 310-320, specific limits on sheeting in categories 313/320pt., on poplin and broadcloth in categories 314/320pt., on printcloth in categories 315/320pt., on twills and sateens in categories 317/320pt., with a sublimit on sateens in category 317pt., and individual limits for Category 611 and Category 612pt. (lightweight polyester filament fabric). There is also a limit for categories 600-602, excluding 600pt. above, as a group. All of these limits are for goods produced or manufactured in Japan and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the foregoing categories in excess of the designated limits.

Overshipments of 1986 limits received through December 1986 are as follows: Category 314/320pt., 2,824,959 square yards; Category 337, 3,679 dozen; Category 442, 201 dozen; Category 444, 2,359 dozen; Category 611, 7,408,436 square yards. The category and group overshipments are being deducted from the appropriate limits for 1987. Additional adjustments will be made as the data become available.

Under the agreement flexibilities are available to various limits which, when applied, would raise those limits, thereby decreasing the overshipments to be charged by the same amounts. Upon receipt of a written request from the Government of Japan for flexibilities available under the agreement, the 1986 limits will be appropriately adjusted, which will decrease the 1986 overshipments to be charged by the same amount.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 29924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), June 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 10, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and Japan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 15, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Japan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of the following restraint limits:[1]

Category	12-mo restraint limit
group I: 330-354, 359, 431-448, 459, 630-654, 659	132,926,540 square yards equivalent
331/631	2,224,714 doz. pairs
333	15,450 doz.
334	26,007 doz.
335	175,100 doz.
337	84,746 doz.
338	692,431 doz.
339	1,326,000 doz.
340	102,989 doz.
343/641	510,000 doz.
342/642	335,000 doz.
347/348	1,545,000 doz.
350	20,806 doz.
435	26,823 doz.
442	19,554 doz.
444	15,331 doz.
448	37,100 doz.
634	98,828 doz.
644	23,406 doz.
645/646	183,164 doz.
648	494, 142, pds.
659 pt.[1]	97,850 pds.
659 pt.[2]	635,510 pds

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

Category	12-mo restraint limit
Group II:	
300–320, 360–369, 400–429, 464–469, 600pt.[3], 603–605, 610–627, and 665–670.	499,000,130 sq yds equivalent.
Subgroup:	
310–320	115,260,000 sq yds.
313/320 pt.[4].	9,366,748,sq yds.
314/320 pt.[5].	23,110,731 sq yds.
315/320 pt.[6].	17,356,871 sq yds.
317/320 pt.[7].	16,356,871 sq yds of which not more than 9,785,000 square yards shall be in Catebory 317pt.[8].
300/301	2,700,000 pds.
410	10,605,000 sq yds equivalent.
600 pt./ 604pt.[9].	3,674,306 sq yds.
611	10,674, 306 sq yds.
612 pt.[10]	128,000,000 sq yds.
612 pt.[11]	55,550,000 sq yds.
613	18,540,000 sq yds.
614 pt.[12]	8,585,000 sq yds.
614 pt.[13]	18,540,000 sq yds.

[1] In Category 659, coveralls, overalls, etc. in TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310.

[2] In Category 659, infant sets in TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384,8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, and 384.9365.

[3] In Category 600, only TSUSA number 310,5015.

[4] Category 313 and, in Category 320, sheeting in TSUS items 320.____, through 331.____, with statistical suffixes 38, 80, and 82.

[5] Category 314 and, in Category 320, poplin and broadcloth in TSUS items 320.____, through 331.____, with statistical suffixes 21, 22, 24, 26, 72, 74 and 76

[6] Category 315 and, in Category 320, printcloth in TSUS items 320.____, through 331.____, with statistical suffix 31

[7] Category 317 and, in Category 320, twills and sateens in TSUS ITEMS 320.____, through 331.____, with statistical suffixes 54, 92, 94 and 96

[8] In Category 317, sateens, in TSUS items 320.____, through 331.____, with statistical suffixes 50, 87 and 93

[9] In Category 600, TSUSA number 310.5015, and in category 604, TSUSA numbers 310.5049 and 310.6045. Imports in these TSUSA numbers shall be converted to square yards equivalent at the rate of 4.1 per pound.

[10] In Category 612, lightweight polyester filament fabrics in TSUSA numbers 338.5010, 338.5011, 338.5012, 338.5013, 339.5014, 338.5015, 338.5016, 338.5017, 338.5018, 338.5019, 338.5020 and 338.5021.

[11] In category 612, all TSUSA numbers other than those in footnote 10.

[12] In Category 614, wool blend fabrics in TSUSA numbers 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568 and 338.1572

[13] In category 614, spun filament combination fabrics in TSUSA numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095 and 338.5098.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to further adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and Japan, which provides, in part, that: (1) Group limits, sublimits and specific limits may be increased by designated percentages for swing, carryover and carryforward; however, carryover shall not be available in the specific arrangement period in which the limit is established; (2) exports in excess of annual limits shall be charged to the limits for the subsequent year; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the bilateral agreement. Appropriate adjustments, referred to above, will be made to you by letter.

A description of the textitle categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of The United States Annotated (1987)*.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553.

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–8453 Filed 4–14–87; 8:45 am]

BILLING CODE 3510–DR–M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

April 7, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 16, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive dated November 28, 1986 (51 FR 43960) establishes limits for cotton, wool and man-made fiber textiles and textile products in Categories 310–320, 360–369, 410–429, 464–469, 610–629, 665, 669, and 670, as a group, and individual Categories 300/301, 334, 335, 336/636, 337/637, 338/339, 340, 341/641, 347/348, 352/652, 359, 363, 433, 435, 443, 447, 604, 632, 633, 634, 635, 638/639, 640, 647/648, 649, 651, 659 and 666, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

During consultations held on March 13, 1987, between the Governments of the United States and the United Mexican States, agreement was reached to further amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, to cancel the previously established group limit and established new limits for Categories 310–320, 610–614, as a group, and individual Categories 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 360, 361, 362, 363, 369, 410, 411, 425, 429, 464, 465, 469, 610, 611, 612, 613, 614, 625, 626, 627, 665, 669 and 670. It was further agreed that the current designated consultation levels for Categories 300/301, 335, 342/642, 352/652, 433, 443, 447, 604, 632, 644, 649 and 666 would be amended. The designated consultation level for Category 338/339 is being amended and converted to a specific limit for the 1987 agreement year.

In addition, Catagories 331 and 631 and Categories 340 and 640 are being

merged to become Categories 331/631 and 340/640. Designated consultation levels are being established for the newly merged categories. The sublimits for trousers in Categories 347/348 and 647/648 are being adjusted to account for additional shift granted for the 1987 agreement year.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the foregoing categories, with the exception of Categories 331/631 and 644, in excess of the newly agreed restraint limits:

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), Novermber 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 7, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel,the directive issued to you on November 28, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on April 16, 1987, the directive of November 28, 1986 is amended to include the following new and adjusted limits for cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.[1]

Category	New 12-mo. limits
300/301	9,200,000 lbs
310-320, 610-614, as a group.	32,000,000 sq. yds.
310	6,400,000 sq. yds.
311	6,400,000 sq. yds.
312	6,400,000 sq. yds.
313	16,000,000 sq. yds.
314	6,400,000 sq. yds.
315	6,400,000 sq. yds.
316	6,400,000 sq. yds.
317	6,400,000 sq. yds.
318	6,400,000 sq. yds.
319	6,400,000 sq. yds.
320	6,400,000 sq. yds.
610	6,400,000 sq. yds.
611	6,400,000 sq. yds.
612	6,400,000 sq. yds.
613	6,400,000 sq. yds.
614	6,400,000 sq. yds.
335	45,000 doz.
338/339	550,000 doz.
340/640	390,000 doz.
342/642	190,000 doz.
347/348	1,298,500 of which not more than 960,625 doz. shall be in Category 347 and not more than 960,625 doz. shall be in Category 348
352/652	1,400,000 doz.
360	909,091 no's.
361	161,290 no's.
362	144,928 no's.
363	5,500,000 no's.
369pt.[1]	400,000 lbs.
369pt.[2]	2,830,000 lbs.
369pt.[3]	300,000 lbs.
369pt.[4]	217,391 lbs.
410	475,000 sq. yds.
411	100,000 sq. yds.
425	50,000 lbs.
429	100,000 sq. yds.
433	13,000 doz.
443	7,000 doz.
447	13,000 doz.
464	76,923 lbs.
465	1,000,000 sq. ft.
469	50,000 lbs.
604-A [5]	1,250,000 lbs.
604-O [6]	1,600,000 lbs.
625	128,205 lbs.
626	1,000,000 sq. yds.
627	2,180,000 lbs.
632	500,000 doz. pairs
647/648	1,590,000 doz. of which not more than 1,060,000 doz. shall be in Category 647 and not more than 1,060,000 doz. shall be in Category 648
649	1,450,000 doz.
665	10,000,000 sq. ft.
666	5,500,000 lbs.
669-C [7]	330,000 lbs.
669-P [8]	750,000 lbs.
669-O [9]	650,000 lbs.
670	8,000,000 lbs.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[1] In Category 369, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] In Category 369, handbags and luggage in TSUSA numbers 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

[3] In Category 369, shoe uppers in TSUSA numbers 386.0410 and 386.5210.

[4] In Category 369, other—all TSUSA numbers except 355.0200, 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2440, 366.2860, 386.0410, 386.5210, 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

[5] In Category 604, only TSUSA numbers 310.5049 and 310.6042.

[6] In Category 604, all TSUSA numbers except 310.5049 and 310.6042.

[7] In Category 669, cordage in TSUSA numbers 348.0065, 348.0075, 348.0565 and 348.0575.

[8] In Category 669, man-made fiber bags in TSUSA number 385.5300.

[9] In Category 669, other—all TSUSA numbers except 348.0065, 348.0075, 348.0565, 348.0575 and 385.5300.

All import charges already made to the restraint limits previously established for the foregoing categories, with the exception of Categories 369 and 669, are to be retained. Charge the following amounts to the limits established in this directive for Categories 369 [1], 369 [2], 369 [3], 369 [4], 669-C [5], 669-P [6], and 669-O [7]. These charges are for the period January 1—January 31, 1987. Additional charges will be supplied as they become available.

Category	Charges
369 [1]	0 lbs.
369 [2]	11,098 lbs.
369 [3]	74,780 lbs.
369 [4]	5,259 lbs.
669-C [5]	1,124 lbs.
669-P [6]	119,049 lbs.
669-O [7]	11,255 lbs.

[1] Same as footnote [1] above.
[2] Same as footnote [2] above.
[3] Same as footnote [3] above.
[4] Same as footnote [4] above.
[5] Same as footnote [5] above.
[6] Same as footnote [6] above.
[7] Same as footnote [7] above.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-8456 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of Colombia on Category 317pt.

April 10, 1987.

On March 31, 1987 the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of Colombia to enter into consultations concerning exports to the United States of cotton sateen fabric in Category 317pt. (only TSUSA items 320.—through 331.—with statistical suffixes 50, 87 and 93), produced or manufactured in Colombia.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Colombia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton sateen fabric in Category 317pt., produced or manufactured in Colombia and exported to the United States during the twelve-month period which began on March 31, 1987 and extends through March 30, 1988, at a level of 3,030,077 square yards.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the **Tariff Schedules of the United States Annotated** (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 317pt. or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consulations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Colombia, further notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Janey Heinzen, International Trade Specialist, Office of Textile and Apparels, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consulations have been requested call (202) 377-3740.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Columbia—MARKET STATEMENT

Category 317 Pt.—Cotton Sateen Fabric

March 1987.

Summary and Conclusions

United States imports of cotton sateen fabric—Category 317pt.—from Colombia were 3,030 thousand square yards during 1986, a five fold increase from the 642 thousand square yards imported a year earlier. Colombia is the fourth largest supplier of these fabrics, accounting for 6 percent of the total imports.

The sharp and substantial increase of imports from Colombia which are being offered at duty paid landed values below U.S. producers' prices are severely disrupting the U.S. market for cotton sateen fabric.

Production and Market Share

U.S. production of cotton sateen fabric dropped from 58.1 million share yards in 1982 to 45.6 million in 1983, a 21 percent decline. Production in 1984 partially recovered from 1983, however, the improvement was short-lived. Production in 1985 declined 2 percent from its 1984 level. This decline continued into 1986. Although 1986 production data is not directly comparable to the 1985 data, indications are that the 1986 production level is below that of 1985 level.

The U.S. producers' share of the market for domestically produced and imported sateen fabric declined from 72 percent in 1982 to 53 percent in 1985. The U.S. producers' share was further reduced in 1986.

Imports and Import Penetration

U.S. imports of cotton sateen fabrics doubled between 1982 and 1984, increasing from 22.2 million square yards to 45.3 million square yards. Although sateen fabric imports declined to 42.0 million square yards in 1985, imports in 1986 reached a record level 53.1 million square yards.

The ratio of imports to domestic production more than doubled, increasing from 38 percent in 1982 to 89 percent in 1985. The ratio continued to increase in 1986.

Import Values

Approximately 96 percent of Colombia's cotton sateen fabric imports during 1986 entered under TSUSA 320.1993, cotton sateen fabric of 10 yarn counts. These fabrics entered at duty-paid landed values below the U.S. producers' prices for comparable fabrics.

[FR Doc. 87-8455 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Individual Religious Education Enrollment and Attendance Record (SAC Form 532) (OMB No. 0701-0059)

Strategic Air Command (SAC) Form 532 is used to obtain information from

dependents of military personnel who wish to enroll in religious education classes on SAC bases. The information collected is used by chaplains, chapel management personnel, and religious education teachers to determine individual religious education preferences and to tailor their programs for those specific requirements.

Dependents of Air Force Members
Responses 7,590
Burden hours 1,518

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from CMSgt Kenneth J. Edwards, HQ SAC/HC, Offutt AFB NE 68113-5000, telephone (402) 294-2958.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

April 10, 1987.

[FR Doc. 87-8482 Filed 4-14-87; 8:45 am]

BILLING CODE 3810-01-M

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Base Information Transfer System and Publication Distribution Office, Sheppard AFB, TX will be examined for conversion to contract.

For further information contact Captain Ayotte, HQ ATC/XPMRC, telephone (512) 652-2384.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-8398 Filed 4-14-87; 8:45 am]

BILLING CODE 3910-01-SM

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Envirnomental Impact Statement (DEIS) For a Proposed Flood Control Project on Calleguas Creek, Ventura County, California

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare Draft Environmental Impact Statement (DEIS).

SUMMARY: .

1. *Study Alternatives.* The purpose of the proposed flood control measures is to alleviate flood damages to primarily agricultural land adjacent to the Calleguas Creek below U.S. Highway 101 and Pacific Missile Test Center at Pt. Mugu. A review of the alternative measures for flood control at the reconnaissance level yielded two alternatives that warranted further study at the feasibility level, the All Channel Plan and the Retarding Basin Plan. Each of these alternatives is being studied relative to a 25-, 50- and 100-year level of protection. The alternatives will each be designed to trap sediment such that there will be no net increase over existing sediment discharge conditions into Mugu Lagoon. The sediment trapping criteria will require widening and deepening of the channel at several locations. The alternatives are both being designed with an earthen bottom. Four bridges including the State Highway 1 bridge may require modification or replacement. Project features common to both alternatives include an inlet at Pleasant Valley Road or at the confluence of Calleguas Creek with Conego Creek, with a spur dike on the west bank (for the 50- and 100-year levels of protection).

Alternative 1—The All Channel Plan will be designed to contain all flows of magnitude equal or less than the design discharge from either Pleasant Valley Road or the confluence of the Calleguas and Conejo Creeks to Highway 1 (8 or 9 miles). The levees on either side of the creek from the inlet to California State Highway 1 would be reconstructed to form a trapezoidal invert with rock riprap revestment on both sides to prevent erosion of the side slopes. At the base of the levees, excavation would be made to construct a toe to anchor and protect the levees.

Alternative 2—The Retarding Basin Plan is designed to contain all flows of magnitude equal to or less than the design discharge from either Pleasant Valley Road or the confluence of Calleguas Creek and Conejo Creek to Highway 1. The eastern levee from the Lewis Road bridge crossing to the north side of Round Mountain would be a lowered levee to allow flows greater than the capacity of the existing channel downstream (approximately 25 year) to flow into the proposed retarding basin and to hold the water until the storm peak passes after which the basin would be drained. This alternative involves rebuilding the levees to form a trapezoidal invert with rock riprap revetment on both sides to prevent erosion of the side slopes. Levee reconstruction would begin at the inlet and continue to the southern extent of the proposed retarding basin. The levees downstream of the retarding basin would be stabilized where necessary with rock riprap on both sides. At the base of the levees, excavation would be made to construct a toe to anchor and protect the levees. Land within the retarding basin may be available for farming or other open space uses including mitigation.

2. *Scoping Process.* The Calleguas Creek Steering Committee was formed to aid the Corps in the development of alternative solutions to the flood problems along the lower Calleguas Creek. The Corps has initiated coordination with U.S. Fish and Wildlife Service, California Department of Fish and Game, Santa Monica National Park, Soil Conservation Service and National Marine Fisheries Service to resolve potential environmental problems. The area is considered one of high sensitivity in terms of cultural resources and Native Americans have demonstrated a significant concern regarding cultural resource remains in the study region. Coordination will be initiated with the appropriate Native American groups.

The Calleguas Creek study reach is in an environmentally sensitive area. Most of the agricultural land is designated as prime and/or unique farmlands by the U.S. Department of Agriculture, Soil Conservation Service. In addition, large areas of farmland are in State designated agricultural preserves. The study area is very sensitive with respect to biological resources. Calleguas Creek forms a continuous wetland corridor from upland chaparral areas in the Santa Monica Mountains passing through a mature willow corridor and terminating in Mugu Lagoon, the highest quality remaining wetland in southern California. The lagoon supports six Federally listed endangered species. Eight candidate animal species and 9 condidate plant species are located within the study area. A preliminary records and literature search revealed the presence of two archeological sites in the project area. Due to the floodplain nature of the study area, the potential for buried sites is high. The Corps will complete an intensive survey of the area in order to inventory all historic properties located within the Calleguas Creek study area.

3. *Scoping Meeting.* Two scoping meetings will be held. The first scoping meeting to be held at the Camarillo City Council Chambers, 601 Carmen Drive, Camarillo, California on Thursday, April 30, 1987 at 7:30 p.m. will present the study alternatives currently under consideration and invite comments from the public. The second scoping meeting will be an informational meeting to

present the National Economic Development Plan to the public and is scheduled for July 1987.

4. *Publication of the DEIS.* The Draft Environmental Impact Statement is scheduled to be available for Public Review in January 1988.

Address: Questions about the proposed action and the DEIS can be answered by, Mr. Rick Dreher (213) 894–4352 or (FTS) 798–4352, U.S. Army Corps of Engineers, 300 N. Los Angeles Street, P.O. Box 2711, Los Angeles, California, 90053–2325.

Date: April 8, 1987.

D. Fred Butler,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–8445 Filed 4–14–87; 8:45 am]

BILLING CODE 3710-ICF-M

Department of the Navy

Intent to Prepare Draft Environmental Impact Statement for Navy Family Housing Supporting Weapons Station (NWS) Earle, NJ

Pursuant to Civil Action No. 87–908, United States District Court for the District of New Jersey, the U.S. Navy will prepare a Draft Environmental Impact Statement (EIS) as provided for by the National Environmental Policy Act (NEPA) of 1969 and Council on Environmental Quality Regulations (US CFR Part 1500) for the construction of Navy Family Housing supporting Naval Weapons Station (NWS), Earle, New Jersey.

Extensive public involvement has been occasioned over the past several months as concerned this action to include a well attended public meeting held by the Navy on 24 February 1987. Accordingly, it is believed the significant issues have been identified. However, to insure that appropriate scoping has been effected interested parties are to forward questions or comments regarding this action to the below address within 15 days from publication of this notice.

Commander, Naval Facilities Engineering Command 200 Stovall Street, Alexandria, VA 22332–2300; ATTN: Mr. Tom Peeling, Code 2023.

Dated April 9, 1987.

Harold L. Stoller,

CDR, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–8371 Filed 4–14–87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Integrated Avionics for Advanced Aircraft and Aircraft Retrofit will meet on April 29 through May 1, 1987. The meeting will be held at the Grumman Corporation, 1000 Wilson Boulevard, Arlington, Virginia; Headquarters, Naval Air Systems Command, Jefferson Plaza 1, Washington, DC; The Pentagon, Washington, DC; and the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:00 A.M. and terminate at 4:30 P.M. on April 29 through May 1, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to define what is meant by integrated avionics, what new aircraft and avionics suites should be addressed, assess common service requirements, and determine if the magnitude of the problem necessitates the establishment of a separate joint program office. The agenda will include technical briefings and discussions addressing integrated avionics technologies of industry. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Navy Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 9, 1987

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–8370 Filed 4–14–87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.149]

Inviting Applications for New Awards under the College Assistance Migrant Program for Fiscal Year 1987

Purpose: Provides grants to institutions of higher education for projects that address the educational needs of migrant and seasonal farmworker students at the postsecondary education level.

Deadline for transmittal of applications: May 29, 1987

Deadline for intergovernmental review comments: July 28, 1987

Applications available: April 16, 1987

Available funds: The Congress appropriated $1,200,000 in fiscal year 1987 for this program. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification.

Estimated range of awards: $150,000–$350,000

Estimated average size of awards: $250,000

Estimated number of awards: 5

Project period: 36 months

Applicable regulations:

(a) Regulations governing the College Assistance Migrant Program (34 CFR Part 206), as proposed to be modified by a notice of proposed rulemaking published on April 8, 1987 at 52 FR 11448. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resumit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78 and 79).

For applications or information contact: Dr. John F. Staehle, Director, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, Washington, DC 20202. Telephone: (202) 732–4746.

Program authority: 20 U.S.C. 1070d–2.

Dated: April 9, 1987.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–8465 Filed 4–14–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84,117]

Inviting Applications for New Awards Under the Field-Initiated Studies Program for Fiscal Year 1987

Purpose: To support field-initiated studies designed to provide more dependable knowledge about the processes of learning and education.

Weighting for selection criteria: The program regulations at 34 CFR 700.30(d) authorize the Secretary to distribute an additional 25 points among the criteria described in the regulations at § 700.31 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 25 points as follows: 15 additional points to the criterion at § 700.31(f) (Significance), bringing the total for this criterion to 30 points; and 10 additional points to the criterion at § 700.31(g) (Technical Soundness), bringing the total for this criterion to 25 points.

Deadline for transmittal of applications: May 29, 1987.

Applications available: April 29, 1987.

Available funds: $500,000.

Estimated range of awards: $30,000 to $70,000.

Estimated average size of awards: $50,000.

Estimated number of awards: 10.

Project period: 12 to 24 months.

Applicable regulations: (a) The Educational Research Grant Program Regulations 34 CFR Part 700, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact: Ms. Delores Monroe, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 new Jersey Avenue, NW., Mail Stop 1606, Washington, DC 20208.

Telephone Number (202) 357–6223.

Program Authority: 20 U.S.C. 1221e.

Dated: April 9, 1987.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–8466 Filed 4–14–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.141]

Inviting Applications for New Awards Under the High School Equivalency Program for Fiscal Year 1987

Purpose: Provides grants to institutions of higher education to assist migrant and seasonal farmworker students to obtain the equivalency of a secondary school diploma.

Deadline for transmittal of applications: May 29, 1987

Deadline for intergovernmental review comments: July 28, 1987

Applications available: April 16, 1987

Available funds: The Congress appropriated $6,300,000 in fiscal year 1987 for this program. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification.

Estimated range of awards: $150,000–$375,000

Estimated average size of awards: $325,000

Estimated number of awards: 21

Project period: 36 months

Applicable regulations:

(a) Regulations governing the High School Equivalency Program (34 CFR Part 206), as proposed to be modified by a notice of proposed rulemaking published on April 8, 1987 at 52 FR 11448. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts, 74, 75, 77, 78 and 79).

For applications of information contact: Dr. John F. Staehle, Director, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, Washington, DC 20202. Telephone: (202) 732–4746.

Program authority: 20 U.S.C. 1070d–2.

Dated: April 9, 1987.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–8467 Filed 4–14–87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Notice of Proposed Consent Order With Wickett Refining Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Wickett Refining Company ("Wickett"). The Consent Order proposes to resolve matters relating to Wickett's compliance with the Federal petroleum price and allocation regulations for the period August 1, 1973, through January 27, 1981. To remedy any violations that may have occurred during the period, Wickett has agreed to make a payment of $850,000 within ten days of the effective date of this Consent Order.

ERA will petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V to distribute the funds received. In that proceeding, any person who claims to have suffered injury from Wickett's alleged violations would have the opportunity to submit a claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for a period of thirty (30) days following publication of this Notice.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Harold Goldsmith, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4945.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Terms and Conditions of the Consent Order

I. Introduction

Wickett is a general partnership owned by Adobe Resources Corporation and Tom Brown, Inc. During the period covered by the proposed Consent Order (August 1, 1973, through January 27, 1981), Wickett owned and operated a refinery for the refining of crude oil and marketed covered products. Therefore, Wickett was subject to the jurisdiction of the ERA to determine its compliance with the Federal petroleum price and allocation regulations.

ERA conducted an audit to determine Wickett's compliance with these regulations for the period August 1, 1973,

through January 27, 1981. In a Notice of Probable Violation (NOPV) issued to Wickett in 1979, ERA raised certain questions and issues concerning Wickett's compliance with the regulations governing the Entitlements Program (10 CFR § 211.67). As a result of discussions with the firm, analysis of additional information it submitted, and further investigation and consideration by ERA, ERA determined that Wickett had satisfactorily resolved most of ERA's concerns as outlined in the NOPV. However, with regard to certain processing agreements to which Wickett was a party for the period March through May 1976, the firm had, in ERA's opinion, violated the entitlements regulations and thereby had improperly benefited by approximately $700,000. Wickett has maintained that it correctly construed and applied these regulations. The parties desire, however, to resolve the issues raised without further resort to complex, lengthy and expensive compliance actions. ERA believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues, that the Consent Order is an appropriate conclusion of the audit of Wickett, and that it is in the public interest.

II. Term and Conditions of the Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE against Wickett concerning its compliance with the Federal petroleum price and allocation regulations during the period August 1, 1973, through January 27, 1981.

Under terms of the proposed Consent Order, Wickett shall pay to DOE the sum of $850,000 within ten days of the effective date of the Consent Order. The refund amount will be deposited in a suitable account for distribution pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part. Interested parties are invited to submit written comments concerning this proposed Consent Order to: Wickett Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. All comments received by thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on April 2, 1987.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87–8329 Filed 4–14–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–18–NG]

Minnesota Methane, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 24, 1987, of an application from Minnesota Methane, Inc. (MnM), for blanket authorization to import, for its own account or the account of others, Canadian natural gas for resale to distribution companies, other purchasers, and end users in the United States. Authorization is requested to import up to 100 MMcf per day or a total of 182.5 Bcf over a five-year period. MnM, a Minnesota corporation, intends to use existing pipeline facilities or new facilities that may be constructed and placed in service for the transportation of the proposed imports. MnM states it would pursue contracts with sellers and purchasers for specific quantities of gas under market-responsive terms and conditions. It would not offer to enter into any contracts containing take-or-pay obligations.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 15, 1987.

FOR FURTHER INFORMATION CONTACT:
Chuck Boehl, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6050
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served as the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In reponse to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1999 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., May 15, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, incuding the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete

understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of MnM's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 3, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economnic Regulatory Administration.

[FR Doc. 87–8330 Filed 4–14–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–17–NG]

PeopleService, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 24, 1987, of an application from PeopleService, Inc. (PSI), for blanket authorization to import Canadian natural gas for short-term and spot market sales to customers in various markets in the United States. Authorization is requested to import up to 100 Bcf per year for a two-year period beginning on the date of the first delivery. PSI, a Delaware corporation with its principal place of business in Council Bluffs, Iowa, is a wholly owned subsidiary of UtiliCorp United Inc., a Missouri corporation with its principal place of business in Kansas City, Missouri. PSI proposes to purchase natural gas from various Canadian suppliers on a short-term basis for resale to various local distribution companies and end users in the United States. PSI intends to use existing pipeline facilities for the transportation of the proposed imports. PSI will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 15, 1987.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In responses to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., May 15, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PSI's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., April 3, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-8331 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Cases Filed; Week of February 27 Through March 6, 1987

During the Week of February 27 through March 6, 1987, the 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. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 6, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of February 27 through March 6, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 30, 1987	Wind Energy Development Corporation, Rio Piedras, Puerto Rico	KEG-0005	Petition for Special Redress. If granted: Puerto Rico would be required to comply with the terms of the Commonwealth Oil Refining Company, Inc. (CORCO) Consent Order.
Feb. 13, 1987	Belcher Oil Company, Inc., Murray, Kentucky	KER-0020	Request for Modification/Rescission. If granted: The December 24, 1986 Decision and Order (Case No. KEE-0065) would be rescinded regarding the firm's request for an exception to the reporting requirements.
Mar. 2, 1987	Pierson, Ball & Dowd, Washington, DC	KFA-0081	Appeal of an Information Request Denial. If granted: The January 30, 1987 Freedom of Information Request Denial issued by the Office of Procurement Operations would be rescinded, and Pierson, Ball & Dowd would receive access to certain documents relevant to the evaluation of its proposal submitted under solicitation no. DE-RP01-87-FE61083.
Mar. 2, 1987	Ted True, Washington, DC	KRR-0018	Request for Modification/Rescission. If granted: The February 10, 1987 Decision and Order (Case No. KRO-0270) would be rescinded regarding the denial of the Motion for Discovery filed by Ted True's Trustee in Bankruptcy.
Mar. 2, 1987	Tooze, Marshall, Shenker, Holloway & Duden, Portland, Oregon	KFA-0083	Appeal of an Information Request Denial. If granted: The January 29 and February 9, 1987 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Tooze, Marshall, Shenker, Holloway & Duden would receive access to contract drafts, letter drafts and memoranda relating to transmission Contract No. DE-MS-79-86EP91947.
Mar. 3, 1987	General Electric Calma Company, Greenbelt, Maryland	KFA-0082	Appeal of an Information Request Denial. If granted: The January 29, 1987 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and General Electric Calma Company would receive information relevant to Contract No. 95-3996 and its amendments.
Mar. 3, 1987	Peter T. Torell, Maywood, New Jersey	KFA-0084	Appeal of an Information Request Denial. If granted: The January 29, 1987 Freedom of Information Request Denial issued by the Office of Nuclear Energy would be rescinded, and Peter T. Torell would receive a copy of a letter and a draft settlement proposal from the Deputy Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy to Mr. William Rupp, an attorney for the Borough of Maywood.
Mar. 6, 1987	Keneco, Littlestown, Pennsylvania	KEE-0129	Exception to the Reporting Requirements. If granted: Keneco would not be required to file Form EIA-782, "Reseller/Retailers' Monthly Petroleum Products Sales Report."

Refund Applications Received

[Week of February 27 to March 6, 1987]

Date	Name of refund proceeding/name of refund applicant	Case No.
Feb. 27, 1987 to Mar. 3, 1987	Getty Refund Applications	RF265-685 thru RF265-748
Feb. 27, 1987	Les Williams Chevrolet	RF265-698
Feb. 27, 1987	Les Williams Chevrolet	RF265-699
Mar. 2, 1987	Tracy's Service	RF265-10691
Mar. 2, 1987	Grischott Bros. Service	RF265-10692
Mar. 2, 1987	Paul Peters Mobil	RF265-10693
Mar. 2, 1987	Judd's Mobil	RF265-10694
Mar. 2, 1987	L. J. Mobil	RF265-10695
Mar. 2, 1987	Bruce's Mobil	RF225-10696
Mar. 2, 1987	L & J Mobil	RF225-10701
Mar. 2, 1987	Bruce's Mobil	RF225-10702
Mar. 2, 1987	Christian Son, Inc	RF225-10703
Mar. 2, 1987	Christian Son, Inc	RF225-10704
Mar. 2, 1987	Christian Son, Inc	RF225-10705
Mar. 2, 1987	Christian Son, Inc	RD225-10706
Feb. 20, 1987	Nu Way Oil Company	RF292-1
Mar. 2, 1987	Williams & Dorius Oil Company	RF112-209
Mar. 2, 1987	Midwestern Butane Gas	RF140-51
Mar. 2, 1987	Johnston's LP Gas	RF140-52
Mar. 2, 1987	Home Gas, Inc	RF140-53
Mar. 2, 1987	Aiding Corporation	RF108-32
Mar. 2, 1987	L.G. Abbott LP Gas	RF208-15
Feb. 13, 1987	Western Petroleum, Inc	RF220-486
Mar. 2, 1987	Bryan Municipal Light & Water	RF272-382
Mar. 2, 1987	Oberlin Light & Water System	RF272-383
Feb. 27, 1987	Knutsen O.A.S. Shipping	RF272-385

Refund Applications Received—Continued

[Week of February 27 to March 6, 1987]

Date	Name of refund proceeding/name of refund applicant	Case No.
Feb. 27, 1987	Grand Haven Public Schools	RF272-386
Mar. 3, 1987	Union Camp Corporation	RF272-387
Mar. 2, 1987	Fairlawn Oil Service	RF284-7
Mar. 2, 1987	Darigolo	RF272-384
Mar. 3, 1987	Dorazio's Mobil Service Station	RF225-10698
Mar. 3, 1987	Eastside Oil Company	RF250-2712
Mar. 3, 1987	Eastside Oil Company	RF250-2713
Mar. 3, 1987	H.C. Lewis Oil Company	RF250-2714
Mar. 3, 1987	H.C. Lewis Oil Company	RF250-2715
Jan. 12, 1987	Sommers Company	RF250-2716
Dec. 5, 1986	Huffy Oil Company	RF250-2717
Apr. 16, 1982	City of New York	RF272-380
June 1, 1983	Eastern Seaboard Petroleum	RF272-381
Mar. 4, 1987	Flint Community Schools	RF272-388
Mar. 4, 1987	Outboard Marine Corporation	RF272-389
Mar. 4, 1987	A.J. Trucking, Inc	RF270-2476
Mar. 5, 1987	Newmans One Stop	RF40-3677
Mar. 5, 1987	Old Elm Services, Inc	RF225-10699
Mar. 5, 1987	Jesse's Mobil Service	RF225-10700
Mar. 6, 1987	Southwestern Film Service	RF270-2477
Mar. 6, 1987	Tower Lines, Inc	RF270-2478
Mar. 6, 1987	J. Marlin Ernst & Sons, Inc	RF270-2479
Mar. 5, 1987	Anderson Clayton Foods	RF272-390
Mar. 5, 1987	City of Columbus, Georgia	RF272-391

[FR Doc. 87-8332 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

Notice of Cases Filed With the Office of Hearings and Appeals; Week of March 6 Through March 13, 1987

During the Week of March 6 through March 13, 1987, the appeals and applications for exceptions or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comment 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.

April 6, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearing and Appeals

[Week of March 6 through March 13, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 22, 1986	Telum, Inc., Provo, Utah	KRD-0022	Motion for Discovery. If granted: Discovery would be granted to Telum, Inc. in connection with the firm's statement of objections to the Proposed Remedial Order issued to it (Case No. BRO-1244).
Mar. 10, 1987	E.E. Tullos, Groveton, Texas	KER-0021	Request for Modification/Rescission. If granted: The December 23, 1986 Decision and Order (Case No KEE-0073) issued to E.E. Tullos would be modified regarding his application for exception from the reporting requirements of Form EIA-782B.
Mar. 10, 1987	Natural Resources Defense Council, Washington, DC	KFA-0085	Appeal of an Information Request Denial. If granted: The March 2, 1987 Freedom of Information Request Denial issued by the Office of Classification and Technical Information would be rescinded, and Natural Resources Defense Council would receive access to a complete copy of the Table of Contents page for all issues of the Sandia Weapons Review from 1975 to the present.
Mar. 12, 1987	Fleming Brothers Oil Company, South Haven, Michigan	KEE-0130	Exception to the Reporting Requirements. If granted: Fleming Brothers Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
Mar. 13, 1987	Jason M. Cook, Morgantown, West Virginia	KFA-0086	Appeal of an Information Request Denial. If granted: The February 19, 1987, Freedom of Information Request Denial issued by the Morgantown Energy Technology Center (METC) would be rescinded and Jason M. Cook would receive access to lists of Federal Employees at METC who received performance awards for Fiscal Year 1986.

Refund Applications Received

[Week of March 6 to March 13, 1987]

Date	Name of refund proceeding/name of refund applicant	Case No.
Nov. 20, 1986	Duke's Marathon	RF250-2718
Mar. 6, 1987 to Mar. 1987	Getty Refund Applications	RF265-749 thru RF265-771
Mar. 9, 1987	Alabama River Pulp Company	RF272-392
Mar. 9, 1987	City of Oneonta	RF272-393
Mar. 9, 1987	Armco Eastern Steel Division	RF272-394
Mar. 9, 1987	The Bibb Company	RF272-395
Mar. 9, 1987	University of Texas at Austin	RF272-396
Mar. 9, 1987	Endicott Oil Service, Inc	RF40-3678
Mar. 10, 1987	Timble Oil Company, Inc	RF161-104
Mar. 10, 1987	Teague Oil Company	RF292-2
	Essex Group, Inc	RF139-165

Refund Applications Received—Continued

[Week of March 6 to March 13, 1987]

Date	Name of refund proceeding/name of refund applicant	Case No.
Mar. 11, 1987	Kings Plaza Service Station	RF225-10707
Mar. 11, 1987	Hagen's Mobil Service	RF225-10708
Mar. 11, 1987	Stemon's Freeway Mobil	RF225-10709
Mar. 11, 1987	Woodruff Place Mobil	RF225-10710
Mar. 11, 1987	Mullin's Service Station	RF225-10711
Mar. 11, 1987	Charles L. Suehs LP Gas Company	RF208-16
Mar. 11, 1987	B & C LP Gas Company	RF208-17
Mar. 11, 1987	Ross Martinez	RF161-105
Mar. 11, 1987	Cauthen Oil Inc	RF239-19
Mar. 11, 1987	The Holmes Limestone Company	RF272-397
Mar. 11, 1987	City of Worchester	RF284-8

[FR Doc. 87-8333 Filed 4-14-87; 8:45 am]

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Notice of Cases Filed; Week of March 13 Through March 20, 1987

During the Week of March 13 through March 20, 1987, the 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. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 6, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of March 13 through March 20, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 19, 1987	Mt. Airy Refining Company, Washington, DC	KRD-0320	Motion for Discovery. If granted: Discovery would be granted to Mt. Airy Refining Company in connection with the Statement of Objections submitted in response to the July 25, 1986 Proposed Remedial Order issued to Mt. Airy Refining Company (Case No. KRO-0320).
Mar. 12, 1987	J. D. Street & Company, Inc., Washington, DC	KRR-0022	Request for Modification/Rescission. If granted: The pending Motion to Dismiss the Proposed Remedial Order issued to J.D. Street on August 3, 1982 (Case No. HRO-0064) would be granted.
Mar. 16, 1987	E. H. Pechan & Associates, Inc., Springfield, Virginia	KFA-0087	Appeal of An Information Request Denial. If granted: E.H. Pechan & Associates would receive access to materials produced by Decision Analysis Corporation, in response to a DOE contract award.
Mar. 16, 1987	Mojane Petroleum Company, Inc., Borger, Texas	KEE-0131	Exception to the Reporting Requirements. If granted: Mojane Petroleum Company, Inc. would not be required to file Form EIA-782B, "Reseller/Retailer's Monthly Petroleum Products Sales Report."
Mar. 17, 1987	Inexco Oil Company, Washington, DC	KEF-0089	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a December 31, 1986 Consent Order which the DOE entered into with Inexco Oil Company.
Mar. 17, 1987	McWhirter Distributing Co., Inc., San Francisco, California	KRD-0380	Motion for Discovery. If granted: Discovery would be granted to McWhirter Distributing Company, Inc. in connection with the Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. KRO-0380).
Mar. 17, 1987	R. W. Tyson Producing Company, Washington, DC	KEF-0090	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a December 29, 1986 Consent Order which the DOE entered into with R.W. Tyson Producing Co.
Mar. 17, 1987	Triangle Oil Company, Easton, Maryland	KEE-0132	Exception to the Reporting Requirements. If granted: Triangle Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
Mar. 18, 1987	Iowa, Des Moines, Iowa	KEG-0006	Request for Special Redress. If granted: The Office of Hearings and Appeals would review and approve the proposed expenditures for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Mar. 19, 1987	Gay's Fuel Service Incorporated, Bellows Falls, Vermont	KEE-0133	Exception to the Reporting Requirements. If granted: Gay's Fuel Service Incorporated would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Mar. 19, 1987	Government Accountability Project, Washington, DC	KFA-0088	Appeal of an Information Request Denial. If granted: The March 10, 1987 Freedom of Information Request Denial would be rescinded, and the Government Accountability Project would receive access to the August 21, 1978 letter to K. Mattern (DOE) from A. Truilli, Argonne National Laboratory.
Mar. 20, 1987	Inexco Oil Company, Washington, DC	KEF-0091	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a November 7, 1986 agreement entered into by the Department of Energy and Inexco Oil Company.

Refund Applications Received

[Week of March 13 to March 20, 1987]

Date	Name of refund proceeding/name of refund applicant	Case No.
Dec. 4, 1986	Chrysler Corporation	RF250-2288
Jan. 21, 1987	Clark Equipment Company	RF153-37

Refund Applications Received—Continued

[Week of March 13 to March 20, 1987]

Date	Name of refund proceeding/name of refund applicant	Case No.
Jan. 21, 1987	Wilkerson Diesel, Inc	RF153-38
Jan. 21, 1987	Clark Equipment Company	RF154-36
Jan. 30, 1987	Wilkerson Diesel, Inc	RF154-35
Mar. 12, 1987	National Helium/New Jersey	RQ3-361
Mar. 13, 1987	Radio Oil Company, Inc	RF284-9
Mar. 13, 1987	Temple Hill Mobil	RF225-10712
Mar. 13, 1987	Palmer's Mobil Service	RF225-10713
Mar. 13, 1987	Palmer's Mobil Service	RF225-10714
Mar. 13, 1987	A-1 Mobil	RF225-10715
Mar. 13, 1987	Black Jack Mobil	RF225-10716
Mar. 13, 1987	Black Jack Mobil	RF225-10717
Mar. 13, 1987	Jim Parker Mobil	RF225-10718
Mar. 13, 1987 thru Mar. 20, 1987	Getty Refund Applications	RF265-772 thru RF265-847
Mar. 16, 1987	Harrisburg Steam Works, Ltd	RF272-398
Mar. 16, 1987	Dan-D-Service	RF250-2719
Mar. 16, 1987	Home Petroleum Corporation	RF116-9
Mar. 16, 1987	Jim Smith Contracting Co., Inc	RF272-399
Mar. 18, 1987	B.J. McAdams, Inc. et al	RF40-3679
Mar. 18, 1987	B.J. McAdams, Inc. et al	RF40-3780 thru RF40-3784
Mar. 18, 1987	Value Oil Company	RF263-31
Mar. 18, 1987	Mid-South Sales, Inc	RF263-32
Mar. 18, 1987	Gary Public Transportation	RF272-400

[FR Doc. 87-8334 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders; Week of February 9 Through February 13, 1987

During the week of February 9 through February 13, 1987, the decisions and orders summarized below were issued with respect to 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.

Remedial Orders

T&M Petroleum Corporation, 2/11/87, HRO-0101

T&M Petroleum Corporation and Ted R. Adkins (collectively "T&M"), and Old Antler Corporation (Antler), objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on November 15, 1982. In the PRO, the ERA alleged that T&M and Antler received illegal revenues totalling $1,904,046.16 as a result of selling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period September 1979 through November 1980. The DOE determined that, with respect to Antler, the allegations concerning violation of 10 CFR 212.186 should be dismissed without prejudice. With respect to the remaining respondents, the DOE concluded that the Proposed Remedial Order should be issued as a final Remedial Order, as modified by this Decision and Order. The important issues discussed in the Decision and Order include (i) whether T&M's sales to an alleged refiner constituted historical and traditional crude oil reseller services, (ii) whether T&M's sale of imported crude oil was exempt from DOE price regulations as a "first sale into U.S. commerce," and (iii) whether an affiliated corporation, Antler, should be held liable for the actions of T&M.

Tommy Oil Company, 2/11/87, HRO-0120

Tommy Oil Company (Tommy) objected to a Proposed Remedial Order which the Kansas City Regional Office of the ERA issued to the firm on October 29, 1982. In the proposed Remedial Order, the ERA found that Tommy violated the price regulations applicable to sales of motor gasoline at 10 CFR Part 212, Subpart F and antecedent regulations, by selling regular and premium gasoline to its retail customers at prices that exceeded the maximum lawful selling prices permitted under the regulations. After considering the firm's Statement of Objections, the DOE concluded that the PRO should be issued as a final Order. In reaching its conclusion, the DOE rejected the firm's contention that the ERA erred in calculating Tommy's banks of unrecouped product costs separately for each of the firm's nine retail outlets and for each grade of gasoline, rather than on a firm-wide single product basis.

Requests for Exception

Dodd's Wholesaler's, Inc., 2/12/87, KEE-0071

Dodd's Wholesaler's, Inc. filed an Application for Exception on September 9, 1987. The firm sought relief from the reporting requirements of Form EIA-782B pursuant to 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm did not bear an unusual burden as result of the reporting requirements that would warrant approval of exception relief. Accordingly, exception relief was denied.

Idaho Petroleum, Inc., 2/13/87, KEE-0072

Idaho Petroleum, Inc. Filed an Application for Exception on September 15, 1986. The firm sought relief from the reporting requirements of Form EIA-782B pursuant to 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the reporting requirements that would warrant approval of exception relief. Accordingly, exception relief was denied.

Motions for Discovery

Ted True, Inc., Ted True, 2/10/87, KRD-0270

The ERA issued a PRO to Ted True, Inc. and Ted True, alleging that they sold a substantial volume of the lower tier crude oil they purchased as upper tier or stripper crude oil. On August 13, 1985, the Respondents filed a Motion for Discovery in support of their objections to the PRO. On February 9, 1987, OHA denied that Motion. As an initial matter, OHA determined that the Respondents' Motion totally failed to meet the requirements for discovery set forth at 10 CFR 205.198. In addition, OHA found that Respondents' requests for information regarding the legal and factual basis of the PRO should be denied because the PRO clearly set forth the nature and basis of its allegations. Finally, OHA denied the Respondents' requests to determine whether any audit documents had been destroyed, because the Respondents were already in possession of all the documentation necessary to understand the PRO and because they had no showing of improper agency conduct.

Tri-Service Drilling Company/Economic Regulatory Administration, 2/9/87, KRZ-0121, KRD-0120, KRD-0120

Tri-Service Drilling Company filed a Motion to Dismiss and a Motion for Discovery in connection with an Amended Proposed Remedial Order (APRO) which was issued to the firm on September 3, 1985, by the Economic Regulatory Administration (ERA). The APRO alleges that Tri-Service violated the price regulations applicable to first sales of crude oil and, as result, obtained overcharges of $394,837.89, plus interest.

In its Motion to Dismiss the proceeding, Tri-Service claimed that (1) the ERA had failed to meet its burden of proving that the pricing violations actually occurred; (2) the firm had been subjected to undue burdens as a result of the proceeding; (3) the Texas statute of limitation required dismissal; and (4) the ERA's claim should be barred by the doctrine of laches. The OHA denied this Motion after concluding that the firm had failed to support any of its claims.

In its Motion for Discovery, the firm presented three interrogatories in which it

asked the ERA to identify and produce all documents relating to instances in which it allowed multiple leases to be treated as single properties under the "aggregation of rights to produce" provisions of Ruling 1977–1. The OHA determined that Tri-Service had not made a showing of discriminatory treatment by the ERA and had not presented any other evidence that demonstrated that such discovery would in any way advance the proceeding.

In the Decision, the OHA also considered a Motion for Discovery filed by the ERA. The Motion was denied with the exception of one interrogatory in which the ERA requested that Tri-Service produce any well or lease production date heretofore not submitted for the period 1972–1975. The OHA determined that this discovery request was meritorious because it addresses the issue of the accuracy of the ERA's crude oil production calculations; an issue disputed by Tri-Service.

Refund Applications

Concoco Inc./Potlatch Corporation et al., 2/12/87, RF220–460 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by purchasers of Conoco refined products. Each customer filed for a refund based upon the small claims procedures outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the claims, the DOE concluded that all eight customers should receive refunds based on the volumetric refund amount established in *Conoco*. The total amount of refunds granted was $30,579.

Cranston Oil Service Company, Inc./Anthony & Mafalada Caliri, et al., 2/12/87, RF276–3 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc., and its successor-in-interest Galego Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The amount of the refunds approved in this Decision is $297, representing $274 in principal and $23 in interest.

Crystal Oil Company/Kent Oil & Trading, 2/11/87, RF233–44

The DOE issued a Decision and Order granting an Application for Refund filed by Kent Oil & Trading, a reseller of Crystal Oil Co. refined petroleum products. Kent presented evidence that it purchased refined petroleum products from Crystal during the Crystal consent order period, and elected to limit its claim to the $5,000 small claims threshold for resellers established in *Crystal Oil Co.*, 13 DOE ¶85,381 (1986). The refund approved in this Decision totaled $8,884.

Domenico Bus Service, Inc., Storer Coachways, Southern Coach, 2/13/87, RF270–1092, RF270–1095, RF270–1097

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by three bus companies for refunds from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. Each bus company applied for refund based on its purchases of diesel fuel between August 19, 1973 and January 27, 1981. The DOE's Decision approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Gulf Oil Corporation/D. J. Adams et al., 2/12/87, RF40–3610

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of D. J. Adams and eight other firms in the Gulf Oil Corporation refund proceeding. Each firm was a retailer of Gulf Oil Corporation refund proceeding. Each firm was a retailer of Gulf refined petroleum products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), each applicant demonstrated that it purchased a certain volume of Gulf covered products and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Accordingly, refunds totaling $25,823 in principal and $6,137 in interest were approved for the nine claimants.

Gulf Oil Corporation/International Drilling & Energy Corporation 2/11/87, RF40–3609

The DOE issued a Decision and Order concerning the Applications for Refund filed by International Drilling & Energy Corporation (IDEC) in the Gulf Oil Corporation refund proceeding. IDEC was a retailer of Gulf products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), IDEC demonstrated that it purchased a total of 877,625 gallons of Gulf propane and butane and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. According, IDEC will receive $1,071 in principal and $255 in interest.

Gulf Oil Corporation/Pomona Oil Company, 2/11/87, RF40–2665

The DOE denied an Application for Refund filed in connection with the Gulf Oil Corporation special refund proceeding by Pomona Oil Company, a reseller of refined petroleum products. Pomona purchased Gulf products through Adamucci Oil Company. In a previous decision, the DOE had granted Adamucci a full volumetric refund based on its own purchases from Gulf. Since the Adamucci family held a controlling interest in Pomona, the DOE determined that a refund for Pomona would represent a second payment to a single interest. Accordingly, Pomona's Application for Refund was denied.

Gulf Oil Corporation/Smitty's Gulf Service, et al., 2/9/87, RF40–2212

The DOE granted refunds from the Gulf Oil Corporation deposit fund escrow account to 21 purchasers of Gulf refined petroleum products. The refund applicants are retailers who demonstrated that they would not have been required to reduce their selling prices to their customers by the amount of the refund claimed. The refunds to these firms totaled $25,974.

Gulf Oil Corporation/Walker Oil Company, et al., /10/87, RF40–2070 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of Walker Oil Company and four other firms in the Gulf Oil Corporation refund proceeding. Each firm was both a reseller and a consignee of Gulf products during the Gulf consent order period. Following the procedures outlines in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), each applicant demonstrated that it purchased a certain volume of Gulf middle distillates and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Each applicant also demonstrated that as a consignee it had lost potential sales of Gulf motor gasoline and therefore had been injured by Gulf's allegedly uncompetitive prices. Accordingly, refunds totaling $13,939 in principal and $3,198 in interest were approved for the five claimants.

Hicks Oil and Hicks Gas Co., Inc./Mt. Pulaski Products, Inc., Lake Fork Grain Company, 2/12/87, RF237–10, RF237–11

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Hicks Oil and Hicks Gas Company, Inc. special refund proceeding. Both applicants were end-users of propane purchased from Rocket Supply Company, a wholly-owned subsidiary of Hicks. In the Decision, the DOE granted the two applications under the standards specified in *Hicks Oil and Hicks Gas Co.*, 13 DOE ¶85,400 (1986). The refunds granted total $559, representing $412 in principal and $147 in interest.

Marathon Petroleum Company/Amigene Mitchell, et al., 2/11/87, RF250–2111 et al.

The DOE issued a Decision and Order concerning 52 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 $41,522 in principal and $3,060 in interest.

Marathon Petroleum Company/Coffey Marathon Service, 2/10/87, RF250–658 et al.

The DOE issued a Decision and Order concerning seven 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 $7,338 in principal and $540 in interest.

Marathon Petroleum Company/Columbus Board of Education, et al., 2/9/87, RF250–2660 et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applications were evaluated in accordance

with the procedures set forth in *Marathon Petroleum Co., 14* DOE ¶ 85,269 (1986). The sum of the refunds approved in this Decision is $13,296, representing $12,382 in principal and $914 in interest.

Marathon Petroleum Company/East Coast Oil Corporation, 2/9/87, RF250–1872, RF250–1873

The DOE issued a Decision and Order concerning two Applications for Refund filed by East Coast Oil Corporation (East Coast), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, East Coast elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that East Coast should receive a total refund of $26,447.01, representing $24,945.49, in principal and $1,501.52 in accrued interest.

Marathon Petroleum Company/Remote Services, Inc., 2/12/87, RF250–1872, RF250–1874

The DOE issued a Decision and Order concerning two Applications for Refund filed by Remote Services, Inc. (Remote), a reseller of Marathon covered products. Although the firm's purchase of motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Remote elected to file its refund applications in accordance with procedures for filing claims of less than $50,000 under the 35 percent presumption method outlined in the Marathon decision. Ater examining the evidence and supporting data submitted by the firm, the DOE concluded that Remote should receive a total refund of $53,105.25, representing $49,999.99, in principal and $3,105.26 in accrued interest.

Marathon Petroleum Company/Southwest Georgia Oil Company, 2/13/87, RF250–1875, RF250–1876

The DOE issued a Decision and Order concerning two Applications for Refund filed by Southwest Georgia Oil Company (Southwest), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Southwest elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Southwest should receive a total refund of $13,995.26, representing $13,177.05 in principal and $818.21 in accrued interest.

Mobil Oil Corporation/A. Gordon Tracy, et al., 2/9/87, RF225–7121 et al.

The DOE issued a Decision granting 50 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $31,378, representing $25,854 in principal plus $5,524 in interest.

Mobil Oil Corporation/Anderes Oil Company, et al., 2/10/87, RF225–8702 et al.

The DOE issued a Decision granting 104 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $85,035, representing $70,052 in principal plus $14,983 in interest.

Mobil Oil Corporation/Baldanza Bakery, Inc., et al., 2/10/87, RF225–3639 et al.

The DOE granted 22 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 their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $1,772, representing $1,464 in principal plus $308 in interest.

National Helium Corporation/Wisconsin, RQ3–214
Vickers Energy Corporation/Wisconsin, RQ1–216
Standard Oil Company, (Indiana)/ Wisconsin, RQ21–342
Standard Oil Company (Indiana)/Wisconsin, RQ21–354
Standard Oil Company (Indiana)/Wisconsin, 2/13/87, RQ251–355

The State of Wisconsin filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders estasblishing procedures for the disbursement of funds obtained under consent orders with National Helium Corp., Vickers Energy Corp., and Standard Oil Co. (Indiana). Wisconsin proposed to use $130,000 to expand its oil furnace replacement program for low-income families. In a second program, the state proposed to spend $918,112 to improve energy conservation in rental properties. The state also proposes to set aside $14,000 from Amoco II for use by its federally-recognized Indian tribes. In addition, Wisconsin proposes to disburse an equal share of the $15,000 that it set aside from Amoco I to its 11 tribes in order to fund weatherization programs on the reservations. The OHA concluded that the plans were restitutionary to consumers of petroleum products who were injured by the alleged overcharges. Accordingly, the OHA approved the refund plans.

Standard Oil Company (Indiana)/ Massachusetts, RQ251–343
Northeast Petroleum Industries/ Massachusetts, RQ25–344
National Helium Corporation/ Massachusetts, RQ–345
Perry Gas Processors, Inc./Massachusetts, RQ183–346
Coline Gasoline Corporation/Massachusetts, 2/9/87, RQ251–347

The DOE issued a Decision concerning the second-stage refund plans filed by the Commonwealth of Massachusetts in the Standard Oil Co. (Indiana), Northeast Petroleum Industries, National Helium Corp., Perry Gas Processors, Inc., and Coline Gasoline Corp. refund proceedings. Massachusetts plans to use $200,000 for vehicle height sensors in Boston. These sensors will help prevent low-bridge collisions and thereby conserve gasoline as the result of fewer delays and reduced congestion. The Commonwealth plans to use $289,720 for various enhancements to its rideshare program. This program will decrease fuel consumption among commuters by encouraging carpooling and vanpooling. Accordingly, the DOE approved these two programs. The DOE did not approve Massachusetts' proposal to spend $125,000 for a fleet management program because it would benefit municipal and school district fleets as well as commercial fleets.

Stinnes Interoil Inc./Northville Industries Corp., 2/11/87, RF125–10

Northville Industries Corporation filed an Application for Refund seeking a portion of the escrow account fund remitted by Stinnes Interoil, Inc. Northville's claim was based on its purchases of Stinnes gasoline on the spot market. The decision and order stated that a reseller who only made spot purchases is presumed to have not injured from the purchases, and does not qualify for a refund. However, Northville was afforded an opportunity to rebut the no-injury presumption by demonstrating that the purchases were made for supplying needs, and that the firm sustained losses as a result of the purchases. Northville in this case failed to rebut the no-injury presumption. Accordingly, its refund request was denied.

Union Texas Petroleum Corporation/ Chevron U.S.A., Inc., 2/10/87, RF140–18

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron U.S.A., Inc. (Chevron) in connection with its purchases of Union Texas Petroleum Corporation (UTP) natural gas liquids (NGLs). The NGLs were used by Chevron as raw materials for blending in the manufacture of motor gasoline. In considering Chevron's application, the DOE applied the volumetric and small-claims presumptions applicable to resellers (including refiners) of UTP petroleum products who elect not to make a detailed showing of injury. Under those presumptions, the DOE determined that Chevron was entitled to receive a threshold refund of $5,000 plus a proportionate share of the interest accrued on the UTP consent order funds. The refund approved in the Decision and Order totalled $7,238.

WE-MAC Manufacturing Company Superior's Brand Meats, 2/13/87, RF270–1112, RF270–1114

The Department of Energy (DOE) issued a Decision and Order approving a

manufacturing company and a meat packing company for refunds from the Surface Transportation Escrow, established as the result of the Stripper Well Settlement Agreement. Each company operates a private fleet of trucks and based its claim on purchases of diesel fuel between August 19, 1973 and January 27, 1981. The DOE's Decision approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Dismissals

The following submissions were dismissed:

Company Name	Case No.
American Printers	RF225-6813
Anderson Clayton Foods, Inc	RF270-578, RF270-774, RF270-1542, RF270-1543
Asphaltic Concrete Corporation	RF225-6771
B&B Service	RF225-10287
Barge Transport Co., Inc	RF7-169
Blue Bird Coach Lines, Inc	RF270-1184
Bowden Oil Company	RF204-13
Canton Railroad Company	RF270-1434
Cargill Inc	RF270-1579
Cargo Carriers	RF271-199
Carncut Service Station	RF220-476
Central Soya Co., Inc	RF272-311
Choctaw, Inc	RF225-6840
City of Greenville, South Carolina	RF225-6826
Crabtree Oil Company	RF40-3613
Dairymen, Inc	
David R. Soler	KFA-0073
Dobson, The Mover	RF270-2411
Dover Corp., Elev. Div	RF225-6785
Dyrotech Industries, Inc	RF225-6816
Equitec Properties Company	RF225-6834
Excel Corporation	RF270-1580
Fashion, Inc	RF225-6828
Flav-O-Rich	RF270-2377
Freuhauf Division	RF225-6814
General Electric	RF225-6832
Gospel Teachers Publications, Inc	RF225-5815
Government Accountability Project	KFA-0075
Harry's Conoco	RF220-477
Harvey's Conoco	RF220-478
Hosgland's Transport Service, Inc	RF270-2043
J. J. Wright Oldsmobile, Inc	RF225-6799
John Cirillo	RF40-3643
M.E.A. Inc	RF225-6830
Nalley's Fine Foods	RF225-6836
Oregon Trail Garage	RF220-480
Perry Oil Company	RF225-3611
Pete's Conoco	RF220-479
Pete's Good Gulf	RF40-3454
Philadelphia Newspapers	RF40-3625
Ray Petroleum Company	RF225-9451
Robinson Freight Lines	RF270-1588, RF270-2111
Sagamore Spring Golf Club, Inc	RF225-6767
Security Storage Co., Inc	RF270-2236
Sellers Grain Co., Inc	RF270-2333
Stamford Taxi, Inc	RF270-2129
Star Service & Petroleum Co., Inc	RF112-193, RF203-9
Superiors Fibers, Inc	RF225-239
Taylor's Express, Inc	RF225-6766
The Hodson Corporation	RF225-6819
The Kroger Company	RF225-6829
The Phoenix Electric Company	RF225-6833
The Waggoners Trucking	RF270-1006
Trimble Oil Co., Inc	RF220-475
Turner Towing Co., Inc	RF225-6855
Union Precision Manufacturing	RF225-6848

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.

Dated: April 6, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87-8335 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders; Week of March 2 Through March 6, 1987

During the week of March 2 through March 6, 1987, 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.

Appeals

Institute for Policy Studies, 3/3/87, KFA-0076

The Institute for Policy Studies (IPS) filed an Appeal from a determination issued by the Director of the Program Support Division (Director) of the Office of Military Application for Defense Programs in response to a Request for Information which the IPS had submitted under the Freedom of Information Act. In its Appeal, the IPS challenged the adequacy of the DOE's search for responsive documents. In considering the Appeal, the DOE determined that responsive documents exist and that, therefore, the determination was inadequate. Accordingly, the case was remanded to the Director for a further search and determination.

Stone & Webster, Engineering Corporation, 3/6/87, KFA-0074

Stone & Webster Engineering Corporation (S&W) filed a Freedom of Information Act (FOIA) Appeal from a determination issued to the firm by the Assistant Manager for Administration (Manager) of the Richland Operations Office. In that determination, the Manager withheld documents relating to evaluations of contract proposals by a DOE Source Evaluation Board (SEB). The Manager withheld the documents on the ground that they were exempt from disclosure pursuant to Exemption 5 of the FOIA which applies to predecisional, deliberative intra- or inter-agency communications. He also found that portions of the documents were also exempt from disclosure pursuant to Exemption 4, which shields privileged or confidential commercial or financial information obtained from a person by an agency.

In considering S&W's Appeal, the DOE rejected the firm's assertion that it was entitled to a detailed Vaughn-type index of the withheld documents. However, the DOE found that the Manager's description of the documents was not sufficiently detailed to conform to the requirements of the DOE's FOIA regulations. The DOE performed a *de novo* review of the documents and provided its own detailed description. In addition, the DOE found that certain forms used in the SEB evaluations could be released. However, the DOE determined that the remainder of the documents are exempt from disclosure pursuant to Exemption 5, and that portions of the documents may also be exempt under Exemption 4. Accordingly, the Appeal was granted in part.

Tri-City Herald, 3/5/87, KFA-0077

Tri-City Herald filed an Appeal from a denial by the Assistant Manager for Administration of the Richland Operations Office (Manager) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE determined that pursuant to Exemption 4, the Manager properly withheld contract proposals prior to the award of the contracts.

Remedial Orders

Doram Energy, Inc., Damson Oil Corporation, 3/2/87, HRO-0149

Doram Energy, Inc. and Damson Oil Corporation objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firms on July 6, 1983. In the Proposal Remedial Order, the ERA found that Doran Energy and Damson Oil, its parent corporation, received illegal revenues totalling $282,141.69 as a result of reselling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period March through December 1980. After considering the firms' Statement of Objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Order. An important issue discussed in the Decision and Order was the liability of a parent corporation for the regulatory violations committed by its subsidiary.

Listo Petroleum, Inc., 3/4/87, KRO-0140

Listo Petroleum, Inc. objected to a Proposed Remedial Order issued to it on September 26, 1985 by the Economic Regulatory Administration. In the PRO, the ERA alleged that during the period December 1979 through July 1980 (the audit period), Listo violated the layering regulation, 10 CFR 212.186, by charging prices for crude oil in excess of its purchase price while performing no service or other function traditionally associated with crude oil reselling. In considering Listo's Statement of Objections, the DOE rejected the firm's arguments that the layering regulation was procedurally and substantively invalid and that prior DOE interpretations of the regulation were erroneous. The DOE also determined that Listo did not perform any economically valuable functions in its crude oil resales which would justify a markup. Finally, the DOE rejected Listo's claim that the firm's overcharges should be reduced to exclude taxes it previously paid on the profits of its layered transactions. Accordingly, Listo was directed to remit $7,503,039.35 plus interest to the DOE as restitution for these violations. The DOE discussed the effect of Listo's

bankruptcy on the accrual of interest, and specified that the funds remitted by the firm will be distributed pursuant to Supart V and the DOE's Modified Statement of Restitutionary Policy.

Sherer Oil Company, Inc., Ringer Tri-State Oil Company, Inc., 3/6/87, HRO-0128

Sherer Oil Company, Inc. and Ringer Tri-State Oil Company, Inc. (collectively referred to as the firm) objected to a Proposed Remedial Order which the DOE's Economic Regulatory Administration issued to the firm on January 27, 1983. In the PRO, ERA found that during the period April 1, 1979 through September 30, 1979, the firm sold various grades of motor gasoline and prices in excess of the maximum lawful selling prices permitted pursuant to the reseller-retailer rule set forth at 10 CFR Part 212, Subpart F. In considering the firm's objections to the PRO, the DOE found that most were general objections to the DOE regulations and enforcement program, which had been rejected in a number of other cases. With respect to the firm's specific objections, the DOE found that, despite the firm's general objection to ERA's audit methodology, (i) the firm had failed to assert that the methodology disadvantaged the firm and (ii) the record indicated that there would be no basis for such an incorrect class of purchaser determination with respect to a group of customers purchasing premium gasoline. Accordingly, the PRO was modified to reflect the correct May 15, 1973 selling price for those customers. The DOE therefore concluded that the PRO, with that modification, as well as certain others, should be issued as a final Order.

Requests for Exception

Taylor Oil Company, Inc., 3/5/87, KEE-0100

Taylor Oil Company, Inc. filed an Application for Exception from the requirement that it prepare and file Form EIA-782B, "Resellers'-Retailers' Monthly Petroleum Product Sales Report." In considering the application, the DOE decided that the firm had not demonstrated that the firm's expenditure of two hours each month to complete the form imposed a serious hardship, gross inequity, or unfair distribution of burdens. Accordingly, the Application for Exception was denied.

TOMCO Inc., 3/5/87, KEE-0099

TOMCO Inc. filed an Application for Exception from the requirement that it prepare and file Form EIA-782B, "Resellers'-Retailers' Monthly Petroleum Product Sales Report." In considering the application, the DOE decided that the firm had not demonstrated that the burden that it experienced in completing the form was sufficient to constitute a serious hardship, gross inequity, or unfair distribution of burdens. Accordingly, the Application for Exception was denied.

Waldo Oil Co., 3/6/87, KEE-0104

Waldo Oil Company filed an Application for Exception from the requirement that it submit Form EIA-782B, entitled "Resellers'-Retailers' Monthly Petroleum Product Sales Report." Waldo asserted that data from a company of its small size cannot be useful to the EIA's statistics concerning oil distribution in Wisconsin. Waldo also argued that it is unfair that none of its competitors are required to file the Form. In considering the firm's request, the DOE found that neither Waldo's size, nor the possibility that none of its competitors file the Form, distinguishes Waldo from other survey respondents. Accordingly the DOE denied Waldo's request for relief.

Refund Applications

Byrd Motor Line, Inc., Lyden, Inc., Dietz Motor Lines, Inc., 3/6/87 RF270-1093, RF270-1094, RF270-1096

The DOE issued a Decision and Order approving two "for hire" trucking companies and a holding company which owns two additional "for hire" trucking companies for refunds from the Surface Transporters Escrow. Each of the companies was approved for a refund based on purchases of diesel fuel between August 19, 1973 and January 27, 1981. The DOE approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Gulf Oil Corp., Mangum Oil & Gas Co., Inc., 3/4/87, RF40-3657

The DOE issued a Decision and Order correcting an interest calculation error that was discovered in *Gulf Oil Crop./Mangum Oil & Gas Co.*, 15 DOE ¶ 85,297 (1987). Accordingly, the DOE will remit an additional sum of $760 to Mangum.

Gulf Oil Corp., Moore's Fuel Service, 3/4/87, RF40-3649

The DOE issued a Decision and Order concerning an Amended Application for Refund submitted on behalf of Moore's Fuel Service, a retailer of Gulf middle distillates. Based upon newly acquired purchase documentation, Moore's requested that its refund be augmented by the difference between the amended claim and the refund previously granted to the firm in *Gulf Oil Corp./L.R. Haase Oil Co.*, 15 DOE ¶ 85,265 (1987). Moore's also reaffirmed that it would not have been required to reduce selling prices to its customers to pass through the amount of the refund claimed. The DOE reveiwed the amended filing and determined that Moore's should receive the additioinal amount it requested. The refund approved in this Decision is $10,421 in principal and $2,477 in interest.

La Gloria Oil & Gas Co., Savings Oil Company et al., 3/6/87, RF263-13 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by seven resellers of products covered by a consent order that the agency entered into with La Gloria Oil & Gas Compay. Each of the applicants presented evidence that it purchased refined petroleum products from La Gloria during the consent order period, and claimed refunds at or below the $5,000 small claims threshold for resellers. According to the methodology set forth in *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), each applicant was found to be eligible for a refund from the La Gloria consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved in this Decision totaled $36,822.

Marathon Petroleum Co., Boncosky & Co., et al., 3/3/87, RF250-2419 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed by six 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 attempted demonstration of injury. Accordingly, each applicant was granted a refund of $5,000 in principal under the small claims presumption of injury. The sum of the refund approved in this Decision is $30,000 in principal and $2,358 in interest.

Marathon Petroleum Co., CSC Oil Co., Bowman Oil Co., Duke's Marathon, 3/4/87, RF250-2022, RF250-2023, RF250-2024, RF250-2025

The DOE issued a Decision and Order concerning four Applications for Refund filed by three 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 $3,896 in principal and $306 in interest.

Marathon Petroleum Co., East Coast Oil Co., 3/2/87, RF250-1530, RF250-1531

The DOE issued a Decision and Order concerning two Applications for Refund filed by East Coast Oil Company (East Coast), a reseller of Marathon motor gasoline and distillates. Although the firm's purchases of motor gasoline and distillates from Marathon during the consent order period exceeded the threshold refund level established in Marathon Petroleum Co., East Coast elected to file its refund application in accordance with procedures for filing small claims and based upon the presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that East Coast should receive a refund of $5,000 in principal and $322.68 in accrued interest for a total refund of $5,322.68.

Marathon Petroleum Co./Hamilton Oil Co., 3/3/87, RF250-2347

The DOE issued a Decision and Order concerning an Application for Refund filed by Hamilton Oil Company (Hamilton), a reseller of Marathon covered products. Although the firm's purchases of motor gasoline from Marathon during the consent period exceeded the threshold refund level established in Marathon Petroleum Co., Hamilton elected to file its refund application in accordance with procedures for filing small claims and based upon the presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Hamilton should receive a refund of $7,018.05 in principal and $453.39 in accrued interest for a total refund of $7,471.44.

Mobil Oil Corp./Al's Mobil et al., 3/6/87, FR225-9975 et al.

The DOE issued a Decision and Order granting 36 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $40,728 ($33,552 principal plus $7,176 interest).

Mobil Oil Corp./New York Office of General Services, 3/3/87, RF225-3033

The DOE granted an Application for Refund filed by the New York Office of General Services (OGS) from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. The OGS was an end-user that purchased directly from Mobil and therefore was eligible for a refund equivalent to its full allocable share based on the volumetric methology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refund granted was $27,083.22, representing $22,264.73 in principal plus $4,818.49 in interest.

Oneok, Inc./Chevron U.S.A., Inc. 3/2/87, RF212-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron, U.S.A., Inc., as successor to Gulf Oil Corporation, seeking a portion of the funds remitted by Oneok, Inc. pursuant to a consent order that Oneok entered into with the DOE. Chevron purchased 110,716,129 gallons of natural gas liquid products from Oneok during the consent order period. The DOE found that, for a portion of the NGLPs that Chevron purchased, Chevron was charged prices below the average market price levels. Considering the competitive advantage that Chevron enjoyed from purchases from Oneok, the DOE limited the refund to Chevron to an amount equal to the gallons that Chevron purchased at above market prices multiplied by the per gallon refund rate. The refund granted totals $145,866, representing $122,151 in principal and $23,715 in interest.

Rainbow Disposal Company, Inc., Best Scavenger Service, Inc., 3/6/87, RF270-1101, RF270-1110

The DOE issued a Decision and Order approving two trash removal companies for refunds from the Surface Transporters Escrow. The companies based their refund applications on the petroleum products used in their garbage trucks, including greases, hydraulic oil and motor fuels. In evaluating the grease and hydraulic oil claims, the DOE stated that it generally will follow a two-pronged test to determine if a product is eligible for a Surface Transporter refund. First, the DOE will consider whether substantial amounts of the product were refined from crude oil. Second, the DOE will determine whether the product was used in the company's vehicles for surface transportation. Applying this test, the DOE determined that the companies' claims for greases and hydraulic oil should be approved.

Sid Richardson Carbon and Gasoline Co., and Richardson Products Co./Boyd's, Inc., 3/2/87, RF26-47

The DOE issued a Decision and Order concerning an Application for Refund filed in connection with a consent order fund remitted to the DOE by the Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson). The application was filed by Boyds, Inc., a retailer of Sid Richardson propane. After obtaining satisfactory explanations for several apparent discrepancies between the applicant's schedule of purchases and volume information supplied by Sid Richardson upon which the applicant's schedule was ostensibly based, the DOE determined that Boyd's claim for 1977 exceeded the small claims threshold of 720,000 gallons of annual purchases established in *Sid Richardson Carbon and Gasoline Company*, 10 DOE ¶ 85,056 (1983). Because Boyd's elected to limit its claim for 1977 to the small claims threshold of 720,000 gallons, the firm was not required to demonstrate that it was injured by its purchases from Sid Richardson and was eligible for a refund based on adjusted total purchases of 3,675,789 gallons. The total refund approved in the Decision is $44,664 ($23,124 principal plus $21,540 interest).

Sid Richardson Carbon and Gasoline Co., and Richardson Products Co./Geiger Enterprises 3/4/87, RF26-37

The DOE issued a Decision and Order concerning an Application for Refund filed by Geiger Enterprises, Inc., a purchaser of propane covered by a consent order that the agency entered into with Sid Richardson Carbon & Gasoline Company and Richardson Products Company (Sid Richardson). The applicant requested a full refund on the basis of a schedule of banks of unrecovered increased product costs and a three-step competitive disadvantage showing of injury. The DOE found that the market prices used for comparison by the applicant were inappropriate, and DOE conducted its own competitive disadvantage analysis. Because the analysis did not indicate that the applicant was injured to the extent of 100 percent of its allocable share, Geiger Enterprises was granted a refund on the basis of the propane it purchased from Sid Richardson at above market prices. The refund granted to Geiger was $29,629, representing $15,254 in principal and $14,375 in interest.

Sid Richardson Carbon and Gasoline Co., and Richardson Products Co./Stacyville LP Gas Co., 3/2/87, RF26-42

The DOE issued a Decision and Order approving an Application for Refund filed by Stacyville LP Gas Company (Stacyville), a reseller-retailer of Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson) natural gas liquid products, that purchased the product directly from Sid Richardson. According to the application, Stacyville maintained large positive banks of unrecouped increased product costs for periods throughout the consent order period, indicating that the firm was unable to pass through any of the alleged overcharges. Using a three-step competitive disadvantage methodology, the DOE determined that Stacyville should receive its allocable share of the consent order fund for a portion of its claimed volumes of Richardson purchases occurring during the consent order period when the firm had positive banks. Accordingly, DOE granted to the firm a refund totalling $55, 178 ($28,564 in principal plus $26,614 in interest).

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Atlantic Richfield Co.—RF21-10340, RF40-2635, RF151-1
Caribou Four Corners, Inc.—RF21-10344, RF132-1
Chevron U.S.A. Inc.—RF151-2, RF21-10339, RF98-1, RF99-1, RF100-1, RF101-1, RF102-1, RF103-1, RF130-2
Cities Service Co.—RF21-12362, RF127-1, RF128-1, RF129-1
City of New York—RF6-9
Deaver Grain Co.—RF220-484
Driltol—RF225-6333
Gulf Oil Corp.—RF21-11041, RF136-2, RF137-1, RF138-1
Independent Refining Corp.—RF127-2, RF134-1, RF135-1
International Petroleum Refining and Supply—RF21-10346
Kern Oil & Refining Co.—RF130-1
Koppers Co. Inc.—RF225-6374
Marathon Petroleum Co.—RF21-11043
Martin Oil Marketing, Ltd.—RF278-1
Mid-West Forge Corp.—RF225-6364
Mobil Oil Corp.—HFD-0097, HFH-0097
Monsanto Co.—RF225-6420
Plateau, Inc.—RF21-10345, RF131-1
Walker Manufacturing Co.—RF225-6440
Wallace International Silversmiths—RF225-9921, RF225-9922, RF225-9923

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 6, 1987.

[FR Doc. 87-8336 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3186-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Wool Fiberglass Insulation Manufacturing Industry (EPA ICR #1160). (This is a revision of a currently approved collection.)

Abstract: Wool fiberglass insulation manufacturers must notify EPA of construction; of each modification, startup, shutdown, and malfunction; and of the results of each performance test. They record and maintain (a) data from all tests and the continuous monitoring system, and (b) data on any startup, shutdown, and malfunction in the operation of the affected facility, its controls, and the monitoring systems. They must also report excess emissions of particulate matter semiannually. The States and/or EPA use the data to ensure compliance with the standards, to target inspections, and, when necessary, as evidence in court.

Respondents: Owners or operators of wool fiberglass insulation manufacturing facilities.

Estimated annual burden: 1,196 hours.

Agency PRA Clearance Requests Completed by OMB

EPC ICR #0155, Pesticide Applicator Certification and Training, was extended (OMB #2070-0029; expires 6/30/87).

EPC ICR #0232, Lead Additive Report for Refineries, Importers and Manufacturing Facilities or Sites, was extended (OMB #2060-0066; expires 6/30/87).

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Nicholas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: April 8, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87-8418 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3187-2 EPA Project Number SE 86-01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to U.S. Borax & Chemical Corporation

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on February 20, 1987 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 45 MW cogeneration facility to be located at the existing U.S. Borax Refinery in Boron, California. The permit is subject to certain conditions, including an allowable emission rate as follows:

Pollutant	Emission Limit (lbs/hr, 3-hour average)	
	Gas-firing	Oil-firing
NO_x (the more stringent of).	40 (or 25 ppm a 15% O_2, dry).	84 (or 42 ppm a 15% O_2, dry).
SO_2	0	102
CO	23	30
PM	12	48
HC	6	19

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 include the use of steam or water injection and a Selective Catalytic Reduction (SCR) system on gas turbine for the control of NO_x 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 June 15, 1987.

Dated: April 2, 1987.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 87-8419 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

[SW-FRL 3187-1]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractors, Research Triangle Institute (RTI) and Westat, Inc., information which has been, or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA) in the following surveys.

- National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- National Detailed Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- Solid Waste (Municipal) Landfill Survey;
- Subtitle D Industrial Facilities Telephone Screening Survey; and
- Subtitle D Industrial Facilities Mail Survey.

These firms are assisting EPA in developing information bases for and conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory development. Some of the information may have a claim of business confidentiality.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than April 22, 1987.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH-563), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4670.

SUPPLEMENTARY INFORMATION:

Transfer of Data

The U.S. Environmental Protection Agency is conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements and other analyses for regulatory development in support of the policies and programs established for solid and hazardous waste management under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), including subsequent amendments through 1984.

RTI, under EPA Contract No. 68–01–7350, and Westat, under EPA Contract No. 68–01–7359, will assist the Office of Solid Waste in developing information bases for and conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory development.

The information collected in the surveys was previously managed by ICF and its subcontractors: RTI; Westat; Development Planning and Research Associates (DPRA); Versar, Inc.; Pope-Reid Associates, Inc. (PRA); Industrial Economics, Inc. (IEC); Buc & Associates, Inc. (BAI); and Policy, Planning & Evaluation, Inc. (PP&E) under EPA Contract No. 68–01–7290. Some of the information being transferred may have been claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that RTI and Westat require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contracts. EPA is issuing this notice to inform all submitters of CBI that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, RTI and Westat will return all such materials to EPA.

RTI and Westat have been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contract Requirements Manual.

Dated: March 6, 1987.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 87–8420 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100037; FRL–3183–8]

KBN Engineering and Applied Science, Inc. and Environmental Science and Engineering, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

KBN Engineering and Applied Science, Inc. (KBN) and its subcontractor, Environmental Science and Engineering, Inc. (ESE) have been awarded a contract to perform work for EPA's Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to KBN and ESE as authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2) respectively. This action will enable KBN and ESE to fulfill the obligations of the contract and serves to notify affected persons.

DATE: KBN and ESE will be given access to this information no sooner than April 20, 1987.

FOR FURTHER INFORMATION CONTACT: By mail:

William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68–02–4278, KBN and ESE will provide scientific reviews and evaluations to OPP, on the ecotoxicity data of pesticides in connection with Registration Standards, Registration Actions, Special Reviews, and Special Assignments. The contractor and sub-contractor will review and evaluate chemical data submitted to OPP under FIFRA, which may include any and all of the types of studies identified in 40 CFR Part 158.

The Office of Pesticide Programs has determined that access by KBN and ESE to information on all pesticide chemicals is necessary to the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with KBN and ESE prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor and subcontractor sign an agreement to protect the information from unauthorized release. In addition, KBN and ESE are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and it's subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in OPP. All information supplied to KBN and ESE by EPA for use in connection with this contract will be returned to EPA when KBN and ESE have completed their work.

Dated: April 2, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87–7837 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100036; FRL–3183–7]

Integrated Laboratory Systems; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

and the Federal Food, Drug, and Cosmetic Act (FFDCA).

Integrated Laboratory Systems (ILS) has been awarded a contract to perform work for EPA's Office of Pesticides and Toxic Substances, Office of Compliance Monitoring and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ILS as authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2) respectively. This action will enable ILS to fulfill the obligations of the contract and serves to notify affected persons.

DATE: ILS will be given access to this information no sooner than April 20, 1987.

FOR FURTHER INFORMATION CONTACT:
By mail:
William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-02-4276, ILS will conduct inspections of toxicity testing facilities to assure that the studies of interest to the Agency are conducted in compliance with the Good Laboratory Practice regulations of the EPA, and conduct audits of studies for the Agency in support of registration or marketing petitions under FIFRA. This contract involves no subcontractors.

The Office of Pesticide Programs has determined that access by ILS to information on all pesticide chemicals is necessary to the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with ILS prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, ILS is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Compliance Monitoring. All information supplied to ILS by EPA for use in connection with this contract will be returned to EPA when ILS has completed its work.

Dated: April 1, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-7836 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

[PF-471; FRL-3185-1]

Pesticide Tolerance Petition; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Correction.

SUMMARY: This document corrects FR Doc. No. 86-25579, published in the Federal Register of November 19, 1986, which announced the filing of pesticide petition (PP) 6F3454 by the FMC Corp., proposing tolerances for residues of the insecticide (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate. This Document adds a raw agricultural commodity that was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT:
George LaRocca, Product Manager (PM) 15, Registration Division (TS-757C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: FMC Corp. filed a pesticide petition (PP 6F3454) proposing tolerances for residues of the insecticide (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate. Included in the petition was a proposed tolerance for walnut meats at 0.05 parts per million, which was inadvertently omitted by EPA in developing the notice of filing. Accordingly, the following correction is made to FR Doc. 86-25579 appearing on page 41828 in the issue of November 19, 1986. In the second column, the entry for item 1. is revised to read as follows:

1. *PP 6F3454:* Peaches at 2.0 parts per million (ppm), pears and strawberries at 1.0 ppm, pecans and walnuts at 0.05 ppm.

Authority: 21 U.S.C. 346a.

Dated: April 3, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-8162 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

[FR-3186-8]

Concept Paper For the Implementation of Title II and VI of the Water Quality Act of 1987; Availability

SUMMARY: The Water Quality Act of 1987, Pub. L. 100-4, which amended the Clean Water Act of 1972, became law on February 5, 1987. The existing Title II, which authorizes the Agency to award grants to municipalities for construction of wastewater treatment facilities, is amended in several respects. The 1987 Amendments create a new Title VI, authorizing the Agency to award grants for the capitalization of State Water Pollution Control Revolving Funds. The Concept Paper presents the Agency's interpretation of the 1987 Amendments, and its approach to implementation of the amended construction grants program and the new capitalization grant program.

Interested parties are encouraged to obtain the Concept Paper and to submit comments.

DATES: This Concept is available to the public from April 8, 1987 through the end of the comment period on May 20, 1987.

ADDRESS: Concept Paper requests and comments should be sent to: Geoffrey Cooper, Planning and Analysis Division, Office of Municipal Pollution Control (WH-546), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CALL: (202) 382-7256.

Dated: April 9, 1987.

Michael J. Quigley,

Acting Assistant Administrator for Water.

[FR Doc. 87-8423 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-788-DR]

Major Disaster and Related Determinations; Maine

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine, (FEMA-788-DR), dated April 9, 1987, and related determinations.

DATED: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616..

Notice: Notice is hereby given that, in a letter of April 9, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from severe storms and flooding beginning on or about March 30, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby give that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster and are designated eligible as follows:

Androscoggin, Franklin, Kennebec, Oxford, Penobscot, Piscataquis, and Somerset Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Deputy Director.

[FR Doc. 87-8389 Filed 4-14-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011091.

Title: Galveston Terminal Agreement.

Parties:

Board of Trustees of the Galveston Wharves (Port)

Lykes Bros. Steamship Co., Inc., (Lykes)

Synopsis: The proposed agreement would permit the Port to provide preferential berthing to Lykes and would establish levels of wharfage and incentive revenues to be paid. The agreement would have a five year term. The parties have requested a shortened review period.

Agreement No.: 224-011092.

Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (Port)

ITO Corporation of Baltimore (ITO)

Synopsis: The proposed agreement would permit ITO to lease 85.1 acres at the Port's South Locust Point Marine Terminal for an initial period of five years with a renewal option for an additional five year term. The parties have requested a shortened review period.

Dated April 10, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-8437 Filed 4-14-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BankAmerica Corp.; Proposal To Engage in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) 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 engage in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the office of the Board of Governors not later than May 7, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation.* San Francisco, California; to engage *de novo*, directly or indirectly through one or more of its subsidiaries in the issuance and sale throughout the United States and abroad of general purpose variably denominated payment instruments with maximum face values of $10,000. This activity has been approved by Board

Order as permissible for bank holding companies. 70 Federal Reserve Bulletin 364 (1984).

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8373 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

Equimark Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Equimanagement, Inc., Pittsburgh, Pennsylvania, in appraising of real estate and tangible and intangible personal property, including securities, for its clients pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Financial Services, Inc.*, Arlington Heights, Illinois; to engage *de novo* through its subsidiary, Arlington Mortgage Company, Arlington Heights, Illinois, in making, acquiring and servicing loans or other extensions of credit for the company's account and for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by May 6, 1987.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *San Miquel Investment Company*, Norwood, Colorado; to engage *de novo* in lending as would be conducted by a consumer and commercial finance or mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by May 3, 1987.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Schreiner Bancshares, Inc.*, Kerrville, Texas; to engage *de novo* through its subsidiary, Schreiner Financial Corporation, Kerrville, Texas, in making, acquiring and/or servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Texas. Comments on this application must be received by April 29, 1987.

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8372 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

Jefferson Banking Group Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 7, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Jefferson Banking Group Inc.*, Watertown, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Jefferson National Bank, Lafargeville, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Americana Bancorporation of Clara City, Inc.*, Edina, Minnesota; to merge with Americana Bancorporation of Alden, Inc., Edina, Minnesota, and thereby indirectly acquire Americana State Bank of Alden, Alden, Minnesota; Americana Bancorporation of Danube, Inc., Edina, Minnesota, and thereby indirectly acquire Americana State Bank of Danube, Danube, Minnesota; and Americana Bancorporation of Edina, Inc., Edina, Minnesota, and thereby indirectly acquire Americana State Bank of Edina, Edina, Minnesota.

In addition, Applicant has also applied to acquire 100 percent of the voting shares of Americana State Bank of Hayward, Hayward, Minnesota.

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8375 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

W.J. Wright et al., Change in Bank Control Notice, Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the officers of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 30, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *W.J. Wright and R.G. Harper* as Trustees for the Article Fifth Will of Sue D. Hauberg for the benefit of Catherine H. Sweeney; to acquire 10.56 percent of the voting shares of Financial Services Corporation of the Midwest, Rock Island, Illinois, and thereby indirectly acquire The Rock Island Bank, Rock Island, Illinois.

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8374 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Application To Engage de Novo in 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 225.21(a) of Regulation Y (12 CFR 25.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 1987.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, DC 20551:

1. *Citicorp*, New York, New York, indirectly through its subsidiary, Citicorp Savings, a Federal Savings and Loan Association, Oakland, California, to purchase certain assets and assume certain liabilities of 50 branch offices of Sears Savings Bank, Glendale, California, a state-chartered savings and loan association. This application may be inspected at the Federal Reserve Banks of New York and San Francisco.

Board of Governors of the Federal Reserve System, April 10, 1087.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8487 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

First Community Corp., 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 May 7, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Community Corporation*, Woodstock, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community First Bank, Woodstock, Georgia, a *de nova* Bank.

2. *Three Rivers Bancshares, Inc.*, Milan, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Milan, Milan, Georgia.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Landmark Bancshares Corporation*, Clayton, Missouri; to merge with CCNB Bancshares Corporation, Ozark, Missouri, and thereby indirectly acquire Christian County National Bank, Ozark, Missouri.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Lockwood Banc Group, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lockwood National Bank of Houston, Houston, Texas.

Board of Governors of the Federal Reserve System, April 10, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8488 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

Illini Community Bancorp, Inc.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini & Associates, Inc., Springfield, Illinois, in providing management consulting advice, auditing, accounting and tax services to nonaffiliated and nonbank depository organizations pursuant to § 225.25(b)(11) of the Board's Regulation Y.

2. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini Community Mortgage Co., Springfield, Illinois, in the origination of VA, FHA and conventional mortgage loans for resale to the secondary market appraisal services; servicing of loans originated and sold; warehouse financing of mortgage loans and other related services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 10, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8486 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., April 29, 1987.

Place: Conference Room 5141-A, General Services Administration Building, 18th and F Streets, NW., Washington, DC 20405.

Status: Open.

Matters to be considered: Approval of minutes of January 23, 1987, meeting; Activity update by the Executive Director, Federal Retirement Thrift Investment Board; Distribution of booklets, election forms and other materials; Participation in the Thrift Savings Plan by employees in a non-pay status; Participation in the Common Stock Index Fund and the Fixed Income Fund by Civil Service Retirement System employees, Securities disclosure policy and the applicability of banking and securities sales laws and regulations to the Thrift Saving Plan; Consultation with the Council prior to issuance of proposed regulations; and other business.

Any interested person may attend, appear before, or file statements with the Council. For Further information contact John J. O'Meara on (202) 653-2573.

Dated: April 13, 1987.

Francis X. CAvanaugh,

Executive Director.

[FR Doc. 87-8619 Filed 4-14-87; 8:45 am]

BILLING CODE 6820-SB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1987 Through September 30, 1988

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This notice announces the "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Title XIX of the Social Security Act (the Act) exists in each jurisdiction, title IV-A in all jurisdictions except American Samoa and the Northern Mariana Islands, titles I, X, and XIV operate only in Guam and the Virgin Islands, while title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Section 1101(a)(8)(B) of the Act, as revised by section 9528 of Pub. L. 99-272, requires the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentage to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1987 and ending September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Emmett Dye, Office of Family Assistance, Family Support

Administration, Room B320–H, Trans Point Building, 2100 2nd Street SW., Washington, DC 20201, Telephone (202) 245–2040.

(Catalog of Federal Domestic Assistance Program Nos. 13.808—Assistance Payments—Maintenance Assistance (State Aid); 13.714—Medical Assistance Program)

Dated: April 9, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1987–SEPTEMBER 30, 1988 (FISCAL YEAR 1988)

State	Federal percentages	Federal medical assistance percentages
Alabama	65.00	73.29
Alaska	50.00	50.00
American Samoa	50.00	50.00
Arizona	57.91	62.12
Arkansas	65.00	74.21
California	50.00	50.00
Colorado	50.00	50.00
Connecticut	50.00	50.00
Delaware	50.00	51.90
District of Columbia	50.00	50.00
Florida	50.44	55.39
Georgia	59.83	63.84
Guam	50.00	*50.00
Hawaii	50.00	53.71
Idaho	65.00	70.47
Illinois	50.00	50.00
Indiana	59.68	63.71
Iowa	58.61	62.75
Kansas	50.22	55.20
Kentucky	65.00	72.27
Louisiana	64.73	68.26
Maine	63.42	67.08
Maryland	50.00	50.00
Massachusetts	50.00	50.00
Michigan	51.64	56.48
Minnesota	50.00	53.98
Mississippi	65.00	79.65
Missouri	54.74	59.27
Montana	65.00	69.40
Nebraska	55.25	59.73
Nevada	50.00	50.25
New Hampshire	50.00	50.00
New Jersey	50.00	50.00
New Mexico	65.00	71.52
New York	50.00	50.00
North Carolina	65.00	68.68
North Dakota	60.96	64.87
Northern Mariana Islands	50.00	*50.00
Ohio	54.55	59.10
Oklahoma	59.25	63.33
Oregon	57.90	62.11
Pennsylvania	52.61	57.35
Puerto Rico	50.00	*50.00
Rhode Island	50.00	54.85
South Carolina	65.00	73.49
South Dakota	65.00	70.43
Tennessee	65.00	70.64
Texas	52.13	56.91
Utah	65.00	73.73
Vermont	62.48	66.23
Virgin Islands	50.00	*50.00
Virginia	50.00	51.34
Washington	50.00	53.21
West Virginia	65.00	74.84
Wisconsin	54.42	58.96
Wyoming	53.28	57.96

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR. Doc. 87–8444 Filed 4–14–87; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. May 19, 8:30 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectivness of marketed and investigational prescription drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearings. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) Subcommittee report on 20 percent lidocaine; (2) intravenous dosage of versed (midazolam, Roche) for conscious sedation—a followup; and (3) general background on package inserts.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. May 28 and 29, 9 a.m., Auditorium of the Uniformed Services University of the Health Sciences, 4301 Jones Bridge Rd., Bethesda, MD.

Type of meeting and contact person. Open public hearing, May 28, 9 a.m., to 10 a.m., unless public participation does not last that long; open committee discussion, May 28, 10 a.m. to 3 p.m.; May 29, 9 a.m. to 5 p.m.; John C. Standaert, Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. On May 28, the committee will discuss pinacidil, NDA 19–456, (pindac, Eli Lilly & Co.) for hypertension. On May 29, the committee will discuss biological product license applications for three intravenous products for use in the treatment of acute myocardial infarction: (1) Streptokinase (streptase, Behringwerke AG/Hoechst-Roussel); (2) streptokinase (kabikinase, KabiVitrum AB); and (3) tissue plasminogen activator (activase, Genentech).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative

proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the Committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 8, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–8353 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

Health Professional Organizations' Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of health professional organizations to be chaired by Frank E. Young, Commissioner of Food and Drugs. The agenda will include discussions on Action Plans I and II, an update on acquired immunodeficiency syndrome (AIDS), anabolic steroids, Women's Health Initiative, and the Physician Recruitment Program.

DATE: The meeting will be held on April 27, from 1 p.m. to 3 p.m.

ADDRESS: The meeting will be held in Conference Rm. 703A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

Dated: April 8, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–8354 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

Garver Feed & Supply Co., Inc.; Type C Swine Feed, Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Garver Feed & Supply Co, Inc. The NADA provides for use of a Type A article containing 0.8-gram-per-pound tylosin for making Type C swine feeds. The firm requested the withdrawal of approval.

EFFECTIVE DATE: April 27, 1987.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3184.

SUPPLEMENTARY INFORMATION: Garver Feed & Supply Co., Inc., P.O. Box 7756, Madison, WI 53707, is sponsor of NADA 119–145. The NADA provides for use of a Type A article containing 0.8-gram-per-pound of tylosin (as tylosin phosphate) for making Type C swine feeds for use as in 21 CFR 558.625(f)(1)(vi)(*a*). The NADA was originally approved June 24, 1980 (45 FR 42262).

By letter dated November 18, 1986, the sponsor requested the withdrawal of approval because the product was not being manufactured and it no longer requires an NADA for manufacture.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with §514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 119–145 and all supplements thereto is hereby withdrawn, effective April 27, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect this approval and is removing the firm from the list of sponsors of approved NADA's

Dated: April 8, 1987

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87–8363 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–75–2024]

Memorandum of Understanding Between the Ministry of Agriculture of the Republic of France and the Food and Drug Administration

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Ministry of Agriculture, France, and FDA, U.S. Department of Health and Human Services. This MOU describes the mutual goals of the Ministry of Agriculture of the Republic of France and FDA to establish certification requirements for the caseins, caseinates, and mixtures thereof exported from France to the United States and to minimize the need for extensive FDA audit sampling of these certified products.

DATE: This agreement became effective January 15, 1987.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal**

Register, the agency is publishing this memorandum of understanding.

Dated: April 8, 1987.

John M. Taylor,

Associated Commissioner For Regulatory Affairs.

Memorandum of Understanding Between the Food and Drug Administration, DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA, and the Ministry of Agriculture of the Republic of France, Covering Caseins, Caseinates, and Mixtures Thereof, Exported to the United States of America

I. Purpose

The mutual goals of the Food and Drug Administration (FDA) and the Ministry of Agriculture of the Republic of France in entering into this agreement are to:

1. Establish certification requirements for the caseins, caseinates, and mixtures thereof exported from France to the United States to assure that contaminated caseins, caseinates, and mixtures thereof will not be imported into the United States.

2. Minimize the need for extensive FDA audit sampling of these certified products from France.

This agreement supersedes the Memorandum of Understanding between FDA and the Ministry of Agriculture of the Republic of France that became effective on October 15, 1974.

II. Definitions

For the purposes of this agreement, both parties agree to the following definitions:

Lot: A lot is a quantity of caseins, caseinates, or mixtures thereof packaged by one manufacturer during a definite period of time not exceeding 1 day. The manufacturing process, including milling and packaging, is performed by using a perfectly identified processing line. Caseins or caseinates intended for export to the United States are packaged, after milling, in identical containers identified by a unique code or mark traceable to the manufacturer.

Salmonella-negative: The absence of *Salmonella* in 30 samples, each of 25 grams, that have been taken from the same lot of product and tested individually, or composited, using procedures contained in the current edition of the "Bacteriological Analytical Manual."

Phosphatase-negative: The absence of phosphatase activity in 30 samples, each of 25 grams, that have been taken from the same lot of product and tested using the method contained in the current edition of the "Official Methods of Analysis."

III. Substance of Agreement

A. The Direction de la Qualité, Service Vétérinaire d'Hygiène Alimentaire, Ministry of Agriculture

The Direction de la Qualité, Service Vétérinaire d'Hygiène Alimentaire (SVHA) of the Ministry of Agriculture of the Republic of France, is the agency of the French government responsible for inspecting those caseins, caseinates, and mixtures thereof that are intended for export. Such inspection is necessary for consumer protection. To fulfill its responsibilities under this agreement, SVHA will direct its activities to ensure that caseins, caseinates, and mixtures thereof that are intended for export to the United States are fit for human consumption in that they comply with the requirements of the Food, Drug, and Cosmetic Act of the United States and of this agreement. SVHA will inspect and analyze samples of these caseins, caseinates, and mixtures thereof to ensure that they comply with these requirements.

To discharge its responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill its commitment under this agreement, SVHA will:

1. Inspect and analyze each lot of caseins, caseinates, and mixtures thereof produced in France for export to the United States to assure that it is *Salmonella*-negative and phosphatase-negative, based on the testing of 30 samples of 25-gram units taken from bags of caseins immediately before closing, as determined by the methods cited in Section V. "Analytical Methodology."

2. Issue an export certificate only for those lots that are *Salmonella*-negative and phosphatase-negative.

3. Require that all containers of lots of caseins, caseinates, and mixtures thereof that are to be exported to the United States be certified as complying with the provisions of this agreement, and identified by a lot number and marked "FOR HUMAN USE ONLY; NOT TO BE USED FOR ANIMAL FEED."

4. Require that all of the information that is required by the Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act of the United States is included on the packaging of individual products.

5. Include the following information on the export certificate for each lot of caseins, caseinates, and mixtures thereof exported to the United States:

a. Lot identification, including name and address of manufacturer;

b. Number and size of containers in the lot;

c. Analytical results for *Salmonella* and phosphatase activity;

d. Date of the certificate; and

e. Name and stamp or seal of authorizing official.

6. Provide the exporter of caseins, caseinates, and mixtures thereof with the validated export certificate. This certificate and the packing list, which indicates those lots that are physically present in each containerized cargo unit, are to be attached to the shipping manifest.

7. Furnish FDA with a copy of the current French regulations and the procedures used to ensure that the caseins, caseinates, and mixtures thereof are in compliance with those regulations and with the Food, Drug, and Cosmetic Act of the United States.

8. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure that the caseins, caseinates, and mixtures thereof that are produced are fit for human consumption, as discussed in III. A. of this agreement.

9. Furnish FDA with a list of the names of those officials who will sign the certificates issued in accordance with this agreement.

B. The Food and Drug Administration

FDA is charged with the enforcement of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes of the United States. FDA directs its activities toward the protection of the public health in the United States by ensuring that foods are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure compliance with these statutes. FDA makes a concerted effort to ensure that foods entering the United States meet the same standards as domestic products. To discharge these responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill this agreement, FDA will:

1. Audit samples of caseins, caseinates, and mixtures thereof certified by SVHA under this agreement to ensure that the products exported from the Republic of France comply with the requirements of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes of the United States.

2. Share any information obtained through its audit sampling with SVHA, which includes:

a. Providing prompt notification of the detention of any casein products covered by this agreement.

b. Explaining the reasons for the detention of any lot of certified products.

c. Providing copies of the laboratory worksheets developed in determining the reasons for detention.

d. Providing information regarding the serotype of any detected *Salmonella*, when these results are available.

e. Supplying a reserve sample of any lots determined to be *Salmonella*-positive when available and requested by SVHA or the Embassy of France.

f. Providing notification of changes in applicable analytical procedures.

g. Providing information on modifications of the statutes and regulations that affect the certified products.

3. Share expertise and provide assistance to SVHA when necessary.

IV. Sample Collection

The same subsamples will be used to determine both the presence, if any, of *Salmonella* and the level of phosphatase activity.

Thirty samples of caseins, caseinates, or mixtures thereof, each sample consisting of approximately 25 grams, will be collected in accordance with the applicable portions of the current edition of the "Bacteriological Analytical Manual."

V. Analytical Methodology

Compliance with the established criteria for *Salmonella* and phosphatase will be determined according to the methods contained in the current editions of "Bacteriological Analytical Manual" for

Salmonella and "Official Methods of Analysis" for phosphatase.

These publications are available from: Association of Official Analytical Chemists, 1111 North 19th St., Department 55, Arlington, VA 22209.

VI. Participating Parties

A. The Direction de la Qualité, Service Vétérinaire d'Hygiène Alimentaire, Ministry of Agriculture, 175 rue du Chevaleret, 75646, Paris Cedex 13, France.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

VII. Liaison Officers

A. For SVHA: Agricultural Attaché, (Currently Mr. Ralph Ichter), Embassy of France, 4101 Reservoir Rd. NW., Washington, DC 20007–2173, Telephone: 202–944–6360; Telex 248320 FRCC UR.

B. For FDA: Director, Division of Regulatory Guidance (HFF–310), (Currently Howard N. Pippin), 200 C. St. SE., Washington, DC 20204, Telephone: 202–485–1186; Telex 197623 PHS PKLN.

VIII. Administration Procedures

The parties shall mutually agree on the ways and means of giving instructions and guidance for the practical implementation and application of this agreement.

IX. Period of Agreement

This agreement will become effective upon acceptance by both parties and will continue indefinitely. It may be revised by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Approved and accepted for the Direction de la Qualité, Service Vétérinaire, D'Hygiène Alimentaire, Ministry of Agriculture of the Republic of France.

By: M. Gilbert Jolivet.
Title: Directeur de la Qualité.
Date: 10 Septembre 1986.

Approved and accepted for the Food and Drug Administration of the United States of America.

By: John M. Taylor.
Title: Associate Commissioner for Regulatory Affairs.
Date: January 15, 1987.

[FR Doc. 87–8366 Filed 4–14–87; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 85P–0384]

Canned Spinach Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to The Larsen Co. and Continental Can Co., Inc., to market test experimental packs of canned spinach containing added zinc chloride. This action will allow the permit holders to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identity for canned spinach.

DATE: The new expiration date of the permit will be either the effective date of the final rule for any proposal to amend the standard of identity for canned spinach which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to The Larsen Co., 520 North Broadway, P.O. Box 19027, Green Bay, WI 54307–9027, and Continental Can Co., Inc., 800 Connecticut Ave., P.O. Box 5410, Norwalk, CT 06856, to market test canned spinach containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to The Larsen Co. and Continental Can Co., Inc., was published in the **Federal Register** of September 13, 1985 (50 FR 37437).

The Larsen Co. and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned spinach proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 35,000 cases containing twenty-four 8-ounce (211 X 304) cans each, 230,000 cases containing twenty-four 12-ounce (307 X 306) cans each, 35,000 cases containing twenty-four 16-ounce (303 X 406) cans each, and 100,000 cases containing six No. 10 (603 X 700) cans each of the test product. The test product will be distributed in the continental United States.

The Continental Can Co., Inc., in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.200 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to The Larsen Co. and Continental Can Co., Inc., including the labeling requirements and the amounts of tests product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Chemistry and Technology (HFF–411), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned spinach which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: April 27, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–8365 Filed 4–14–87; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 86N–0500]

Support of Scientific Conferences; Availability of Grants; Applications Process

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the anticipated availability of funds for awarding a very limited number of grants to provide general support for domestic or international scientific conferences held in the United States and Canada. These conferences must relate directly to FDA's mission and funding priorities. FDA views this support of scientific conferences as an ongoing program and may award a limited number of grants each fiscal year which range from $2,000 to $15,000 in direct costs only per project.

DATES: Before submitting an application, prospective applicants should contact FDA to inquire about the agency's interest in the proposed conference. Applications will be received and

reviewed quarterly during each fiscal year as follows:

Receipt dates	Review dates	Earliest beginning dates
October 15	November 15	December 15.
January 15	February 15	March 15.
April 15	May 15	June 15.
July 15	August 15	September 15.

Applications received after the quarterly deadline date above will be held for the next review cycle or returned to the applicant, if time is not sufficient for FDA to conduct a review prior to the scheduled date of the proposed conference. All applications should be submitted to FDA as early as possible.

ADDRESS: Applications regarding the business management aspects of the program should be submitted to, and application kits are available from, Olia M. Hopkins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park 3–20, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170. Applicants may contact the appropriate FDA Center Liaison Coordinator below to determine FDA's interest in the proposed scientific conference.

FOR FURTHER INFORMATION CONTACT:

Center for Devices and Radiological Health: William Beheler, Director, Program Planning and Evaluation (HFZ–30), 5600 Fishers Lane, Rockville, MD 20857, 301–443–2797.

Center for Drugs and Biologics: Hamilton Brown, Chief, Extramural Programs Branch (HFN–44), Office of Drugs,

or

Nickolas Pollok, Assistance Program Manager (HFN–44), Office of Biologics, Rm. 13B–35, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–6788.

Center for Food Safety and Applied Nutrition: Robert G. Coon, Chief, Extramural Science Advisory Staff (HFF–9), Rm. 6002, Federal Bldg. 8, 200 C St. SW., Washington, DC 20204.

Center for Veterinary Medicine: David Batson, Special Assistant to the Associate Director for Research (HFV–500), Rm. 8–89, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–6510.

Office of the Commissioner, Donald J. Sauer, Executive Officer (HFA–4), Rm. 14–82, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–3206,

or

Mary Ann Danello, Special Assistant to the Commissioner for Science (HF–5), Rm. 14–90, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–4650.

SUPPLEMENTARY INFORMATION: FDA will support scientific conference grants covered by this notice under Title XVII of the Public Health Service Act (42 U.S.C. 300u—300u–5) or the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) (42 U.S.C. 263b–n). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 13.103. Applications submitted under this program are not subject to the requirements of E.O. 12372.

I. Background and Policy

FDA recognizes the value of supporting scientific meetings and conferences designed to coordinate, exchange, and disseminate information, when their objectives are clearly within the scope of the agency's scientific programs. FDA's policy is to participate with other scientific organizations to support meetings, where parcticable, rather than to provide the sole support. In view of the diversity of interests of the various FDA centers and in order to provide maximum flexibility, FDA will not set rigid requirements about the type of scientific meetings and conferences to be supported. Before submitting applications, prospective applicants are urged to contact one of FDA's Center Liaison Coordinators listed above to determine if the proposed scientific conference is clearly consistent with the Center's interest, mission, and priorities.

Grant funds may be awarded to provide modest general support of domestic or international scientific conferences held in the United States or Canada. Funds may also be awarded to support part of the travel for individuals selected by the grantee to attend the meeting.

Grant funds may not be used to provide general support for international scientific conferences held outside the United States or Canada; however, grant funds may be awarded to provide limited support to certain aspects only of an international scientific conference held outside the Untied States or Canada (for example, a selected symposium, panel, or workshop, including the cost of planning and the cost of travel of U.S. participants in that particular segment of the scientific conference). Any Public Health Service foreign travel restrictions that are in effect at the time of the award must be followed, such as:

1. Limitations or restrictions on countries to which travel will be supported; or

2. Budgetary or other limitations on availability of funds for foreign travel.

II. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant award. The policies governing the administration of research grants are applicable to grants in support of scientific conferences.

B. Eligibility

These grants are available to any U.S. institution eligible to receive grants from PHS agencies, including scientific or professional societies. In the case of an international conference, the U.S. representative organization of an established international scientific or professional society is the eligible grantee. In exceptional cases, where there is no U.S. representative organization, grants to support a specific aspect of an international conference may be awarded directly to a foreign institution or international organization with the approval of the PHS agency head or his or her designee. An individual is not eligible to reveive a grant in support of a conference.

C. Length of Support

The length of support will usually be 1 year.

D. Funding plan

The number of grants funded will depend on the quality of the applications, whether they directly relate to FDA's mission and priorities, and the availability of the agency's funds.

III. Review Procedures and Criteria

A. Review Method

All applications responding to this announcement will be reviewed and evaluated for their scientific and technical merit by a single review committee composed of government personnel.

B. Review Criteria

Applications must contain sufficient information to permit review. Those that are determined not to include sufficient information wil be returned to the applicant. Applications will be reviewed according to the following criteria:

1. The content/subject matter and how current and appropriate it is for FDA's mission.

2. The conference plan and how thorough, reasonable, and appropriate it is for the intended audience.

3. The experience, training, and conpetence of the principal investigator/director and support staff.

4. The adequacy of the facilities.

5. The reasonableness of the proposed budget given the total conference plan, program, speakers, travel, and facilities.

IV. Submission Requirements

The original and six copies of the completed application should be delivered to State Contracts and Assistance Agreement Branch (address above).

Note.—Do not mail the application to the National Institutes of Health.

Label the outside of the mailing envelope and item 2 of the application face page "Request for Conference Grant."

V. Format for Application

Submit applications on Form 398, "Public Health Service Grant Application," and include the following:

1. Title; which has the term scientific "conference," "symposium," "workshop," or other similar description to assist in the identification of the request;
2. Location of conference;
3. Expected registration;
4. Dates of conference (inclusive);
5. Conference format and projected agenda, including list of principal areas or topics to be addressed;
6. Physical facilities required for the conduct of the meeting (e.g., sumultaneous translation facilities);
7. Justification of the conference, including the problems it intends to clarify and any developments it may stimulate;
8. Brief biographical sketches of individuals responsible for planning the conference;
9. Information about all related conferences held on this subject during the last 3 yars (if known); and
10. Details of proposed per diem/subsistence rates and transportation costs.

VI. Reporting Requirements

A financial status report and a progress report will be required within 90 days after the end of the budget/project period.

The collection of information requested in PHS Form 398 and its instructions have been submitted by PHS to the Office of Management and Budget (OMB), were approved, and were assigned OMB control number 0925–0001.

Dated: March 2, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–8364 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Fertility and Maternal Health Drugs Advisory Committee scheduled for April 16 and 17, 1987. The meeting was announced by notice in the **Federal Register** of March 25, 1987 (52 FR 9542).

FOR FURTHER INFORMATION CONTACT: Philip A. Corfman, Center for Drugs and Biologics (HFN–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

Dated: April 8, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–8367 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–87–836; FR–2341]

Designating Attesting Officers

AGENCY: Department of Housing and Urban Development, Office of the Secretary.

ACTION: Delegation of authority to cause department seal to be affixed and to authenticate copies of documents.

SUMMARY: This delegation of authority revises and updates the designation of attesting officers to authenticate documents.

EFFECTIVE DATE: April 15, 1987.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Room 10254, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410 (202) 755–7137 (This is not a toll-free number).

Section A—Authority Delegated

Each of the following employees of the Department of Housing and Urban Development is designated as Attesting Officer and is authorized to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department:

1. Assistant Secretary for Housing—Federal Housing Commissioner
2. Assistant Secretary for Legislation and Congressional Relations
3. Assistant Secretary for Administration
4. Assistant Secretary for Public and Indian Housing
5. Assistant Secretary for Policy Development and Research
6. Assistant Secretary for Community Planning and Development
7. Assistant Secretary for Fair Housing and Equal Opportunity
8. President, Government National Mortgage Association
9. Inspector General
10. General Counsel
11. Associate General Counsel for Litigation
12. Manager, Solar Energy and Energy Conservation Bank
13. Each Regional Administrator
14. Each Field Office Manager
15. The Secretary to each position listed above
16. Assistant General Counsel for Regulations and the Rules Docket Clerk
17. In each Field Office, each Legal Clerk and Legal Technician
18. Director, Mortgage Insurance Accounting and Servicing, Office of Finance and Accounting

Section B—Authority to Redelegate

The authority delegated in Section A may be redelegated to any employee of the Department.

Section C—Supersedure

This delegation revokes and supersedes the delegation of authority published at 50 FR 41419 (October 10, 1985).

Authority: Sec. 7(d) and (g), Department of HUD Act, 42 U.S.C. 3535(d) and (g).

Dated: April 9, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–8403 Filed 4–14–87; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–07–4333–12]

Closure of Lands to the Discharge of Firearms; Montana

AGENCY: Butte District, Bureau of Land Management, Interior.

ACTION: Closure of lands to firearms discharge.

SUMMARY: Public Notice is hereby given that under the provisions of Part 8360 of

43 CFR, and in the interest of public safety, the following described lands, under the jurisdiction of the Bureau of Land Management, are hereby closed effective May 1, 1987, to the discharge of all firearms. The lands are located in:

T. 12 N., R. 14 W.,
Section 3, Granite County, Montana
T. 13 N., R. 14 W.,
Section 34 and 35, Missoula County, Montana.

The closure includes all public lands within the boundary descibed as follows:

Beginning on the Garnet Range Road at the intersection with the Old Coloma Road in Section 34; east along the Garnet Range Road about one mile to a point due north of the intersection of the jumpover road with the Summit Cabin Road; then due south about 2/3 mile to the intersection of the jumpover road and the Summit Cabin Road; then south along the Summit Cabin Road 1/8 mile to the junction with the Anderson Peak Jeep Trail; then due west about 3/5 mile to a logging road designated as ski trail M; then northwest along logging roads about 1/3 mile to the intersection of the Chicken Run Road and the Old Coloma Road; then north about 2/3 mile along the Old Coloma Road to the junction with the Garnet Range Road.

The above described public lands total 170 acres more or less. The lands are located in Granite and Missoula counties, Montana, and are commonly referred to as the Garnet Historic District.

The above described lands receive intensive recreation use, and the continued discharge of firearms constitutes a hazard to the public health and safety.

DATES: Effective date: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: Darrell Sall, Area Manager, Garnet Resource Area, 3255 Fort Missoula Road, Missoula, Montana 59806.

April 7, 1987.

James A. Moorhouse,

District Manager.

[FR Doc. 87-8343 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-DN-M

[OR-090-07-6310-01-GP7-157]

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on May 8, 1987, at 9:00 a.m., Pacific Standard Time, in room 227 of the Federal Building at 211 E. 7th St., Eugene, Oregon.

The agenda will include (1) a discussion of the Bureau's proposed reorganization plan; (2) land exchanges with private firms; and (3) summary of other current issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:45 a.m. and 11:00 a.m., or file written statements for the Council's consideration. Anyone wanting to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401, by May 6. Depending on the number of persons wanting to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: April 6, 1987.

Melvin D. Clausen,

District Manager.

[FR Doc. 87-8344 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-33-M

Filing of Plat of Survey; New Mexico

April 6, 1987.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on April 2, 1987.

A survey representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, a portion of the subdivision of section 2, the 1873 adjusted record meanders of the left bank of the Canadian River and the survey of the meanders of the present left bank of the Canadian River in section 2, Township 5 North, Range 1 East, Indian Meridian, Oklahoma, under Group 44 OK.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief Branch of Cadastral Survey.

[FR Doc. 87-8346 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-FB-M

Filing of Plat of Survey; New Mexico

April 6, 1987.

The plats of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico effective at 10:00 a.m. on April 2, 1987.

A survey representing the dependent resurvey of a portion of the north boundary of the Tome Grant, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional line, certain small holding claim boundaries in sections 1, 10, 11, and 12 and the survey of certain lot boundaries in sections 1 and 11, Township 6 North, Range 2 East, New Mexico Principal Meridian, New Mexico.

A survey representing the dependent resurvey of a portion of the Lo de Padilla Grant, a portion of the east boundary, portions of certain small holding claims and the survey of certain lot boundaries in section 25, Township 7 North, Range 2 East, New Mexico Principal Meridian, New Mexico.

A survey representing the dependent resurvey of a portion of the west boundary, a portion of the subdivision of section 30, portions of certain lots and small holding claims and the survey of certain lot boundaries in section 30, Township 7 North, Range 3 East, New Mexico Principal Meridian, New Mexico, under Group 829 NM.

The surveys were requested by the District Manager, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 87-8347 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-FB-M

[CA-050-07-4333-11]

Special Area Designation

Public lands within the Forks of Butte Creek Recreation Area in Butte County, California, which are not legally claimed under the mining laws, are designated as a special area within which Special Recreation Permits are required for recreational panning, sluicing and dredging (commonly called recreational mining). This designation is made under the authority of 43 CFR 8372.1-1,2.

The public lands affected by this designation are specifically described as Butte Creek, as it traverses portions of:

Mt. Diablo Base and Meridian

T. 24 N., R. 3 E.,
Section 22, Lots 1, 3, 5;
Section 26, Lots 2, 3, 4;
Section 27, Lots 2, 3, 4, 7;
Section 34, Lots 10, 15.
T. 23 N., R. 3 E.,

Section 3, Lot 3.

Totalling approximately 385 acres.

Any person who engages in recreational panning, sluicing or dredging without proper authorization or in violation of permit terms or stipulations may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, under the authority of 43 CFR 8372.0–7.

The public lands affected by this order will be posted at points of public access to recreational panning, sluicing and dredging areas. Maps showing the area affected by this order are available from the Redding Area Office, 355 Hemsted Drive, Redding, CA 06002.

Effective date of action is June 1, 1987.

SUPPLEMENTARY INFORMATION: The Forks of Butte Creek Recreation Area was placed under protective withdrawal (S 4528) under Public Land Order 5329 on January 18, 1973, to segregate the area from all forms of appropriation, including the mining laws. While the mineral rights to much of this area continue to be held under mining claims which pre-date this withdrawal several segments of Butte Creek are not encumbered with mining claims. These areas have become extremely popular for recreational collection via panning, sluicing and dredging. Overcrowding and overuse of the stream has resulted in conflicts between competing mineral collectors, fishermen and swimmers, as well as degradation of water quality and fishery habitat.

By requiring recreational panners, sluicers and dredgers to obtain and operate under the terms and stipulations of a Special Recreation Permit, the actions, numbers and distribution of such recreational users can be controlled to prevent unnecessary environmental degradation, eliminate user conflicts, and provide for higher quality recreational experience opportunities.

FOR FURTHER INFORMATION CONTACT: Robert J. Bainbridge, Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, CA 96002 (916) 246–5325.

Dated: April 2, 1987.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 87–8345 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–40–M

[CO–940–07–4220–11; C–28311]

Colorado; Proposed Continuation of Withdrawal

March 31, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Twin Sisters Administrative Site, be modified and the withdrawal be continued for 20 years insofar as it affects approximately 20 acres of National Forest System Land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Executive Order 2024, dated August 17, 1914, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

Sixth Principal Meridian

Roosevelt National Forest

T. 4 N., R. 73 W.,

Sec. 24, that portion of S½S½SW¼ within the Roosevelt National Forest.

The area described aggregates approximately 20 acres in Larimer County.

The purpose of this withdrawal is for the administration and protection of the Twin Sisters Lookout Administrative Site. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

Evelyn W. Axelson,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–8349 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–JB–M

[CO–940–07–4220–11; C–013229]

Colorado; Proposed Continuation of Withdrawal

April 6, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdraw lands for an indefinite period of time for the Buford Ranger Station, be modified and the withdrawal be continued for 20 years insofar as it affects 10 acres of public land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 1348, dated October 16, 1956, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

Sixth Principal Meridian

T. 1 S., R. 91 W.,

Sec. 4, SW¼NE¼SE¼SW¼, SE¼NW¼SE¼SW¼, NE¼SW¼SE¼SW¼, and NW¼SE¼SE¼SW¼.

The area described aggregates 10 acres in Rio Blanco County.

The purpose of this withdrawl is for the administration and protection of the Buford Ranger Station. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action

may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the Federal Register. The existing withdrawal will continue until such determination is made.

Evelyn W. Axelson,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-8348 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-JB-M

[ID-050-07-4920-10-7887]

Amendment of the Monument Resource Management Plan; Realty Action; Direct Sale of Public Land in Jerome County, ID, to the North Side Canal Company

AGENCY: Bureau of Land Management, Idaho.

ACTION: Combined notice of action (NOA)—Amendment of the monument resource management plan (RMP) and notice of realty action (NORA)—direct sale of public land in Jerome County, Idaho, to the North Side Canal Company.

DATE: April 8, 1987.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

SUMMARY: Notice is given that the Bureau of Land Management (BLM) is amending the Monument RMP to allow for disposal of certain public lands in Jerome County. The planning amendment will become effective upon Idaho State Director signature following completion of the required 30 day comment period for the NOA unless protests to the Planning Amendment are received. The direct sale to the North Side Canal Company will be held no less than 60 days from the date of Federal Register publication of this Notice at 1:00 p.m. on the next working day unless protests to the Direct Sale are received.

SUPPLEMENTARY INFORMATION: The following described land was examined and through the public supported land use planning process determined to be suitable for disposal by sale pursuant to section 203(a)(3) of the Federal Land Policy and Management Act of 1976 at no less than fair market value as determined by an appraisal to be completed prior to the end of the comment periods:

T. 9 S., R. 19 E., B.M.
Sec. 24: SE¼NE¼.
(40.00 acres more or less)

When patented, the land will be subject to the following reservations:
Ditches and canals, oil and gas to U.S.
BL-039651 Reservoir Right-of-Way
BL-040698 Ditch Rider Station
I-23054 Electrical Powerline Right-of-Way 24 feet wide
I-010060 Road Right-of-Way 50 feet wide
I-23659 Road Right-of-Way 50 feet wide

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of their grants. Administrative responsibility previously held by the United States will be assumed by the patentee.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws as provided by 43 CFR 2711.1-2(d).

Sale Procedures: The sale parcel will be sold by direct bid procedure as follows: A certified check for the entire appraised amount must be submitted in person or by mail prior to the time of sale on the date specified by the Authorized Officer.

The check will constitute an application to purchase that portion of the mineral estate of no known value. An additional $50.00 non-returnable mineral conveyance processing fee in the form of a certified check is required.

The total appraised parcel amount and mineral conveyance fee must be submitted on separate certified checks made payable to: Department of the Interior—BLM.

Detailed information concerning the sale may be obtained by contacting Joseph Aitken at (208) 886-2206.

Planning Protest: Any party that participated in the Plan Amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the State Director within 30 days of this Notice. In the absence of any planning protests or objections regarding the sale, this Notice of Action and Planning Amendment shall become effective.

Sale Comments: For a period of 45 days from the date of publication of this Notice in the Federal Register interested parties may submit comments regarding the land sale to the District Manager, Bureau of Land Management, P.O. Box 2-B, Shoshone, Idaho 83352. Objections to the sale will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any protests or objections regarding the sale, this realty action will become the final determination of the Department of Interior.

Jon H. Idso,

District Manager.

[FR Doc. 87-8397 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

Applicant

Name: Fish & Wildlife Service, Assistant Regional Director, Fish & Wildlife Enchancement, Portland, Oregon; File No. PRT-717318.

Type of Permit: Scientific Research

Name of Animals: Southern Sea Otter, (*Enhydra lutris nereis*)

Summary of Activity to be Authorized: The applicant proposes to take these animals to conduct research aiding the management efforts authorized by an Act to Improve Fish and Wildlife Management, P.L. 99-625. Research would require applicant to capture tag, hold and translocate up to 70 otters during the first year (1987) and no more than 70 during subsequent years (1988-1992), not to exceed a total of 250 animals from the wild population, estimated to be approximately 1500-1600. Only nonpregnant, independent animals over 15 lbs. will be taken. Most captures will occur in August, September and October. In addition to attachment of Monel and temple tags, captured otters would undergo premolar tooth extraction and blood sampling. Drugs used would include halothane and fentanyl with a narcan atagonist. Animals that have lost tags will be recaptured to replace them. Transport would be accomplished using commercially available pet transport cages.

Source of Marine Mammals for Research: Captures will occur from Santa Cruz to Pismo Beach, California. Translocated animals may also include stranded, orphaned, or captive-bred

otters. Release site will be San Nicholas Island, off the coast of California.

Period of Activity: August 15, 1987 through August 14, 1992, subject to renewal.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: April 10, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-8441 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

Agency Forms Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-233, U.S. Global Competitiveness: Optical Fibers, Technology and Equipment, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332). The proposed information request was originally submitted to OMB on December 1, 1986, but withdrawn by the Commission on February 24, 1987, for revision and improvement of the design of the proposed questionnaires submitted in connection with the request. This notice represents a resubmission of the above information collection request.

Summary of proposals:

(1) Number of forms submitted: two
(2) Title of forms: U.S. Global Competitiveness: Optical Fibers, Technology and Equipment: Questionnaries for U.S. Producers, Importers and Purchasers of Optical Fiber, Optical Fiber Cable and/or Optical Fiber Put Up In Other Multiple Fiber Forms
(3) Type of Request: resubmission
(4) Frequency of use: nonrecurring
(5) Description of respondents: firms which produce, import, or purchase optical fibers, optical fiber cable, and optical fiber put up in other multiple fiber forms
(6) Estimated number of respondents: 200
(7) Estimated total number of hours to complete the forms: 4,000
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from Christopher Johnson (USITC tel. no. 202-724-1730) or Linda Linkins (tel. no. 202-724-1745). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and incuding specific suggested revisions or launguage changes.

Submission of Comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Issued: April 10, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-8429 Filed 4-14-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-259]

Certain Battery-Powered Smoke Detectors; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Gateway Scientific Inc. ("Gateway").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 8, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why

confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Dated: April 8, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–8430 Filed 4–14–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–259]

Certain Battery-Powered Smoke Detectors; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Pyrotector, Inc. ("Pyrotector").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 8, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: April 8, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–8431 Filed 4–14–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–265]

Certain Dental Prophylaxis Methods, Equipment and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 5, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Dentsply International Inc., 570 W. College Avenue, P.O. Box 872, York, Pennsylvania 17405 and Dentsply Research and Development Corp., Lakeview and Clarke Avenues, P.O. Box 359, Milford, Delaware 19963. The complaint alleges unfair methods of competition and unfair acts in the importation of certain dental prophylaxis methods, equipment and components thereof into the United States, and in their sale, by reason of alleged direct, contributory and induced infringement of (1) at least claims 1–3 of U.S. Letters Patent 3,882,638; (2) at least claim 4 of U.S. Letters Patent 3,972,123; and (3) at least claims 1–6, 12–14, 16, 20, 21 and 23 of U.S. Letters Patent 4,412,402. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1273.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 6, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain dental prophylaxis methods, equipment and components thereof into the United States, or in their sale, by reason of alleged direct, contributory and induced infringement of (1) claims 1–3 of U.S. Letters Patent 3,882,638; (2) claim 4 of U.S. Letters Patent 3,972,123; or (3) claims 1–6, 12–14, 16, 20, 21 and 23 of U.S. Letters Patent 4,412,402, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Dentsply International Inc., 570 W. College Avenue, P.O. Box 872, York, Pennsylvania 17405

Dentsply Research and Development Corp., Lakeview and Clarke Avenues, P.O. Box 359, Milford, Delaware 19963

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sanofi, Inc., 159 Dwight Place, Fairfield, New Jersey 07006

Saofi, S.A., Z.I. du Phare, 33700 Merignac, France

Electro Medical Systems, S.A., G.H. Piquet 17, CH–1347 Le Sentier, Switzerland

Dabi-Atlante, S.A. Ind Medico Odontologigas, Au Presidente Coste lo Banco 2525, C6C 55,979.736/000 1–45, CEP 14100, Rib Preto, SP Brazil

Deldent, Ltd., Petach Tikva, Israel

EMDA Fabrik Elektro-Medizinischer, Hanaher Land Strasse 139–145, 6000 Frankfurt Am Main, Federal Republic of Germany

S-T Products, 502 Delso Street, P.O. Box D, Flint, Michigan 48507
Kromadent Co., Inc., 5565 West Flagler, Miami, Florida 33126
Peerless International, Inc., 228 Tosca Drive, P.O. Box 430, Staughton, Massachusetts 02072
Benco Dental Supply Company, 11 Bear Creek Boulevard, Wilkes-Barre, Pennsylvania 18773
Healthco International, Inc., 25 Stuart Street, Boston, Massachusetts 02116
Kavo American Corporation, 2401 West Hassell Road, Hoffman Estates, Illinois 60195
University Dental Supply Co., Inc., 50 West 23rd Street, New York, New York 10010
Henry Schein, Inc., 5 Harbor Park Drive, Port Washington, New York 11050

(c) Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential business information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: April 8, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-8432 Filed 4-14-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-257]

Certain Electronic Wall Stud Finders; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Meyer Electronics, Ltd. ("Meyer") and Philips Home Products, Inc. ("PHP").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 8, 1987.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued, April 8, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-8433 Filed 4-14-87; 8:45 am]

BILLING CODE 7020-2-M

[Investigation No. 337-TA-244]

Certain Insulated Security Chests; Commission Decision To Review and Remand an Initial Determination Terminating Respondents; Designation of Investigation as More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: Review of an initial determination (ID) terminating respondents EP Industrial Co., Ltd. (EP); Fedco, Inc., (Fedco); Builder's Emporium, Inc. (Builder's Emporium); and Handyman; remand of investigation to the presiding administrative law judge (ALJ); more complicated designation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand an ID (Order No. 13) terminating respondents EP, Fedco, Builder's Emporium, and Handyman as respondents in the above-captioned investigation. The Commission has also determined to designate the investigation "more complicated" and to extend the deadline for completion of the investigation until June 9, 1987.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: On March 13, 1987, the ALJ issued an ID terminating the investigating on the basis of Motions Nos. 244-14 and 244-15, terminating EP on the basis of a proposed consent order appended to complaint's Motion No. 244-15, and terminating the three remaining

respondents on the basis of complainant's Motion No. 244–14. The Commission investigative attorney (IA) opposed the motion to terminate EP on the basis of the consent order, asserting that certain provisions were extraterritorial in scope and thus exceeded the Commission's jurisdiction and that the class of persons covered by the proposed consent order was excessively broad. The IA filed a petition for review of the ID. An opposition to the petition for review was filed by Brush. No Government agency or public comments regarding the ID were received.

The Commission has determined to review and reverse the ID, to remand the investigation to the ALJ for further proceedings consistent with the Commission's Action and Order and Memorandum Opinion, to designate the investigation "more complicated," and to extend the deadline for completing the investigation until June 9, 1987.

The basis for the Commission's actions are set forth in the Commission's Action and Order and accompanying Memorandum Opinion. The Commission has determined to declare the investigation "more complicated" on the basis of "other significant factors" within the meaning of rule § 210.59, 19 CFR 210.59, viz., the inability of the parties to settle their differences in a manner consistent with the Commission's rules despite their evident desire to settle this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules § 210.53–.59 (19 CFR 210.53–.59).

Copies of the ID, the Commission's Action and Order, Memorandum Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–1626.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: April 10, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–8434 Filed 4–14–87; 8:45 am]

BILLING CODE 7020–02–M

Investigation No. 337–TA–264

Certain Mail Extraction Desks and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 3, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Opex Corporation, 42 Olney Avenue, Cherry Hill, New Jersey 08003. The complaint alleges unfair methods of competition and unfair acts in the importation of certain mail extraction desks and components thereof into the United States, and in their sale, by reason of alleged direct, contributory and induced infringement of claims 1, 2, 5–7, 10–12, and 14 of U.S. Letters Patent Re. 32,328. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., or Deborah S. Strauss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–2823 and 201–523–1233, respectively.

Authority: The authority for institution of this investigation is contained in section 377 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 1, 1987, *ordered that:*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain mail extraction desks and components thereof into the United States, or in their sale by reason of alleged infringement of claims 1, 2, 5–7, 10–12, or 14 of U.S. Letters Patent Re. 32,328, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Opex Corporation, 42 Olney Avenue, Cherry Hill, New Jersey 08003.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Stielow GmbH & Company KG, Kosliner WEF 5.D–2000 Norderstedt, Federal Republic of Germany

Almega Systems Inc., 5 Cedarwood Court, Setauket, New York 11733

Automated Equipment Services, 14 Noxon Road, Poughkeepsie, New York 12603.

(c) T. Spence Chubb, Esq., and Deborah S. Strauss, Esq., Office of Unfair Import Investigations, United States International Trade Commission, 701 E Street NW., Room 126, Washington, DC 20436, shall be the Commission investigative attorneys, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information

on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: April 6, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–8435 Filed 4–14–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–250]

Certain Ventilated Motorcycle Helmets; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Shoei Kako Co, Ltd. and Shoei Safety Helmets Corp. (Shoei).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 7, 1987

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: April 7, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–8436 Filed 4–14–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Decisions No. 13–21; Finance Docket No. 30800 Subs-No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24]

Trackage Rights and Purchase Applications of Various Railroads

AGENCY: Interstate Commerce Commission.

ACTION: Applications accepted for consideration.

SUMMARY: The Commission is accepting for consideration applications of various railroads for trackage rights over certain lines of other railroads and for purchase of certain railroad assets. The specific application information is set forth in the supplementary information section of this notice.

DATES: Written comments must be filed with the Interstate Commerce Commission by May 15, 1987. Opposition evidence must be filed by June 15, 1987. Oral hearings in this consolidated proceeding will begin on August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Alan Greenbaum (202) 275–7322.

ADDRESSES: An original and 20 copies of all documents referring to Finance Docket No. 30800 (Sub-Nos. 8 and 9) should be filed with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

One copy of all documents should be sent to:

(1) Rail Section Interstate Commerce Commission Washington, DC 20423

(2) All active parties of record by first-class mail within 10 days of the service date of the Commission's revised service list to be issued shortly.

In addition written comments shall be concurrently served by first-class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on the representatives listed with the specific applications in the supplementary information to this notice.

SUPPLEMENTARY INFORMATION: By statute and regulation, responsive applications were due to be filed March 17, 1987. 49 U.S.C. 11345(b)(2); and 49 CFR 1180.4(d)(4). We granted responsive applicants an extension of time to complete their applications by April 7, 1987 (Decision No. 11, served March 19, 1987). Supporting traffic studies, operating plans, *pro forma* financial statements, density charts, labor impact data, competitive analysis, and environmental and energy exhibits were to be filed by the date. Due to time constraints, these materials were not considered in the Commission's decision accepting this application.

The application and exhibits are available for public inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained from applicants' representatives upon request. Interested persons should request copies of exhibits due April 7 from applicants' representatives, so their comments may reflect the later filed information.

The application is consolidated for disposition with the applications in Finance Docket No. 3080, *et al.* Those applications are the subject of oral hearings conducted by Chief Administrative Law Judge Cross commencing August 3, 1987. By statute, the evidentiary phase of these proceedings must end by December 17, 1988. Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345.

Participation in the Proceeding. Interested persons may participate formally by submitting written comments regarding the application. Comments should indicate the exact proceeding designation. Comments shall include the following: the person's position in support of or in protest to the proposed transaction, and the specific reasons why approval would or would not be in the public interest. *See* 49 CFR 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate

actively in the proceedings and in oral hearings on the application or whether they wish only to be advised of all decisions issued by the Commission in this proceeding. Failure to state an intention to participate as an active party will result in the person being placed in the latter category. In addition, opposition evidence must be filed by June 15, 1987.

Additional information is contained in the Commission's decision. Copies of the decision are available for purchase from T. S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 or toll-free (800) 424–5403.

Applications accepted for consideration

Decision No. 13—Finance Docket 30800 (Sub-No. 6)—Denver and Rio Grande Western Railroad Company—Trackage Rights—Over Missouri-Kansas-Texas Railroad Company and Oklahoma, Kansas and Texas Railroad Company

The Commission is accepting for consideration the application of the Denver and Rio Grande Western Railroad Company (DRGW) for trackage rights over certain lines of the Missouri-Kansas-Texas Railroad Company (MKT) and its wholly owned subsidiary Oklahoma, Kansas and Texas Railroad Company (OKT), subject to conditions. This application is filed as a proposed condition to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad and Missouri Pacific Railroad to acquire control over the MKT.

(1) Applicant's representatives:

Samuel R. Freeman, Vice President and General Counsel, The Denver and Rio Grande Western Railroad Company, P.O. Box 5482, Denver, CO 80217.

E. Barrett Prettyman, Jr., 815 Connecticut Avenue, NW., Washington, DC 20006–4072.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Decision No. 14—Finance Docket No. 30800 (Sub-No. 7)—Georgetown Railroad Company—Trackage Righs and Asset Purchase

The Commission is accepting for consideration the application of Georgetown Railroad Company (GRR) (1) for trackage rights over certain lines of the Union Pacific Railroad Company (UPRR) and Missouri-Pacific Railroad Company (MPRR) and Missouri-Kansas-Texas Railroad Company (MKT) and (2) to purchase a certain MKT line segment. This application is filed as a proposed condition to possible approval of the primary applications filed by Union Pacific Corporation and its wholly-owned subsidiaries, UPRR and MPRR to acquire control over MKT.

(1) Applicant's representative: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Decision No. 15—Finance Docket No. 30800 (Sub-No. 8)—Burlington Northern Railroad Company—Trackage Rights—Over Oklahoma, Kansas and Texas Railroad Company Between Salina, KS and Bowie, TX, and Finance Docket No. 30800 (Sub-No. 9)—Burlington Northern Railroad Company—Trackage Rights—Over Missouri Pacific Railroad Company Between Fort Worth and Laredo, TX

The Commission is accepting for consideration the applications of the Burlington Northern Railroad Company (BN) for trackage rights over certain lines of the Oklahoma, Kansas and Texas Railroad Company (OKT) and the Missouri Pacific Railroad Company (MPRR). These conditions are filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly-owned subsidiaries. Union Pacific Railroad Company (UPRR) and MPRR to acquire control over MKT.

(1) Applicant's representative: William R. Power, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas TX 75202.

Decision No. 16—Finance Docket No. 30800 (Sub-No. 10)—Austin & Northwestern Railroad Company—Trackage Rights—Over Union Pacific Railroad Company Between McNeil, Temple and Milano, TX, and Finance Docket No. 30800 (Sub-No. 11)—Austin & Northwestern Railroad Company—Trackage Rights—Over Missouri-Kansas-Texas Railroad Company Between Elgin and Houston, TX

The Commission is accepting for consideration the applications of the Austin & Northwestern Railroad Company (AUNW) for trackage rights over certain lines of the Union Pacific Railroad Company (UPRR) and Missouri-Kansas-Texas Railroad Company (MKT). These applications are filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, UPRR and Missouri Pacific Railroad Company to acquire control over MKT.

(1) Applicant's representatives: Kimberly A. Madigan, John Docherty, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Decision No. 17—Finance Docket No. 30800 (Sub-No. 12)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Union Pacific Railroad Company Between Omaha, NE, and Topeka, KS, and Finance Docket No. 30800 (Sub-No. 13)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company Between Eton Junction, MO and Rock Creek Junction, MO, and Finance Docket No. 30800 (Sub-No. 14)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company and Missouri-Kansas-Texas

Railroad Company, and Finance Docket No. 30800 (Sub-No. 15)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company Between Ft. Worth and Dallas, TX, and Finance Docket No. 30800 (Sub-No. 16)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Galveston, Houston and Henderson Railroad Between Houston and Galveston, TX, and Finance Docket No. 30800 (Sub-No. 17)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri-Kansas-Texas Railroad Company Between Wichita, KS and Enid, OK, and Finance Docket No. 30800 (Sub-No. 18)—The Atchison, Topeka and Santa Fe Railway Company—Securities Purchase—Texas City Terminal Railway Company

The Commission is accepting for consideration the applications of the Atchison, Topeka and Santa Fe Railway Company (ATSF) for trackage rights over certain lines of Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), Galveston Houston and Henderson Railroad, and Missouri-Kansas-Texas Railroad Company (MKT) and the right to purchase certain securities. Those applications are filed as proposed conditions to possible approval of the application of Union Pacific Corporation and its wholly owned subsidiaries, UPRR and MPRR, to acquire control over MKT.

(1) Applicant's representatives:

Gus Svolos, Milton E. Nelson, Jr., 80 E. Jackson Blvd., Chicago, IL 60604.

R. Eden Martin, G. Paul Moates, 1722 Eye Street, NW., Washington, DC 20006.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missour-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Decision No. 18—Finance Docket No. 30800 (Sub-No. 20)—The Texas Mexican Railway Company—Trackage Rights Over Union Pacific Railroad Company Between Laredo and San Antonio, TX

The Commission is accepting for consideration the application of Texas Mexican Railway Company (TM) for trackage rights over Union Pacific Railroad Company (UPRR) between Laredo and San Antonio, TX. This application is filed as a proposed condition to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad Company and Missouri Pacific Railroad Company (MPRR) to acquire control over the Missouri-Kansas-Texas Railroad Company (MKT).

(1) Applicant's representatives:

Mr. A.R. Ramos, Chairman of the Board, The Texas Mexican Railway, 1200 Washington Street, Laredo, TX 78040, and, Charles H. White, Jr., 1730 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missour-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Decision No. 19—Finance Docket No. 30800 (Sub-No. 21)—Iowa Southern Railroad Company—Trackage Rights and Asset Purchase

The Commission is conditionally accepting for consideration the application of the Iowa Southern Railroad Company for trackage rights over certain lines of the Missouri-Kansas-Texas Railroad Company (MKT) and for purchase of certain railroad assets. The application is filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad Company and Missouri Pacific Railroad Company to acquire control over MKT.

(1) Applicant's representative: Alan P. Sherbrooke, 10th Floor, 1011 Western Avenue, Seattle, WA 98104.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missour-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Decision No. 20—Finance Docket No. 30800 (Sub-No. 22)—The Kansas City Southern Railway Company—Trackage Rights Over Missouri Pacific Railroad Company and Missouri-Kansas-Texas Railroad Company

The Commission is accepting for consideration the application of the Kansas City Southern Railway Company (KCS) for trackage rights over Missouri Pacific Railroad Company (MPRR or MP), Missouri-Kansas-Texas Railroad Company (MKT), and several other lines. This application is filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad Company (UPRR) and MP to acquire control over MKT.

(1) Applicant's representatives:

Robert E. Zimmerman, Robert K. Dreiling, 114 West 11th Street, Kansas City, MO 64105.

Joseph Auerbach, Morris Raker, Louis A. Rodrigues, Sullivan & Worcester, One Post Office Square, Boston, MA 02109, and David M. Schwartz, Robert L. Calhoun, Sullivan & Worcester, 1025 Connecticut Avenue, NW, Washington, DC 20036.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Decision No. 21—Finance Docket No. 30800 (Sub-No. 23)—St. Louis Southwestern Railway Company—Trackage Rights Between Denison and Council Bluffs; Topeka and Omaha; and Chicago, Gorham, East St. Louis, and Finance Docket No. 30800 (Sub-No. 24)—Southern Pacific Transportation Company—Trackage Rights Between Dallas and Fort Worth: Hearne and Kerr; Smithville and LCRA; and Over Texas City Terminal Railroad

The Commission is accepting for consideration the applications of St. Louis Southwestern Railway Company (SSW) and its parent company, Southern Pacific Transportation Company (SP), for trackage rights over Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR or MP), and Missouri-Kansas-Texas Railroad Company (MKT), and over other railroads within terminal areas. These applicants are filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly-owned subsidiaries, UPRR and MPRR to acquire control over MKT.

(1) Applicants' representative: John MacDonald Smith, 813 Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Dated: April 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-8553 Filed 4-14-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Eagle Electric Manufacturing Co. Inc., Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Department Policy, 28 CFR 50.7, 38 FR. 19029, notice is hereby given that a consent decree in *United States v. Eagle Electric Manufacturing Co., Inc.*, Civil Action No. CV-85-4476, was lodged with the United States District Court for the Eastern District of New York on April 2, 1986. The consent decree establishes a compliance program for the Long Island City, New York plant owned and operated by Eagle Electric Manufacturing Co., Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $82,500.00.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Eagle Electric Manufacturing Co., Inc.*, D.J. Ref. No. 90-5-1-1-2474.

The consent decree may be examined at the office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the 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 $1.80 (10 cents per page reproduction charge) payable to the Treasury of the United States.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-8358 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

Miller & Sons, Inc.; Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Miller & Sons, Inc.*, Civil Action No. 85-5737, was lodged with the United States District Court for the District of New Jersey on March 31, 1987. The consent decree establishes a compliance program for the Belleville, New Jersey plant owned and operated by Miller & Sons, Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $62,000.00.

Written comments relating to the Consent Decree will be received by the Department of Justice for a period of thirty (30) days from the date of publication of this notice. Prior to the entry of the Consent Decree by the Court, the Department of Justice will consider, and file with the Court, any written comments received. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Miller & Sons, Inc.*, D.J. Ref. No. 90-5-1-1-2469.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the 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 $1.90 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habichtt II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-8359 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

Nu-Tronic Circuit Co., Inc.; Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 17029, notice is hereby given that a consent decree in *United States* v. *Nu-Tronic Circuit Company, Inc.*, Civil Action No. 85-5738, was lodged with the United States District Court for the District of New Jersey on March 31, 1987. The consent decree establishes a compliance program for the Paterson, New Jersey plant owned and operated by Nu-Tronic Circuit Company, Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $68,000.00.

Written comments relating to the Consent Decree will be received by the Department of Justice for a period of thirty (30) days from the date of publication of this notice. Prior to the entry of the Consent Decree by the Court, the Department of Justice will consider, and file with the Court, any written comments received. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Nu-Tronic Curcuit Company, Inc.*, D.J. Ref. No. 90-5-1-1-2475.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the 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 $1.70 (10 cents per page reproduction charge) payable to the Treaurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-8360 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

Revlon, Inc., Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Revlon, Inc.*, Civil Action No. 85-5735 (JWB), was lodged with the United States District Court for the District of New Jersey on March 7, 1987. The consent decree establishes a compliance program for the Irvington, New Jersey plant owned and operated by Revlon, Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $105,000.00.

Written comments relating to the Consent Decree will be received by the Department of Justice for a period of thirty (30) days from the date of publication of this notice. Prior to the entry of the Consent Decree by the Court, the Department of Justice will consider, and file with the Court, any written comments received. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Revlon, Inc.*, D.J. Ref. No. 90-5-1-1-2478.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the 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 $1.90 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-8361 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19,378]

Honeywell Inc., Fort Washington, PA; Public Hearing

A public hearing is scheduled for 6:00 pm on May 11, 1987 in the Ambler Room at the Holiday Inn, 432 Pennsylvania Avenue, Fort Washington, Pennsylvania. The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish additional testimony and evidence of a relevant and material nature bearing upon the investigation regarding petition TA-W-19,378 filed on behalf of workers and former workers at Honeywell, Incorporated, Fort Washington, Pennsylvania.

Such individuals who desire to furnish additional testimony as evidence should inform the Director, Office of Trade Adjustment Assistance, Department of Labor, of their intention to appear not later than Thursday, April 30, 1987. Mr. Marvin M. Fooks, Director, OTAA, can be reached in Washington, DC, at (202) 376-2646. The Director's Office is in Room 6434, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC, this 10th day of April, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-8559 Filed 4-13-87; 3:07 pm]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 28-29, 1987, from 9:00 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

April 8, 1987.

[FR Doc. 87-8401 Filed 4-14-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed reorganization of Regional Offices.

SUMMARY: The National Labor Relations Board is considering revision of the territorial areas covered by some of its Regional Offices. In order to ensure that all interested persons can comment on the reorganization, the Board is publishing the reorganization in proposed form and invites comments that will be reviewed as part of the final consideration.

DATE: Comments by May 15, 1987.

ADDRESS: Send or deliver written comments to: Rosemary M. Collyer, General Counsel, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT: B. Allan Benson, Deputy to the Assistant General Counsel, 1717 Pennsylvania Avenue, NW., Room 1010, Washington, DC 20570, Telephone: (202) 254-6334.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has recently completed an examination of its field offices to determine whether existing Regional boundaries permit those offices to process cases as

efficiently and economically as possible. This examination was occasioned by the Agency's need to conserve its resources, to avoid any unnecessary expenditures, and to process its cases as efficiently and promptly as it had in the past. As a result of this examination, the National Labor Relations Board has concluded that the boundaries of certain Regional Offices should be adjusted. In some cases, these adjustments are necessary so that geographic areas can be served by the closest Regional Office, thereby reducing travel, overnight lodging expenses, and staff time spent in transit. In others, in addition to conserving resources, an adjustment appears warranted to ensure that sufficient work is allocated to each field office. Finally, the examination revealed a need to downscale one office and to eliminate another where there is insufficient case intake to warrant the present structure.

The last regional and subregional office boundaries were published at 44 FR 34215–34220, June 14, 1979. Accordingly, the NLRB proposes to amend its regional office boundaries as follows:

Region 4, Philadelphia—Three Pennsylvania counties (Adams, Cumberland, and York) will be realigned from Region 4 to Region 5, Baltimore.

Region 5, Baltimore—Thirty-four southwestern Virginia counties (Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchannan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe) and the city of Bristol in Sullivan County, Tennessee, will be realigned from Region 5 to Region 11, Winston-Salem.

Four Pennsylvania counties (Adams, Cumberland, Franklin, and York) will be realigned to Region 5 from Regions 4 and 6.

Region 6, Pittsburgh—One Pennsylvania county (Franklin) will be realigned from Region 6 to Region 5.

Eight West Virginia counties (Braxton, Calhoun, Gilmer, Pleasants, Ritchie, Tyler, Wirt, and Wood) will be realigned to Region 6 from Region 9, Cincinnati.

Region 7, Detroit—Four Michigan counties (Chippewa, Luce, Mackinac, and Schoolcraft) will be realigned to Region 7 from Region 30, Milwaukee.

Region 8, Cleveland—Four Ohio counties (Monroe, Morgan, Noble, and Washington) will be realigned to Region 8 from Region 9, Cincinnati.

Five Ohio counties (Champaign, Darke, Mercer, Miami, and Shelby) will be realigned from Region 8 to Region 9.

Region 9, Cincinnati—Five Ohio counties (Champaign, Darke, Mercer, Miami, and Shelby) will be realigned to Region 9 from Region 8, Cleveland.

Four Ohio counties (Monroe, Morgan, Noble, and Washington) will be realigned from Region 9 to Region 8.

Forty southwestern Kentucky counties (Adair, Allen, Ballad, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster) will be realigned from Region 9 to Region 26, Memphis.

Eight West Virginia counties (Braxton, Calhoun, Gilmer, Pleasants, Ritchie, Tyler, Wirt, and Wood) will be realigned from Region 9 to Region 6, Pittsburgh.

Four West Virginia counties (Greenbriar, Mercer, Monroe, and Summers) will be realigned from Region 9 to Region 11, Winston-Salem.

Region 10, Atlanta—Twenty-one southern Georgia counties (Appling, Atkinson, Bacon, Brantly, Brooks, Camden, Charlton, Clinch, Coffee, Decatur, Echols, Glynn, Grady, Jeff Davis, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne) will be realigned from Region 10 to Region 12.

Fourteen central Tennessee counties (Bledsoe, Clay, Cumberland, Fentress, Grundy, Jackson, Marion, Overton, Pickett, Putnam, Sequatchie, Van Buren, Warren, and White) will be realigned from Region 10 to Region 26, Memphis.

Region 11, Winston-Salem—Thirty-four southwestern Virginia counties (Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchannan, Campbell, Carroll, Charlottee, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe) will be realigned to Region 11 from Region 5, Baltimore.

The city of Bristol in Sullivan county Tennessee will be realigned to Region 11 from Region 5.

Four West Virginia counties (Greenbriar, Mercer, Monroe, and Summers) will be realigned to Region 11 from Region 9, Cincinnatti.

Region 12, Tampa—Twenty-one southern Georgia counties (Appling, Atkinson, Bacon, Brantly, Brooks, Camden, Charlton, Clinch, Coffee, Decatur, Echols, Glynn, Grady, Jeff Davis, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne) will be realigned to Region 12 from Region 10, Atlanta.

Region 16, Fort Worth—One Arkansas county (Miller) will be realigned to Region 16 from Region 26, Memphis.

All of southern Texas that is currently under the jurisdiction of Region 23 will be realigned to Region 16. The Houston office and San Antonio office will operate as resident offices under Region 16. Thus, Region 16 and the Houston and San Antonio Resident Offices would service the entire State of Texas except for the counties of El Paso, Culberson, and Hudspeth, which will continue to be serviced by Region 28.

All of Oklahoma will be realigned from Region 16 to Region 17, Kansas City. The Tulsa Resident Office will continue to process cases arising in the State of Oklahoma but under the jurisdiction of Region 17.

Region 17, Kansas City—All of Oklahoma will be realigned to Region 17 from Region 16. The Tulsa Resident Office will continue to process cases arising in the State of Oklahoma but under the jurisdiction of Region 17.

Three Iowa counties (Fremont, Mills, and Pottawattamie) will be realigned to Region 17 from Region 18, Minneapolis.

Eleven western Nebraska counties (Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux) will be realigned from Region 17 to Region 27, Denver.

Region 18, Minneapolis—Three Iowa counties (Fremont, Mills, and Pottawattamie) will be realigned from Region 18 to Region 17.

Region 19, Seattle—Thirty-two eastern Montana counties (Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone) will be realigned from region 19 to Region 27, Denver.

Twenty-eight southern Idaho counties (Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassis, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, and Washington) will be realigned from Region 19 to Region 27.

Region 21, Los Angeles—The boundary in Los Angeles City and Los Angeles County for Region 21 will be redefined as "that portion of Los Angeles County lying east of Harbor Freeway, south and east of Pasadena Freeway and Arroyo Parkway, and south of Foothill Freeway and Baseline Road (State Route 30)."

Region 23, Houston—Houston and San Antonio offices will both service southern Texas as resident offices under the jurisdiction of Region 16, Fort Worth. Thus, Region 16 and the Houston and San Antonio Resident Offices would service the entire State of Texas except for the counties of El Paso, Culberson, and Hudspeth, which will continue to be serviced by Region 28.

Region 26, Memphis—Forty southwestern Kentucky counties (Adair, Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster) will be realigned to Region 26 from Region 9.

Fourteen central Tennessee counties (Bledsoe, Clay, Cumberland, Fentress, Grundy, Jackson, Marion, Overton, Pickett, Putnam, Sequatchie, Van Buren, Warren, and White) will be realigned to Region 26 from Region 10.

One Arkansas county (Miller) will be realigned from Region 26 to Region 16, Fort Worth.

Region 27, Denver—Eleven western Nebraska counties (Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux) will be realigned to Region 27 from Region 17, Kansas City.

Twenty-eight southern Idaho counties (Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, and Washington) will be realigned to Region 27 from Region 19, Seattle.

Thirty-two eastern Montana counties (Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Gold Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone) will be realigned to Region 27 from Region 19, Seattle.

Region 28, Phoenix—Three Nevada counties (Clark, Lincoln, and Nye) will be realigned to Region 28 from Region 31, Los Angeles. These counties will continue to be serviced by the Las Vegas Resident Office but under the jurisdiction of Region 28.

The El Paso Resident Office will be closed, and cases that would have been processed by that office in the Texas counties of El Paso, Culberson, and Hudspeth will be processed by Region 28 out of the Phoenix Regional Office and the Albuquerque Resident Office.

Region 30, Milwaukee—Four Michigan counties (Chippewa, Luce, Mackinac, and Schoolcraft) will be realigned from Region 30 to Region 7, Detroit.

Region 31, Los Angeles— Three Nevada counties (Clark, Lincoln, and Nye) will be realigned from Region 31 to Region 28. These counties will continue to be serviced by the Las Vegas Resident Office but under the jurisidiction of Region 28.

The boundary in Los Angeles City and Los Angeles County for Region 31 will be redefined as: "that portion of Los Angeles County lying west of Harbor Freeway, north and west of Pasadena Freeway and Arroyo Parkway, and north of Foothill Freeway and Baseline Road (State Route 30)."

As part of our examination of changes in our Regional Office boundaries of structure, the Agency would be pleased to consider any comments you may have with regard to this matter.

Dated, Washington, DC, 13 April 1987.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 87-8557 Filed 4-14-87; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

The Rockwell International L-85 Nuclear Examination Reactor, (Rockwell International Corporation); Order Terminating Facility Operating License

[Docket No. 50-375]

By application dated March 10, 1980, as supplemented, Rockwell International Corporation (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of the research reactor and to terminate Facility Operating License No. R-118. A Notice of "Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts and Terminating Facility License", was published in the **Federal Register** on April 30, 1980, at 45 FR 30759. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The reactor was shut down July 29, 1982 and all fuel has been removed from the core and shipped to a DOE facility for processing. The reactor facility has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Therefore, pursuant to the application filed by Rockwell International Corporation, located at the Santa Susana Field Laboratories, Ventura County, California, Facility Operating License No. R-118 is terminated as of the date of this Order.

For further details with respect to this action see: (1) The application for termination of facility operating license, dated March 10, 1980, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts and Terminating Facility Operating License published in the **Federal Register** on April 30, 1980 (45 FR 30759). Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland this 8th day of April 1987.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87-8474 Filed 4-14-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-252]

Renewal of Facility Operating License; the University of New Mexico

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Facility Operating License No. R-102 for the University of New Mexico (the licensee), which renews the license for operation of the training and research reactor

located on the campus in Albuquerque, New Mexico. The facility is a non-power reactor that has been operating at power levels not in excess of 5 watts (thermal). The renewed Operating License No. R-102 will expire twenty years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on August 22, 1986 at 51 FR 30145. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG-1224) for the renewal of Facility Operating License No. R-102 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment, dated March 24, 1987, for the renewal of Facility Operating License No. R-102 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on April 3, 1987.

For further details with respect to this action, see: (1) The application for amendment dated June 2, 1986, as supplemented; (2) the Notice of Finding of No Significant Environmental Impact; (3) Amendment No. 3 to Operating License R-102; (4) the Commission's related Safety Evaluation Report (NUREG-1224); and (5) the Environmental Assessment, dated March 24, 1987. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Copies of NUREG-1224 may be purchased by calling (202) 275-2060 or (202) 275-2171 or write the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982.

Dated at Bethesda, Maryland, this 24th day of March, 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization & Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87-8475 Filed 4-14-87; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-272, 50-277, 59-278, 50-311, and 50-354]

Philadelphia Electric Co., Public Service Electric and Gas Co., Delmarva Power and Light Co., and Atlantic City Electric Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the corporate reorganization of Atlantic City Electric Company (ACEC), one of the co-owners and co-licensees for the Peach Bottom Atomic Power Station, Units 2 and 3, the Salem Nuclear Generating Station, Units 1 and 2, and the Hope Creek Generating Station Unit 1.

Environmental Assessment

Identification of Proposed Action

By letters dated December 18, 1986, ACEC advised the Commission that ACEC's Board of Directors authorized the formation under the laws of the State of New Jersey of a holding company, Atlantic Energy, Inc., to hold all of the voting stock of ACEC. ACEC would become a generating subsidiary of the holding company and would remain as the co-holder of the licenses for Peach Bottom, Salem and Hope Creek. In each of the relevant licenses, ACEC is authorized to possess but not to operate the facility; in each case facility operation is carried out by another NRC licensee. Pursuant to the proposed reoganization, Atlantic Energy, Inc., would become the sole holder of ACEC's common stock and the current holders of ACEC's common stock would become holders of shares of the common stock of Atlantic Energy, Inc., on a share-for-share-basis.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to have the control of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. Notice of the proposed action was published in the **Federal Register** on March 5, 1987 (52 FR 6895).

The Need for the Proposed Action

ACEC stated that the purpose of the restructuring is to permit diversification on a limited basis into non-utility activities. The goal of such diversification is to enhance the financial strength and operating results of the entire system. ACEC contemplates that the holding company's diversification may initially be into energy-related activities such as cogeneration and other alternate energy forms. ACEC also indicated that the new structure will insulate its utility ratepayers from the risks associated with ventures of non-utility subsidiaries of the holding company and will enable utility managers to focus on utility operations.

Environmental Impact of the Proposed Action

ACEC is authorized to own but not to operate Peach Bottom Units 2 and 3, Salem Units 1 and 2, and Hope Creek Unit 1. The corporate reorganization of ACEC will not affect the management or operation of the facilities and will not reduce the funds available for the operators of these facilities to carry out activities required by the Operating Licenses (e.g., the environmental protection programs). On this basis, the Commission concludes that there are no significant radiological or nonradiological impacts associated with the proposed action.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Peach Bottom Atomic Power Station, Units 2 and 3, the Salem Nuclear Generating Station, Units 1 and 2, and the Hope Creek Generating Station, Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request in consultation with the New Jersey Board of Public Utilities (who approved the corporate reorganization on January 5, 1987) and the Federal Energy Regulatory Commission.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a

significant effect on the quality of the human environment.

Dated at Bethesda, Maryland this 9th day of April 1987.

Daniel R. Muller,

Director, BWR Project Directorate #2, Division of BWR Licensing.

[FR Doc. 87-8473 Filed 4-14-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Standard Forms 2824 and 2824A Through E

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S.C. chapter 35), this notice announces a proposed and unchanged extension of six forms that collect information from the public. The information collection was submitted to OMB for clearance. Standard Form 2824 contains a package of five forms necessary to support an application for disability retirement. They are: SF 2824A, Applicant's Statement of Disability; SF 2824B, Supervisor's Statement; SF 2824C, Physician's Statement; SF 2824D Agency Certification of Reassignment and Accommodation Efforts; and SF 2824E, Disability Retirement Application Checklist. The standard forms must be completed by former Federal employees who apply for disability retirement within 1 year of the date of separation from the service as provided by section 8337, title 5, United States Code. Annually, around 10,000 disability retirement applicants will take 10,000 burden hours to complete these forms. For copies of this proposed extension, call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received within 20 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, Room 6410, 1900 E Street, NW., Washington, DC 20415.

and

Richard Eisenger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3202, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-8471 Filed 4-14-87; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. C87-3; Order No. 752]

Nassau A. Coliseum; Notice and Order on Filing of Complaint

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Herny R. Folsom; Patti Birge Tyson.

Issued April 9, 1987.

On March 23, 1987, Nassau A. Coliseum, an inmate of the New York state correctional system, filed a complaint with the Commission under 39 U.S.C. 3662. Based upon the exhibits accompanying his complaint, Mr. Coliseum apparently contends that the correctional facility where he resides holds back, holds aside, or fails to forward his mail, and that his mail is handled by inmates who are not trustworthy. Authorities at those institutions deny that delivery of his mail is interfered with, and that any problems are caused by inmates handling mail. The complaint alleges that the Postal Service has wrongly delegated some of its mail delivery functions to the prision authorities, and that the manner in which those authorities carry out these functions is inconsistent with national postal policies articulated in title 39 of the United States Code.

The substance of Mr. Coliseum's complaint appears to be that

> . . . mail delivered to and from [inmates] . . . is subject to Postal Service Manual sections 154.62 and 155.61 or similar regulations or practices that abandon postal service authority beyond the main entrance of personal delivery, pick-up and forwarding of mail (see exhibits).
>
> 5. Institutions' handling of mail beyond the authority of the Postal Service is subject to innumerable practices, limitations, regulations and discretions not infused with the policies of Title 39 U.S.C. and almost certain to have a deterrent and abridging effect on the flow and receipt of mail therein.

Complaint at 1-2. PSM section 154.62 covers mail addressed to persons at hotels, schools, etc. The Complaint's citing of PSM section 155.61, however, appears to be inadvertent. No such section appears in the current Postal Service Manual. On the other hand, PSM section 154.61 (now DMM section 153.61) states that

> [m]ail addressed to patients or inmates at institutions is delivered to the institution authorities, who in turn will deliver the mail to the addressee under the institution's rules and regulations. If the addressee is no longer at that address, the mail shall be redirected to his current address. If the forwarding address is unknown, the mail shall be returned to the post office.

In alleging that his complaint falls within section 3662, we presume that complainant meant to cite PSM § 154.61 rather than PSM section 155.61. By citing the generalized Postal Service practice prescribed in PSM section 154.61, he has alleged an aspect of service that is "substantially nationwide", as Rule 82 of our rules requires. As an inmate of an institution covered by § 154.61, complainant would, under Rule 82, have a sufficient interest in the application of PSM 154.6 to validly invoke section 3662.

The complaint cites a long list of provisions in Title 39 that it contends are violated by the Postal Service's practice of allowing institutions to take responsibility for internal mail distribution. Those that relate to the issue of improper delegation of mail delivery functions include the allegation that the Postal Service.

—Has not provided for the collection, forwarding, returning, etc. of mail within institutions, as it is obliged to do under sections 404(a)(1) and 5001

—Has failed to establish post routes and post roads within institutions, as sections 5003(5), and 5203(a) give it exclusive authority to do

—Has not determined the need for postal facilities within institutions, as it is obliged to do under section 404(a)(3)

—Does not investigate postal offenses within institutions, as it is obliged to do under section 404(a)(7)

—Countenances violations of the Private Express Statutes within institutions, contrary to section 601(a)

—Permits states to search and detain mail, in derogation of its own exclusive authority to do so under 39 U.S.C. 404 and 603; and under Art. I, section 8, cl. 7; and Art. VI, cl. 2 of the United States Constitution.

The complaint contends that numerous provisions of Title 39 are violated by the manner in which institutions distribute mail internally. The complaint alleges that the manner in which mail is distributed

—Denies basic postal services to institutionalized persons, contrary to section 101(a)

—Provides less than maximally effective services to small communities, contrary to section 101(b)
—Provides less than maximal expedition for important letter mail to institutionalized persons, contrary to section 101(e)
—Provides less than adequate service to institutionalized persons, contrary to section 403(a)
—Fails to maintain an efficient delivery system for institutionalized persons, contrary to section 403(b)(1)
—Fails to provide types of mail service that meet the specific needs of institutionalized persons, contrary to section 403(b)(2)
—Fails to provide postal facilities that will give inmates ready access to essential postal services, contrary to section 403(b)(3)
—Discriminates unduly against institutionalized users of the mails, contrary to section 403(c)
—Allows inmates or employees of institutions to distribute mail, in violation of the contracting requirements of sections 505 and 5204, *et seq.*

The complaint alleges that present service within institutions is not approved by the Regional Postmaster General, nor by institutional users. It contends further, that there is no clear remedy in federal court, under section 409, 28 U.S.C. 1339, or other sections, for violations of inmates' rights to receive postal service.

For relief, the complaint asks that the Commission use its section 3623(c) authority to recommend establishing categories of service for institutionalized mail users that take into account the importance of mail to such users, the drawbacks of having inmates handle mail, the need for sealed letters, and other factors. It suggests that these service categories could be provided by locating Postal Service substations and distribution facilities inside institutions.

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint, unless that time is extended for some reason, such as use of the informal dispute resolution procedure of 39 CFR 3001.85. In this instance, it appears at this time that informal dispute resolution procedures prior to an answer would not be efficient, since there is a reasonable likelihood that the entire question of how mail is distributed within institutions is beyond the Postal Service's authority to determine. If this is what the Postal Service contends, however, its answer must demonstrate it, not merely assume it to be true, since the complaint, on its face, satisfies the jurisdictional requirements of section 3662. A conclusory citation of DMM section 153.61 that does not discuss the basis for that regulation will not be sufficient.

The issue of whether formal hearings on this complaint are warranted cannot be determined until the Postal Service provides the showing described above. Although the issue of whether formal hearings will be needed is undecided, we are appointing Stephen A. Gold, Director of the Office of the Consumer Advocate, to represent the public in this proceeding.

It is ordered:

(1) The Postal Service is directed to answer the complaint of Nassau A. Coliseum within thirty days of its filing.

(2) Stephen A. Gold, Director, of the Office of Consumer Advocate, is appointed to represent the interests of the general public in this proceeding.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 87-8340 Filed 4-14-87; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24310; File No. SR-CBOE-87-05]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Notice of Filing and Order Granting Accelerated Approved to Proposed Rule Change

On March 4, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the operation of the retail automatic execution system ("RAES") pilot in the Standard & Poor's 500 index option contract ("SPX") to November 20, 1987.

RAES has been utilized for the execution of certain SPX orders since September 5, 1986, pursuant to Commission approval of a six-month pilot program.[3] Although utilization of RAES in SPX has been relatively limited, the Exchange believes that it is appropriate to continue the pilot program for an additional six months. The Exchange has requested this extension so that it may gather additional information before deciding whether to modify or extend the program.

The CBOE indicates in its rule filing that although the pilot has operated efficiently to date, RAES in SPX has been used relatively infrequently during the pilot period. Because of the CBOE's limited experience with RAES in SPX to date, the Exchange is requesting that the pilot be extended for an additional six months, to enable the Exchange to collect additional information on RAES's operation. The Commission believes that the requested extension of the pilot is appropriate and desirable in view of the CBOE's limited experience with the operation of RAES in SPX to date. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [4] and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that pilot previously was pulished for comment and no adverse comments have been received regarding its operation. In addition, the Commission believes that it is desirable for the pilot to continue on an uninterrupted basis to avoid investor and broker-dealer confusion.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] That the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: April 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-8387 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19-4 (1985).

[3] *See* Securities Exchange Act Release No. 23590 (September 4, 1986), 51 FR 32709 (September 15, 1986). RAES automatically executes certain-sized public customer market and marketable limit orders entered into the System against participating CBOE market makers at the best bid or offer quoted on the CBOE floor at the time of the order's entry into RAES.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securites Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Landmark Bancshares Corporation, Common Stock, No Par Value (File No. 7–9873)
Uslico Corporation, Common Stock, $1.00 Par Value (File No. 7–9874)

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 April 30, 1987 written data, views and arguments concerning the above-referenced applications. 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 applications 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. 87–8384 Filed 4–14–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24304; File No. PHLX 87–8]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Amendment of PHLX Rules 1001 and 1002 Position and Exercise Limit Exemption Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1987 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc., ("PHLX"), pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend PHLX Rules 1001, Commentary .03 and 1002, Commentary .02 as follows: (Brackets indicate deletions; italics indicate additions.)

Position Limits

Rule 1001, Commentary .03 The Exchange will not approve any opening purchase or writing transaction or the carrying of any position[s] [which] *that* would exceed the limits established by this Rule except in highly unusual circumstances. [Requests for such approval should be directed to the Office of the Chief Examiner of the Exchange and must be accompanied by a detailed statement of the facts justifying an exception to such position limits.] *An exemption will be granted to a member or member organization only under the following circumstances:*

(i) *The exemption request must be submitted in writing to a floor official and set forth the facts justifying the exemption;*

(ii) *If the exemption is sought by a registered options trader, the registered options trader must hold an assignment in the option;*

(iii) *The applicant's position must be near the current position limit (generally within 10% of the current limit); and*

(iv) The character of trading in the option has been such as to support an exemption request; *the applicant's participation in the market in the period prior to the exemption request has been significant in terms of daily volume.*

[04] The Exchange may establish higher position limits for specialists. [transactions than those applicable with respect to other accounts.] Whenever a specialist reasonably anticipates that he may exceed [such] *the current* position limits in the performance of this function of assisting in the maintenance of a fair and orderly market, he must [consult with] *seek and exemption in writing* [and obtain the prior approval of the Committee on Options] in accordance with this commentary.

A position limit exemption requires the approval of two floor officials. The exemption is effective at the time a decision is communicated; retroactive exemptions will not be granted. The size and duration of an exemption will be determined on a case-by-case basis. An exemption usually will be granted only until the nearest expiration.

Exercise Limits

Rule 1002, Commentary .02 The Exchange will not approve exercises exceeding the limits established pursuant to this Rule except in highly unusual circumstances. [Requests for such approval should be directed to the Office of the Chief Examiner of the Exchange and must be accompanied by a detailed statement of the facts justifying an exception to such exercise limits.] *An exemption request must be in writing and set forth the facts justifying the exemption. An exemption requires the approval of two floor officials.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of this rule change is to modify the Exchange's procedures regarding the position and exercise limit exemption process. Position and exercise limit exemptions, which are sparingly granted, require concurrence of two option floor officials. These decisions are normally made in consultation with PHLX staff. The proposed rule change adopts factors to be considered in reviewing requests of position and exercise limit exemptions: the size and character of prior trading in the option by the applicant and the size of the applicant's current positions in relation to the position limit. Additionally, another factor to be given consideration in evaluating position limit exemption requests includes the willingness of other market participants to make size markets. The process has adequate safeguards, since floor officials may rely upon the Exchange's sophisticated audit trail system to ascertain the positions of a party seeking such an exemption while responding to the immediate attention

for handling large orders in the market place.

The Exchange's rules currently do not contain specific factors to be evaluated by floor officials in considering position and exercise limit requests. Hence, the proposal should provide increased guidance to floor officials, assure consistency in granting exemption requests, and facilitate greater responsiveness to market needs in acting upon exemption requests.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 in that it will facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 6, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 6, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-8386 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 9, 1987.

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 stock:

Federal Paper Board Company, Inc., Common Stock, $5.00 Par Value (File No. 7-9875)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 29, 1987 written data, views and arguments concerning the above-referenced applications. 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 applications 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.

Johathan G. Katz,

Secretary.

[FR Doc. 87-8385 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

Small Business Administration

[Declaration of Disaster Loan Area #2274]

Maine; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 9, 1987, I find that the Counties of Androscoggin, Franklin, Kennebec, Oxford, Penobscot, Piscataquis, and Somerset in the State of Maine constitute a disaster loan area because of severe storms and flooding beginning on or about March 30, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on June 8, 1987, and for economic injury until the close of business on January 11, 1988, at: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere—8.000%

Homeowners without credit available elsewhere—4.000%

Businesses with credit available elsewhere—7.500%

Businesses without credit available elsewhere—4.000%

Businesses (EIDL) without credit available elsewhere—4.000%

Other (non-profit organizations including charitable and religious organizations)—9.500%

The number assigned to this disaster is 227406 for physical damage and for economic injury the number is 652000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 9, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-8480 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #6514; Amdt. #1]

Texas; Declaration of Disaster Loan Area

The above-numbered Declaration (52 FR 10284) is hereby amended to include the Counties of Refugio, Victoria and Aransas in the State of Texas because of the closure of the oyster grounds in San Antonio Bay on December 20, 1986, due to flooding of the Guadalupe and San Antonio Rivers which began on or about December 18, 1986. All other information remains the same; i.e., the termination date for filing applications

for economic injury assistance is the close of business on December 28, 1987.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 9, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-8481 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a District Advisory Council meeting at 9:00 a.m. on Friday, May 8, 1987, at the offices of Clark Tribble Harris & Li Architects PA, 324 North College Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, Packard Place, 222 South Church Street, Suite 300, Charlotte, NC. 28202, telephone number (704) 371-6551.

April 9, 1987.

Jean M. Nowak,

Director Office of Advisory Councils.

[FR Doc. 87-8478 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Columbus, Ohio, will hold a public meeting at 9:30 a.m., on Wednesday, April 22, 1987, at the Envoy Inn, 35 West Spring Street, Columbus, Ohio 43215, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Frank D. Ray, District Director, U.S. Small Business Administration, 85 Marconi Boulevard, Fifth Floor, Columbus, Ohio 43215—(614) 469-7310.

April 9, 1987.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 87-8477 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting at 9:30 a.m. on Wednesday, May 6, 1987, at the Little America Hotel, 500 South Main, Tuscon Room Convention Center, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah (801) 524-5804.

April 9, 1987.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 87-8479 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m., on Tuesday, April 28, 1987, at the Owhylee Plaza "Ambassador Room," 1109 Main Street, Boise, Idaho, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph G. Kaeppner, District Director, U.S. Small Business Administration, 1020 Main Street, Suite 290, Boise, Idaho (208) 334-9641.

April 9, 1987.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 87-8477 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1066]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 5, 1987 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW. Washington, DC.

The purpose of this meeting will be a general review of all agenda items for the seventeenth session of the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals scheduled for May 18-22, 1987.

The agenda for this meeting includes the following items:

—Interpretations of MARPOL 73/78, Annex II
—Evaluation of chemicals shipped in bulk
—Venting requirements for chemical tankers
—Guidelines for the carriage of bulk chemicals on offshore support vessels

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. Frits Wybenga, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW. Washington, DC 20593-0001, telephone (202) 267-1217.

Dated: April 6, 1987.

Michael E. McNaull,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 87-8394 Filed 4-14-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1065]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Stability, Load Lines, and Safety of Fishing Vessels; Meeting

The Working Group on Stability, Load Lines and Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 5, 1987 in Room 6319 at 10:00 AM at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to discuss the national effort to prepare U.S. positions for Session 32 of the Subcommittee on Safety of Life at Sea Working Group on Stability, Load Lines, and Safety of Fishing Vessels scheduled for September 7-11, 1987. Items of principal interest on the agenda for this session are:

—Subdivision of Dry Cargo Ships
—Intact Stability
—Stability for Ocean Barges
—Review of Stability for Mobile Drilling Units
—Future Revision of the Load Line Convention

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W. A. Cleary, Jr., U.S. Coast Guard Headquarters (G–MTH–3), 2100 Second Street, SW., Washington, DC 20593, Tel: (202)267–2988.

Dated: April 6, 1987.

Michael E. McNaull,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 87–8395 Filed 4–14–87; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1067]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting on 4 May 1987 at 0930 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of the meeting is to consider the U.S. position for the 2nd Session of the International Maritime Organization (IMO)/ United Nations Conference on Trade and Development (UNCTAD) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages and Related Subjects.

The JIGE was established by IMO and UNCTAD pursuant to the recommendation contained in Resolution 6 of the 11th Session of the UNCTAD Working Group on International Shipping Legislation. As endorsed by the Council of IMO and the UNCTAD Trade and Development Board, the proposal called for meeting alternately in Geneva and London during scheduled meeting times of the IMO Legal Committee and the UNCTAD Working Group on International Shipping Legislation.

The JIGE is tasked with conducting a broad examination of the subject of maritime liens and mortgages, with consideration to be given to:

1. The revision of the various maritime liens and mortgages Conventions;

2. The preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrest; and

3. The feasibility of an international registry of maritime liens and mortgages.

IMO and UNCTAD have identified the following major objectives as deserving of priority consideration in any investigations regarding possible international action on maritime liens and mortgages:

1. To encourage ship financing by affording appropriate protection to persons providing finance;

2. To afford protection in respect of settled claims;

3. To encourage the provision of services to ships;

4. To protect the ship against multiple actions; and

5. To minimize the potential encumbrances to ship operation.

The JIGE help its 1st Session in Geneva on 1–12 December 1986. The principal outcome of the meeting was the adoption of joint procedural rules; the substantive work undertaken was an exploratory discussion of the major issues and objectives noted above. This discussion revealed strong interest in studying the present international framework and considering substantial revisions that would both promote uniformity and favor the mortgagee. As a preliminary matter, a number of participants questioned the nature and extent of the perceived need to improve the availability of vessel financing.

The 2nd Session of the JIGE is scheduled for 11–15 May 1987 in London. The provisional agenda for the session includes the organization of work and further consideration of maritime liens and mortgages in accordance with the JIGE mandate.

In preparation for the 2nd Session, the IMO and UNCTAD Secretariats are conducting a national survey as the basis for a document identifying the various maritime liens found in the domestic legislation of member states. The U.S. response to this survey will be discussed at the open meeting on 4 May 1987.

Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further informaiton pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting, contact either Captain Frederick F. Burgess, Jr. or Lieutenant Commander Fred M. Rosa, Jr., U.S. Guard (G–LMI), Washington, DC., 20593, telephone (202) 267–1527.

Dated: April 3, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–8396 Filed 4–14–87; 8:45 am]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99–591, Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2524.

Type of Request: Regular submission.

Title of Information Collection: 1987 Residential Energy Conservation Attitude Survey.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1,500.

Estimated Total Annual Burden Hours: 750.

Need For and Use of Information: TVA needs qualitative and quantitative consumer data on the awareness of, attitudes towards, and intentions to participate in its residential conservation programs. TVA will use this data to predict the penetration of these programs which prediction will affect TVA's operational plans and electrical capacity expansion schedule when used as input into the electrical load forecast.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87–8355 Filed 4–14–87; 8:45 am]

BILLING CODE 8120–01–M

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591, Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular submission.

Title of Information Collection: Pre-survey sheet for Radiant Barrier Demonstration.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 60.

Estimated Total Annual Burden Hours: 6.

Need For and Use of Information: TVA is installing a radiant barrier material in the attics of 60 homes to determine installation costs and kwh savings. These questions will determine if homes meet certain criteria (age, type construction, heating/cooling specifications, etc.) to qualify for this demonstration. Respondents will be typical homeowners in the TVA service area.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-8356 Filed 4-14-87; 8:45 am]

BILLING CODE 8120-01-M

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591, Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99591.

Requests for information, including copies of the information collection proposed and supporting documentaion, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular submission.

Title of Information Collection: Group Camp Users Needs Assessment Survey.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, non-profit institutions, small businesses or organizations.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 300.

Estimated Total Annual Burden Hours: 150.

Need For and Use of Information: This survey will be mailed to all recent users of Brandon Spring Group Camp and the Youth Station in the Land Between the Lakes National Recreation Area. The results of the survey will assist TVA in attaining higher levels of user satisfaction and facility utilization, and to more effectively allocate resources.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-8357 Filed 4-14-87; 8:45 am]

BILLING CODE 8120-01-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Invitation for Public Comment Concerning the Proposed Conversion of the GSP Program to the Harmonized System Tariff Nomenclature

Summary

This notice follows-up on the notices of December 8, 1986 (51 FR 44163) and March 6, 1987 (52 FR 7057) concerning the proposed conversion of the GSP program to the Harmonized System tariff nomenclature (HS). The purpose of this notice is to invite public comments on the proposed conversion to the HS of the results of the 1986 Annual Review of the GSP program. This notice also invites public comment on one individual HS subheading where an "A" was inadvertently omitted from the "Rates of Duty Special Column" in the publication of October 1986 entitled "Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System, Revised, Showing Administrative Changes Approved by the Trade Policy Staff Committee" (i.e., the draft HS tariff schedule).

The Conversion to the Harmonized System Tariff nomenclature TSUS Articles Added to the List of GSP Eligible Items

As was announced on April 2 by United States Trade Representative Ambassador Clayton Yeutter, the President has designated nine new articles to the list of GSP eligible items in the TSUS. The nine articles are listed in a April 2 press release which is available from the GSP Information Center at the Office of the United States Trade Representative. This notice invites public comment on a proposal to convert to the HS the nine product additions to the list of GSP eligible TSUS items. The proposed conversion of these items to the HS is listed in Annex 1. As was indicated in the December 8 and March 6 notice, the TSUS and HS are very different. For instance, products in a GSP-eligible TSUS item may be classified in several different HS subheadings. Not withstanding these differences, the overall goal of converting the GSP program is that the conversion should be as "trade neutral" as possible. In other words, within the limits of sound nomenclature principles, products that are GSP-eligible should remain GSP-eligible and products that are not GSP-eligible should remain ineligible.

Prior to preparing comments on the proposals to convert the new GSP product additions, the notice of December 8 should be consulted, particularly the "Comments" section of the notice. In two cases, HS nomenclature changes (or "break-outs") are proposed in an attempt to maintain the "neutrality" of the conversion process to the extent possible. These proposed break-outs are indicated in Annex 1. Comments concerning the HS subheading proposals should be very specific, include the HS subheading number(s) and related TSUS number(s) of interest and focus on instances of where product coverage in the context of the TSUS is apparently being increased or decreased by the proposed conversion of these nine TSUS items to the HS.

Conversion to the Harmonized System Tariff Nomenclature Decisions to Graduate Certain Beneficiary Developing Countries on Certain TSUS Articles

As indicated in the April 2 press release referrred to above, the President "graduated," or removed from GSP eligibility, certain beneficiary developing countries on certain TSUS articles. These graduation actions resulted from the President's decisions to act on petition requests submitted by interested parties in the 1986 Annual Review or as a result of denying a beneficiary developing country "redesignation," or reinstatement to GSP eligibility on a given article. A beneficiary country becomes eligible for redesignation when they fall below the statutory "competitive need limits" in a calendar year following a calendar year in which they exceeded the competitive need limits and thus were excluded from receiving GSP duty-free treatment. The competitive need limits are statutory limitations on the amount of GSP duty-free benefits any one beneficiary country can receive on any given GSP eligible product in a calendar year. For example, if a beneficiary country exceeded competitive need limits in 1985 on a product they would automatically have been excluded from GSP eligibility on July 1, 1986. However, if at the conclusion of calendar year 1986 the same beneficiary country had fallen below the competitive need limits in the same product in which they were previously excluded, they would become eligible for redesignation to GSP eligibility on that product. The President's decision to redesignate or deny redesignation in this example would become effective July 1, 1987 after announcement of the decision on or about April 1, 1987.

Prior to preparing comments on the conversion to the HS the President's decisions to graduate beneficiary countries on certain products, the December 8 notice should be consulted. In this regard, as is noted above, the TSUS and HS are very different. As a result, comments concerning the conversion of graduation decisions should be very specific and include the HS subheading number(s), the TSUS number(s) and the country or countries involved. As was also indicated in the December 8 notice, in preparing their final recommendations to the President on the disposition of GSP-eligible articles and beneficiary countries in the new HS, the TPSC will take into account those comments received during the public comment period and advice from the U.S. International Trade Commission.

Changes With Respect to the TPSC Approved October 1986 Publication Concerning the Conversion of the TSUS to the Harmonized System Tariff Nomenclature

The draft HS tariff schedule listed one HS subheading, in addition to the four that were listed in the March 6 notice, where an "A" was inadvertently omitted from the "Rates of Duty Special Column." The "A" in this document in the "Rates of Duty Special Column" indicates that an item is proposed as GSP eligible. The HS subheading which should have been listed as being proposed for GSP eligibility as indicated by an "A" in the "Rates of Duty Special Column" is: 6908.10.50

As indicated above, those parties preparing comments regarding this HS subheading should consult the December 8 notice.

Submission of Written Comments

All written comments submitted pursuant to this notice should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, Room 517, 600 17th Street, NW., Washington, DC 20506. Written comments will be accepted if submitted in twenty copies in English. If the comments contain business confidential information, twenty copies of a non-confidential version of the coments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page "public version" or "non-confidential."

Deadline for Receipt of Written Comments

All written comments with respect to the matters covered by ths notice must be received no later than close of business Wednesday, May 13, 1987, by the GSP Subcommittee at the address listed above. Rebuttal comments concerning the matters covered by this notice must be received no later than Wednesday, June 3, 1987. Comments should identify the party or parties commenting, provide a detailed description of the product or products of concern (including the proposed HS subheading and the current TSUS category), the party's interest in the product, and detailed information on the impact of the change of particular concern.

Written comments submitted in connection with this notice will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. The GSP Information Center is located in the Office of the United States Trade Representative at the address listed above. The GSP Information Center can be contacted at (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

Annex 1

HS Subheadings proposed as GSP eligible as a result of the President's decisions announced on April 2, 1987, including proposed "Break-Outs":

2401.10.80
2401.20.40
6911.10.39
6912.00.44
9107.00.40

Break-Outs:

(1)						
Fumaric Acid:						
2917.19.15	Derived in whole or in part from aromatic hydrocarbons.	kg	20% Free (E)			15.4¢/kg +87%
2917.19.17	Other	kg	4.2% Free (A, E, EI)			25%

(2)					
2805.22	Strontium and Barium:				
2805.22.10	Strontium	kg	3.7% Free (A, E)		25%
2805.22.20	Barium	kg	3.7% Free (E)		25%

[FR Doc. 87-8393 Filed 4-14-87; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 9, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

United States Mint

OMB Number: New
Form Number: None
Type of Review: New
Title: Coin Survey
Description: The United States Mint intends to conduct a one-time random survey of the public. The survey examines coin demand forecasts which form the basis for short-term budget planning and long-term strategic planning. Among the factors included in the forecast model are the rate of coins lost annually and the stock remaining in circulation.
Respondent: Individuals
Estimated Burden: 4,175 hours
Clearance Officer: Myles Schulberg United States Mint 633-3rd Street, NW. Room 639 Washington, DC 20220
OMB Review: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3208, New Executive Office Building Washington, DC 20503

U.S. Customs Service

OMB Number: 1515-0061
Form Number: CF-1304
Type of Review: Extension
Title: Crew's Effects Declaration
Description: Customs Form 1304 is completed by the master of the arriving carrier to recover and list the crew's effects that are accompanying them on the trip but which are defined as merchandise under U.S. statutes and therefore must be manifested.
Respondents: Businesses
Estimated Burden: 20,983 hours

OMB Number: 1515-0002
Form Number: CF-7507
Type of Review: Extension
Title: General Declaration (Outward/Inward)
Description: The Customs Form 7505 allows the agent or pilot to make entry or exit of the aircraft as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.
Respondents: Businesses
Estimated Burden: 124,950 hours
Clearance Officer: B.J. Simpson (202) 566-7529 U.S. Customs Service Room 6426 1301 Constitution Avenue, NW. Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3208, New Executive Officer Building Washington, DC 20503

Alcohol, Tobacco and Firearms

OMB Number: 1512-0467
Form Number: ATF F 5000.24
Type of Review: Revision
Title: Excise Tax Return
Description: ATF F 5000.24 is completed by persons who are liable for excise taxes on distilled spirits, beer, wine, cigars, cigaretts, cigarett papers and tubes, chewing tobacco and/or snuff. The return is prescribed by law for the collection of these taxes. AFT uses the form to identify the taxpayer, the premises and period covered by the tax return, the taxpayer's liability and the adjustments affecting the amount paid.
Respondents: Businesses
Estimated Burden: 25,309 hours
Clearance Officer: Robert Masarsky (202) 566-7077 Bureau of Alcohol, Tobacco and Firearms Room 7011 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

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 87-8439 Filed 4-14-87;8:45am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 17, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: William A. Sanders, Jr., Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

1. Final Regulations:
   Part 624—Temporary Regulations—Technical Amendments— Regulatory Accounting Principles
2. Proposed Amendments to Regulations:
   Part 611—Temporary Regulations—Capital Corporation Assessment
3. Policy Directives:
   FCA Approval of the Compensation of Farm Credit System Bank Chief Executive Officers
   FCA Approval of Exceptions to PCA Direct Loan Limitation
4. Administrative Matters:
   Schedule of Farm Credit Administration Board Meetings

Dated: April 10, 1987.

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-8518 Filed 4-13-87; 10:35 am]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: April 10, 1987 (52 FR 11796).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, April 15, 1987.

CHANGES IN THE MEETING: Deletion of the following open item from agenda:

Proposals regarding fees for examination of Edge Act corporations, inspections of bank holding companies, and processing applications for banks and bank holding companies. (Proposed earlier for public comment; Docket No. R-0584)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 10, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-8512 Filed 4-13-87; 10:12 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. EMO-1]

Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising

Correction

In proposed rule document 87-7566 beginning on page 10984 in the issue of Monday, April 6, 1987, make the following corrections:

1. On page 10986, in the first column, in the last paragraph, in the second line, "of" should read "to".

2. On page 10988, in the third column, in the third line, "assessment" should read "assessments".

3. On page 10991, in the second column, in the last paragraph, in the third line, " 'handling' " should read " 'handle' ".

4. On page 10994, in the second column, in the second paragraph, in the fifth line, "at least 5 years," should read "at least every 5 years,".

5. On page 10997, in the second column, in the first complete paragraph, in the 15th line, "that a matter" should read "that as a matter".

6. On page 10998, in the second column, in the first complete paragraph, in the third line from the bottom, "procedure" should read "procedures".

PART 994—[CORRECTED]

7. On page 11001, in the third column, in the table of contents, "994.85 Counterparts." should read "*994.85 Counterparts.", "994.86 Additional parties." should read *994.86 Additional parties.", and "994.87 Order with marketing agreement." should read "*994.87 Order with marketing agreement.".

§ 994.85 [Corrected]

8. On page 11007, in the second column, in the first line, the section heading for § 994.85 should read "*§ 994.85 Counterparts."

§ 994.86 [Corrected]

9. On the same page, in the same column, in the ninth line, the section heading for § 994.86 should read "*§ 994.86 Additional parties."

§ 994.87 [Corrected]

10. On the same page, in the third column, in the first line, the section heading for § 994.87 should read "*§ 994.87 Order with marketing agreement."; and in the text of § 994.87, in the seventh line, "spend" should read "spent".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50558; FRL-3174-4]

Ethanol, 2-Amino-, Compound With N-Hydroxy-N-Nitrosobenzenamine (1:1); Proposed Determination of Significant New Uses

Correction

In proposed rule document 87-6459 beginning on page 9508 in the issue of Wednesday, March 25, 1987, make the following correction:

On page 9511, in the third column, under **XII. Rulemaking Record**, in the first paragraph, in the third line, "OTS" should read "OPTS".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-20, RM-5544]

Radio Broadcasting Services; Caldwell, TX

Correction

In proposed rule document 87-4139 appearing on page 6026 in the issue of Friday, February 27, 1987, make the following correction:

On page 6026, in the first column, the Docket Number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-07-4520-12, Group 920]

Plat of Survey

Correction

In notice document 87-6412 beginning on page 9548 in the issue of Wednesday, March 25, 1987, make the following corrections:

1. On page 9548, in the third column, the "Group Number" should read as set forth above.

2. On the same page, in the same column, under **Humboldt Meridian, Trinity County**, the first line should read: "T. 6 N., R. 6 E.".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Nabilone Into Schedule II

Correction

In rule document 87-7533 beginning on page 11042 in the issue of Tuesday, April 7, 1987, make the following corrections:

1. On page 11042, in the second column, under the **SUPPLEMENTARY INFORMATION**, in the fourth line from the bottom, after "Statement" add "of".

2. On the same page, in the third column, in the second paragraph, in the fourth line, "Scheduling" should read "Schedule".

§ 1308.12 [Corrected]

3. On page 11043, in the third column, in § 1308.12(f)(2), in the first line, "Nabiline" should read "Nabilone".

4. On the same page, in the same column, in § 1308.12(f)(2), in the second line, "(+)-*trans*-" should read "(±)*trans*-".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-252]

Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-102; the University of New Mexico

Correction

In notice document 87-7428 appearing on page 10834 in the issue of Friday, April 3, 1987, make the following correction:

On page 10834, in the second column, in the first line, "1986" should read "1966".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWP-18]

Proposed Alteration of VOR Federal Airway and Jet Routes; Nevada

Correction

In proposed rule document 87-5996 beginning on page 8920 in the issue of Friday, March 20, 1987, make the following correction:

On page 8920, in the third column, under **The Proposals**, in the first paragraph, in the ninth line, "40°07'35"N., long." should read "40°07'30"N., long.".

BILLING CODE 1505-01-D

federal register

Wednesday
April 15, 1987

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Occupational Safety and Health Standards; Excavations; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-204]

Occupational Safety and Health Standards; Excavations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: With this notice, the Occupational Safety and Health Administration (OSHA) proposes to revise a portion of the construction industry safety standards addressing excavations. The proposed revisions are intended to correct problems related to the use of existing standards.

The existing standards regulate the use of support systems, sloping and benching systems and other systems of protection as means of protection against excavation cave-ins. In addition, the standards regulate the means of access to and egress from excavations, and employee exposure to vehicular traffic, falling loads, hazardous atmospheres, water accumulation, and unstable structures in and adjacent to excavations.

The proposed revisions would use performance criteria where possible, rather than specification requirements. The proposed revisions would also consolidate and simplify many of the existing provisions; add and clarify definitions; reformat the standard to eliminate duplicate provisions and ambiguous language; provide a consistent method of soil classification; and give employers added flexibility in providing protection for employees.

This is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without unduly burdensome requirements. This proposal is being issued after appropriate consultation with the Advisory Committee on Construction Safety and Health (ACCSH).

DATES: Comments on this proposed rulemaking must be postmarked by June 15, 1987. Hearing requests must be postmarked by June 15, 1987.

ADDRESS: Comments and requests for hearings are to be sent to the Docket Officer, Docket No. S-204, U.S. Department of Labor, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

A. History

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91-54; August 9, 1969), significantly strengthened employee protection by providing for occupational safety and health standards for employees of the building trades and construction industry in Federal and Federally-financed or Federally-assisted construction projects.

Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (the Act) (84 Stat. 1590; 29 U.S.C. 650 et seq.) was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established Federal Standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards in 29 CFR Part 1518 as established Federal Standards in accordance with section 6(a) of the Act (36 FR 10466, May 29, 1971). Part 1518 was redesignated as Part 1926 later in 1971 (36 FR 25232, December 30, 1971). The standards in Subpart P of Part 1926, titled § 1926.650—General Protection Requirements; § 1926.651—Specific Excavation Requirements; § 1926.652—Specific Trenching Requirements; and § 1926.653—Definitions Applicable to this Subpart, were adopted as OSHA standards as part of this process.

The need for review and revision of § 1926.650 through § 1926.653 has been recognized by OSHA since the earliest days of the Agency's existence. Consequently, after a Notice of Proposed Rulemaking (36 FR 19083, September 28, 1971) and after a review by the Advisory Committee on Construction Safety and Health (ACCSH), several amendments of a technical nature were made to Subpart P (37 FR 3512, February 17, 1972). Subsequent to the adoption of those amendments, OSHA found it necessary to further amend the standard. After a Notice of Proposed Rulemaking (37 FR 15317, July 29, 1972) § 1926.652 was amended to require ladders as a means of access and egress in trenches greater than four feet (1.2 m) in depth—instead of three feet (.9 m) in depth (37 FR 24345, November 16, 1972).

In 1976, OSHA, in response to continued complaints concerning the adequacy of the standards in Subpart P, engaged the National Bureau of Standards (NBS) to study the compatibility of the technical provisions in the regulations with actual construction practice. In addition, NBS was to examine the state of the knowledge in geotechnical and structural engineering; to review the field experience accumulated since the promulgation of the standards; and to recommend potential modifications that could improve the effectiveness of the standards.

Findings and preliminary recommendations of the NBS studies were presented and discussed at a Federally-sponsored workshop in September 1978. Six reports were then completed as a result of the NBS work, and these were published in 1979 and 1980. Copies of these reports are part of the public record (Exs. 1 through 6).

As a result of the development of these recommended changes, private industry proposed and sponsored a series of five workshops (herein after referred to as the "workshops" or the "industry-sponsored workshops") in the spring and summer of 1981 to discuss and comment on ways to implement the NBS recommendations. An unpublished text was used at these workshops (Ex. 7). Final recommendations for technical changes to the standards incorporating the comments from the industry-sponsored workshops were prepared by NBS in May 1983 (Ex. 26).

Excavation-related accidents resulting in injuries and fatalities have continued to occur at construction sites despite the development and promulgation of the OSHA Construction Standards in 1971 and 1972. However, based upon examination of available data, this trend appears to be, at least in part, the result of non-compliance with existing OSHA standards, rather than a failure of the standards to address the hazards involved in excavation work. Based on a careful review of compliance problems and public comments received since 1972, OSHA believes that the present standard needs updating. The proposed

standard is intended to eliminate certain ambiguities, redundancies, and unnecessary provisions, and would change certain specific requirements into general requirements. In addition, the proposed standard addresses specific problem areas and provides requirements which are more feasible and practical than the existing requirements. The proposal is written in performance-oriented language where possible.

A draft of the proposed changes to the standard was reviewed by ACCSH in October 1982. Transcripts of this meeting are part of the public record (Ex. 8). The Committee's comments and recommendations, and those of other interested parties, have been carefully analyzed as part of the present proposed rulemaking. Many of the changes in the standard being proposed reflect the recommendations and suggestions of these participants. Relevant ACCSH comments are discussed below in Section III—"Summary and Explanation of the Proposed Standard." Committee discussions that were inconclusive have been considered, but are not discussed in this preamble. Several suggestions for changes to the draft standard were made by members of the ACCSH. OSHA seeks more discussion on these suggestions and is, therefore, raising the individual points as issues in this preamble.

B. Problems With the Existing Standards and Proposed Solutions

OSHA's efforts to revise its excavation and trenching standards were initiated primarily because the Agency has experienced difficulty in enforcing the existing standards. Several of these problems are discussed in detail below.

"Specific Excavation/Specific Trenching Requirements"

The first major problem with the existing standards is that because § 1926.651 and § 1926.652 are two separate sections, one entitled "Specific Excavation Requirements" and the other "Specific Trenching Requirements," the standards are not clear as to which of these requirements must be followed in trenches. It was intended that many of the excavation standards would also apply to trenches since a trench is a type of excavation.

The Occupational Safety and Health Review Commission (OSHRC) and one United States Court of Appeals, have sanctioned the application of the excavation standards in § 1926.651 to trenches (*Dobson Brothers Construction Company*, 3 BNA OSHC 2035 (R.C. 1976); and *D. Federico Company, Inc.*, v. *OSHRC and Usery*, 558 F. 2d 614 (1st Cir 1977) 5 BNA OSHC 1528, respectively). However, another Court of Appeals has held to the contrary that excavation standards cannot be applied to trenches (*Lloyd C. Lockrem, Inc.* v. *OSHRC*, 609 F. 2d 940 (9th Cir. 1979) 8 BNA OSHC 1316).

This proposal resolves the uncertainty left by these decisions and the language ambiguity of the existing standards by setting forth one set of requirements which are applicable to all excavations, including trenches. Where there are requirements intended to be applicable only to trenches—such as the requirement that ladders or equivalent means of egress be provided every 25 feet horizontally—the proposed standard makes it clear that the requirement applies only to those excavations which are also trenches (see proposed § 1926.651(c)(2)).

Excavations (Non-Trench)

A second major problem with the existing standards involves the requirements for protecting employees in nontrench excavations from the hazards of a cave-in. Existing § 1926.651(c) currently requires: "The walls and faces of all excavations in which employees are exposed to danger from moving ground shall be guarded by a shoring system, sloping of the ground, or some other equivalent means." The term "danger from moving ground" is not defined in the standard and, thus, the standard does not specify when an employer must take any precautions to protect employees from a cave-in. Furthermore, the standard does not specify what degree of precaution an employer must take even when employees are exposed to a "danger from moving ground." Requirements in this regard are, however, contained in § 1926.651 (e), (f), (g), and (h).

This issue was resolved somewhat when the OSHRC, in agreement with the Secretary of Labor, interpreted the standard to require shoring or sloping in accordance with *Table P–1* of Subpart P, whenever employees are exposed to unstable soil in excavation sides (*M.J. Lee Construction Company*, 7 BNA OSHC 1140 (R.C. 1979); *Terra Motus Company, Inc.*, 5 BNA OSHC 1696 (R.C. 1977); *D. Federico Company, Inc.*, 3 BNA OSHC 1970 (R.C. 1976) affirmed on the grounds, 558 F. 2d 614 (1st Cir 1977) 5 BNA OSHC 1528). However, the problem was revived by two OSHRC decisions which are inconsistent with the cases mentioned above. In the first case, *Seaward Construction Company, Inc.*, 5 BNA OSHC 1422 (R.C. 1977), the OSHRC interpreted § 1926.651(c) to require sloping and shoring only if OSHA establishes that the ground to which employees are exposed is actually moving. In the second case, *Pipe-Rite Utilities Ltd., Inc.*, 10 BNA OSHC 1289 (R.C. 1982), the OSHRC, relying on *Seaward*, vacated a citation and did not address the other cases interpreting paragraph 1926.651(c).

These decisions reestablished the uncertainty as to when and to what degree an employer must slope, shore or otherwise protect employees in a non-trench excavation. OSHA has long maintained that employees exposed to potential cave-ins must be protected by shoring or sloping long before the excavation face is in imminent danger of collapsing.

Another problem with the standards for non-trench excavations is that the required degree of protection is not always easily determined. With regard to sloping, the existing § 1926.651(g) provides that "All slopes shall be excavated to at least the angle of repose except for areas where solid rock allows for line drilling or presplitting." To find the angle of repose an employer must consult *Table P–1* which appears at the end of § 1926.652, "Specific Trenching Requirements." *Table P–1* is titled "Approximate Angle of Repose for Sloping of Sides of Excavations." The difficulty with *Table P–1* is that it describes the approximate angle of repose for various soil types in terms that are not the same as terms commonly used in the industry to classify soils. In addition, the terms are not defined in the standard. Thus, it is sometimes very difficult to derive the appropriate degree of sloping from this Table.

OSHA recognizes a problem with the term "angle of repose." The term is used in the standard in a manner which is inconsistent with its meaning in the civil engineering profession. In the American Society for Testing and Materials (ASTM) Standard D653–67, "Standard Definitions of Terms and Symbols Relating to Soil and Rock Mechanics," the term "angle of repose" is defined as follows: "The angle between the horizontal and maximum slope that a soil assumes through natural processes. For dry granular soils the effect of height is negligible; for cohesive soils the effect of height is so great that the angle of repose is meaningless." Thus, to talk in terms of a single "angle of repose" is technically inaccurate. The "angle of repose" for cohesive soil depends on the depth of the excavation, whereas the "angle of repose" for granular soil depends largely on densification and changes in environmental conditions of exposure, such as the drying process.

The proposal has sought to rectify these problems by setting forth requirements for the sloping of excavations that are clear and consistent with the terms used both in the civil engineering profession and in the construction industry. This is accomplished in proposed § 1926.652(b) which provides three options for sloping. These three options are: (1) Sloping to a specified angle from the horizontal in accordance with the most conservative assumptions as to soil conditions; (2) sloping in accordance with appendices A and B to Subpart P which allow steeper slopes after the employer has determined that the excavation is located in a soil which is suitable for a steeper slope; or (3) sloping in accordance with the directions of a qualified person *or* a qualified engineer.

In the proposal, OSHA permits a "qualified person" or a "qualified engineer" to design protective systems and structural ramp, to prepare tabulated data, and to determine if excavations below the footing of a foundation or retaining wall can be accomplished safely. The existing standard permits supporting systems to be designed by a "qualified person" (§ 1926.651 (f) and (k)). Additionally, existing § 1926.651(x) permits the "qualified person" to design ramps. Requirements for sloping (§ 1926.651(e) and § 1926.652(b)) and for excavations below footings or adjacent to structures (§ 1926.651 (n), (o)) imply that these are the responsibility of the "qualified person." Input received during the preparation of this proposal seems to indicate a "qualified person" as defined in § 1926.32(l) of the existing construction safety standards may have significant expertise in many phases of excavation work, but may well be unable to demonstrate any expertise specifically relating to the design of cave-in protective systems.

Modifying the standard to permit only a "qualified engineer" to undertake design responsibilities is one suggested remedy which the Agency is considering. However, considering the potentially adverse impact on small firms which do not normally employ engineers, OSHA is proposing to allow either a "qualified person" or a "qualified engineer" to perform design responsibilities provided that the design is in accordance with accepted engineering practice. The Agency is concerned about the qualifications necessary to design protective systems, and solicits public input on this issue.

Need for Clarification of Trench Requirements

OSHA has learned from its enforcement experience with § 1926.652 "Specific Trenching Requirements" that much can be done to clarify the meaning and intent of these standards. The key provisions of the current specific trenching standards are § 1926.652(b) (for trenches in soft or unstable soil) and § 1926.652(c) (for trenches in hard or compact soil).

The main difficulty with §§ 1926.652(b) and 1926.652(c) is that the terms "soft or unstable" and "hard or compact" do not, in some instances, provide sufficient guidance to employers as to the requirements applicable to a trench. The OSHRC has held that any trench requiring a slope less steep than 63 degrees from the horizontal under *Table P–1* must be considered to be in soft or unstable soil within the meaning of § 1926.652(b).

Since § 1926.652(c) requires a slope of not steeper than ½ to 1 for hard or compact soil, it is evident that these materials listed in Table P–1 as having a less steep angle of repose must be considered soft or unstable, and are therefore regulated by § 1926.652(o). (*Connecticut Natural Gas Corporation*, 6 BNA OSHC 1796, (R.C. 1978)).

Although the OSHRC ruling harmonizes the existing regulations, it is preferable for employers to know which requirements they are subject to before determining the extent to which they must slope, rather than determining the slope first and then determining the regulation with which they must comply. In some instances, this is not a difficult problem under the current standard. For example, for many granular soils, an employer is not going to have a problem determining that a slope of ½ to 1 (approximately 63 degrees from the horizontal) is inadequate, and that § 1926.652(b) applies to the trenches excavated in such soil. Indeed, the OSHRC has ruled that there is a rebuttable presumption that predominately sandy soils, unless cemented, are soft or unstable within the meaning of 1926.652(b). (*Duane Meyer d/b/a D.T. Construction Company*, 7 BNA OSHC 1560 ((R.C. 1979)). However, there are situations under the existing standard in which it is not easily determined which sloping angle applies. For example, if a trench is excavated in previously disturbed cohesive soil, the existing standard gives little guidance as to which standard applies or what constitutes an adequate slope under *Table P–1*. And, since the sloping requirements of § 1926.652 are contained in *Table P–1*, the shortcomings of that Table (previously discussed above under non-trench excavations) are also a problem with the existing standards regulating trenches. In addition to the technical misuse of the term "angle of repose," the Table classifies soils in a manner that is difficult to relate to the soil descriptions used in § 1926.652 (b) and (c), and the terms used are not the same as terms generally used in the construction industry.

The proposed standard rectifies these problems in two ways. First, it provides employers with a soil classification scheme in appendix A which describes the variables an employer can encounter; and secondly, it sets forth sloping and shoring requirements in accordance with the types of soil, as determined with respect to the soil classification system. As discussed above, the employer also has the option of sloping in accordance with the directions of a qualified person or a qualified engineer, or simply sloping under the conservative assumptions. In OSHA's opinion, the soil classification system in appendix A will make it much easier for employers to determine whether their slopes comply with OSHA's requirements.

Section 1926.652(c) has caused compliance problems in one other important respect. The standard requires sloping of at least ½ to 1 (horizontal to vertical) but requires only that sloping begin five feet (1.52 m) from the bottom of the trench. This standard has been interpreted as permitting a trench dug in hard or compact soil to be vertical for the first five feet (1.52 m) from the bottom, and sloped not more than 63 degrees from the horizontal beginning at the five foot (1.52 m) level (*Horowitz Brothers, Inc.*, 3 BNA OSHC 1131 ((R.C. 1975)).

OSHA believes that this interpretation is inadequate because it is dangerous to allow employees to work in a trench excavated in soils in which the sides are vertical for the bottom five foot (1.52 m) portion and then sloped starting at the five foot level. This is particularly true in a relatively deep trench in which the weight of cohesive soils adversely affects the stability of the trench side. OSHA has always interpreted and enforced this provision to require shoring or a trench shield in the unsloped, vertical sided portion of the trench.

To address this problem, this proposed standard clarifies that trenches and excavations be sloped or benched from the bottom, instead of from the five foot (1.52 m) level, unless a qualified person or qualified engineer designs an alternate configuration in

accordance with accepted engineering practices. Acceptable configurations for sloped excavations are illustrated in *Figure B–1* of appendix B.

OSHA believes that sound engineering principles dictate that the five foot deep vertical-sided portion should be shored. The National Bureau of Standards (Ex. 3) depicts a similar situation in figure A–2, but recommends a three foot maximum vertical-sided portion and a slope of not more than 1 H: 1 V (45°). Additionally, figure A–7 depicts another similar situation where the depth of the vertical-sided portion is approximately four feet deep, *shored,* and the slope is 1 H: 1 V (45°). OSHA solicits comment on the appropriateness, and costs and benefits of the above discussed configurations with special emphasis on the OSHA interpretation.

Existing § 1926.652(g)(1) provides that shoring be installed in accordance with *Table P–2,* "Trench Shoring-Minimum Requirements." This has been changed in the proposal to afford employers greater flexibility in designing shoring systems. In the proposal, employers can choose between several optional approaches for designing shoring. They can: (1) Conform to the specific requirements contained in Appendices A and C; (2) rely on other tabulated data prepared by a qualified person or a qualified engineer, including manufacturer's tabulated data or state regulations promulgated under an approved State plan and determined by OSHA to be "as effective as Federal regulations;" or (3) use a support system designed by a qualified person or a qualified engineer.

The proposal would assure that shoring that departs from the specific requirements of the appendices is designed by a person qualified to make the judgment that the shoring is adequate based on accepted engineering practices.

Trench Boxes and Shields

The requirements for trench boxes and shields are currently contained in § 1926.652(k). The requirements are not totally clear as to their intent with regard to the design of shields. For example, the standard requires that such devices "shall be designed, constructed, and maintained in a manner which will provide protection equal to or greater than the sheeting or shoring required for the trench." In addition, the standard defines a trench shield as "A *shoring system* (emphasis added) composed of steel plates and bracing . . . which support the walls of a trench. . . ." Shields may be constructed out of steel, but need not be, and they may provide support to the side of a trench. However, shields are more often used in a manner where they do not support the side but rather act as a barrier in the event a cave-in occurs. Because of the restrictive nature of the existing definition, and since the design of sheeting and shoring is tied to the requirements for timber shoring and sheeting set forth in *Table P–2* "Trench Shoring—Minimum Requirements," some observers have perceived a lack of flexibility on the part of OSHA regarding the design of trench shields.

Another problem with the existing requirements for trench shields is the lack of coverage addressing hazardous situations that arise out of the use of shields. Shields are used somewhat differently than shoring, and so situations arise when using shields that do not arise when using shoring. For example, shields are moved into position by sliding them along the trench bottom or by lowering them into position. Employees who are within the confines of a shield during its repositioning are subject to being injured if the shield suddenly shifts in an unintended way—a hazard not generally arising out of the use of timber shoring.

The requirements for trench boxes and shields in current § 1926.652(k) would be changed to allow employers more flexibility in the design of trench shields. The proposal would also clarify the way in which an employer must assure that shields provide equivalent protection to sloping or shoring required by the standard. It would allow an employer to use a trench box or shield designed under the direction of a qualified person or a qualified engineer, or from tabulated data prepared by a qualified person or a qualified engineer. Qualified individuals involved in the design of shield systems will use accepted engineering practices and their expertise and capabilities to assure that the systems can resist the loads imposed on shields.

For manufactured rather than job-made trench boxes or shields, the proposal would require that employers comply with all manufacturer's instructions which might affect the safety of employees. Because of the manufacturer's concerns with product liability, these instructional materials are intended to establish a method or methods which the manufacturer has determined will provide for safe installation and use of a product. The user is thereby on notice of the precautions set forth in these materials, and is responsible for implementing them. Additionally, requirements would be added that address the hazardous situations that arise during the course of using a shield, but are not now addressed in the existing standard. In OSHA's opinion, these requirements will assure that shield systems will adequately protect employees.

II. The Nature of Excavation Hazards and Accidents

Excavation Hazards

The primary hazard to which employees may be exposed during excavation work is that of a cave-in of the excavation. A cave-in occurs when the soil forming the side of the excavation can no longer resist the forces being applied to it. This situation results from either a reduction in the frictional and cohesive capacities of the soil to resist forces, or from exceeding the overall capacity of the soil to resist forces. Changing environmental conditions, such as freezing and thawing, or the addition or removal of water from the pores of the soil, can reduce the ability of the soil to resist forces. Dynamic loads from vibrations caused by nearby traffic or from construction operations, such as pile driving, can also reduce the ability of a soil to resist forces.

The addition of surcharge loads from spoil piles, or the placement of heavy equipment or material near the edge of an excavation, creates forces that can exceed the ability of the soil to resist. Likewise, the load imposed on the soil from adjacent structures can cause soil to cave in if the excavation is too near the structure.

There are several different methods of protecting employees from cave-ins. Protection can be provided by sloping or benching the sides of the excavation; by supporting the sides; or by placing a shield between the side of the excavation and the work area.

Sloping and benching provide protection by eliminating the cave-in hazard. Soil is removed so that a cave-in will not occur. Determining the proper slope or bench configuration for a particular situation can be a highly complex engineering problem. An insufficient slope for the conditions of exposure creates a hazard to employees.

Support systems are provided to add another factor of resistance to the forces that could cause a cave-in. However, the installation of a support system introduces material handling procedures, installation procedures, and removal procedures that can be hazardous in themselves unless accomplished in a safe manner. The possibility of a cave-in also continues to exist during the installation and removal of support systems.

As with sloping, determining what constitutes an adequate support system can also be a complex problem. The hazard of the support system being inadequate to resist the forces applied to it exists if the system has not been carefully designed. The system must have the capacity to resist all the forces that are anticipated or could reasonably be expected to be applied to it. Additionally, improperly installed support members, or the use of inadequate or damaged materials in a support system, could result in a system capacity less than that intended.

Shield systems, unlike support systems, do not eliminate the possibility of a cave-in or add to the factors resisting a cave-in. Shield systems do not prevent cave-ins, but instead provide a shelter to employees in the event that a cave-in occurs. Because a shield is a structure, it must be properly engineered to resist static and impact loads imposed during a cave-in in order to protect the employees within the area shielded. Lateral movement of shields is another hazard that must be considered when shield systems are utilized.

Shield systems most often protect only a very small portion of the area where a cave-in could occur. Employees are therefore exposed to a cave-in hazard if they stray from the protected area. This could occur during entry and exit procedures, or during periods of work activity, unless other precautions are taken.

In addition to cave-in hazards, and secondary hazards related to providing protection against cave-ins, there are several other hazards from which employees must be protected during excavation-related work.

Excavations frequently are made adjacent to existing structures. Excavation activity can create a situation where such structures are destabilized and collapse, thus endangering employees in and around the excavation.

Frequently, underground utilities are encountered and, if damaged, can expose employees to fire and explosion, rapid flooding, electrocution or the release of toxic substances.

Excavations are often made in or near streets, thus exposing employees to vehicular traffic due to both construction and non-construction activity.

Excavation operations include the loading and unloading of earth, fill and other construction material which creates the hazard of falling loads during these operations.

Exposure to hazardous atmospheres is another hazard that can be encountered during excavation work. Hazardous atmospheres can result from many sources related to both construction and non-construction activity. For example, some construction activities, such as welding, produce toxic fumes. Hazardous materials that have been carelessly dumped, or materials that leak from storage tanks underground, can create hazardous atmospheric conditions if the ground is excavated. Excavations near landfill areas can also possibly develop concentrations of hazardous substances from the decomposition of material within the fill.

Hazards related to methods of access and egress are common on excavation sites. Both construction equipment and employees enter and exit excavations. Earth and structural ramps can collapse if not properly designed and constructed to resist the loads imposed. Trips and falls can also occur where runways are not adequately constructed.

Accidents and Injuries

Studies show that excavation work is one of the most hazardous types of work done in the construction industry (Ex. 9 and Ex. 10). Accidents in excavation work occur more frequently than do accidents in construction in general. The primary type of accident of concern in excavation-related work is a cave-in. The actual number of cave-in accidents is not large when compared to the estimated total number of accidents occurring in all of construction. However, those that do occur tend to be of a very serious nature. Cave-in accidents are much more likely to be fatal to the employees involved than other excavation-related accidents.

The true extent of excavation-related injuries and deaths cannot be readily determined from available accident data such as those maintained by the Bureau of Labor Statistics (BLS). This is because a large number of cave-in accidents are classified under a general "accident-type" heading that does not specifically identify whether the accident involved a cave-in. For example, cave-in accidents are most likely to be recorded under the "accident-type" category of "caught in, under, or between." This category encompasses many accidents that are not excavation-related, such as those in which an employee becomes caught in the moving parts of machinery. There is no apparent way to separate out those accidents that are cave-ins.

Nevertheless, estimates of the number of injuries and fatalities occurring in excavations have been made. In a 1975 study, based primarily on a previous study of newspaper articles and other data made available from OSHA files, it was estimated that more than 100 persons were killed in excavation cave-ins each year (Ex. 11). In contrast, based on a recent report prepared by NIOSH and from OSHA's inspection data, it was estimated that at least 73 persons were killed each year in cave-in accidents and at least 97 persons were killed as a result of all excavation-related accidents (Exs. 24, 30, 31, and 32). Using the same data, OSHA has estimated a fatality rate due to excavation-related work injuries of .318 per 1,000 full-time workers and .427 per 1,000 full-time workers for SIC 1623. These rates are at least similar to, if not higher than the fatality rate of .290 per 1,000 full time workers due to all types of work injuries occurring in construction in general. The fatality rate for *trenching* work was estimated to be as high as 112 percent greater than the rate for construction in general.

Estimates of non-fatal injuries have also been made. California has reported that the ratio of non-fatal, lost-time injuries to fatalities for all types of accidents in sewer, pipeline, and trenching work was 50 to 1. That is, one fatality occurred for every 50 non-fatal, lost time injuries. In contrast, the ratio for all contract construction was 174 to 1 (Ex. 9).

In another report specifically related to cave-ins, California reported that the ratio of lost-time injuries to fatalities due only to cave-in accidents was 17 to 1. In contrast the lost-time work injuries to fatalities for all types of accidents in all industries was 250 to 1 (Ex. 10).

As a measure of the seriousness of cave-in accidents, Thompson and Tannenbaum stated that ratios of injuries to fatalities due to cave-ins as high as 10 to 1 and 14 to 1 have been reported (Ex. 11).

OSHA, using most recent data, has estimated that at least 6,790 non-fatal lost-time injuries related to excavation and trenching work occur annually. This estimate is based on the assumption that the ratio of non-fatal lost time injuries to fatalities is 70 to 1 for all types of accidents, including, but not limited to cave-ins in the construction industry (Exs. 24, 30, 31, and 32).

The following examples of recorded accidents will serve to illustrate the types of excavation-related accidents that injure and kill employees working in construction. The list reflects selected examples that are indicative of the types of accidents that have continued to occur. The list is not intended to address all types of excavation-related accidents that occur.

- *California, 1976.* The collapse of a trench took the life of a geologist. The trench was three feet wide, 13 feet deep, and had vertical walls that were not

shored. The geologist was warned that the ground was unstable, but ignored the warnings. Once inside the trench, he was quoted as saying, "This sure looks bad in here. It looks like it's going to cave in." Ten seconds later a cave-in occurred and completely covered him (Ex. 14, p. 15).

• *Indiana, September 1980.* An employee was fatally injured in a sewer trench when the sides of the trench collapsed. There was no shoring to support the sides of the trench and the sides were not sloped (Ex. 22).

• *Texas, March 1981.* Two employees were laying a utility pipe in a trench six feet deep. The sides of the trench caved in, killing one worker and seriously injuring the other (Ex. 19).

• *Utah, April 1981.* A worker was killed when a trench in which he was laying water pipe gave way. The victim was standing in a trench about five feet deep and three feet wide dug in sandy soil. The side of the trench caved in, crushing the man against the other side of the trench. Although his head remained above the soil, he died almost instantly from massive internal injuries to the windpipe, lungs and liver (Ex. 16).

• *California, 1968.* In one accident, a trench 13 feet deep was thought to be stable because it had sides of rock. During the digging, an old trench filled with backfill was encountered. A laborer who entered the trench to see how close the backhoe was digging to a sewer main was knocked down and buried when the backfill from the old trench caved in. Although his head remained above the piled earth, the worker died of suffocation and multiple internal injuries (Ex. 9, p. 5).

• *California, 1968.* A laborer was helping to install shoring in a trench about 10 feet deep, when the material caved in under the existing shoring, covering his feet and lower legs. Before he could be rescued, the whole side of the trench caved in, covering him completely. The accident was caused by the unstable bank material falling in below the bottom of the shoring system that extended to about two and one-half feet from the bottom of the trench. When this happened, the pressure on the hydraulic-type shores was released, causing them to collapse (Ex. 9, p. 3).

• *California, 1968.* A pipeline trench, 600 feet long and 15 feet deep, was dug in sandy soil. About 550 feet of pipe had already been laid, the shoring removed, and the trench backfilled. A worker was assigned to compact the backfill in the remaining 50 feet and to remove the shoring. He then removed a lower jack and threw it from the trench. When he tried to remove the upper shore, there was so much earth pressure on it he required help to force it free. When the shoring jack released, the earth wall collapsed, burying the employee in the trench (Ex. 9, p. 4).

• *Georgia, May 1965.* Two workmen were killed and six others injured when a building under construction collapsed. A backhoe being used to excavate a sewer line inside the building dug adjacent to a column and some five to 15 feet below it. The undermined column slid into the excavation, thus triggering the collapse. Workmen are reported to have noticed flaking of the soil prior to the collapse (Ex. 17, p. 29).

• *California, 1968.* A lateral trench was dug at right angles to a main trench that was eight feet deep. Digging in the lateral trench undermined supports of a six-inch water main, causing the pipe to sag and then break. The trench quickly filled with earth and water. Fellow workers could not pull a laborer who had been installing shoring in the lateral trench loose from the mud which came up to his knees. He was drowned as water filled the trench. It had been assumed that the water line was no closer to the trench than five feet because of the location of a fire hydrant above ground at that distance (Ex. 9, p. 4).

• *Missouri, November 1980.* Employees of a water company struck and ruptured a gas line while digging a trench. Five employees of the gas company were injured when an explosion occurred, followed by fire, during an attempt to repair the leak (Ex. 21).

• *Pennsylvania, July 1981.* An employee was caught in a trench cave-in, but was not killed. During the rescue, the employee suffered deep gashes on his back when rescuers attempted to free him with a backhoe. The employee later died from complications resulting from these injuries (Ex. 23).

• *Arkansas, December 1980.* One worker was killed and three others were seriously injured in a sewer trench cave-in. The three injured jumped into the trench to try to save the first man after a cave-in, but were themselves caught in a second cave-in (Ex. 20).

• *Nebraska, April 1968.* Three workers were killed in a cave-in of an unshored and unsloped trench. The workers had excavated a deep trench alongside a previously undermined bridge abutment to make repairs to the abutment. They were buried to their waists in a cave-in. Before they could be dug out, another cave-in buried them completely (Ex. 18, p. 31).

All such accidents are, of course, complex events and multiple issues must be addressed in order to protect against the human, equipment and environmental factors which can result in injury or death. Among these issues are: Knowledge of the hazards and where protection is required; the types of systems appropriate for use in particular situations; the proper construction, installation and removal of safety systems; proper supervision; proper work procedures; and proper inspection. Each of these topics is covered in the proposed revisions to Subpart P.

OSHA has determined that the available accident and injury data clearly establish a significant risk to employees working in and around excavations. A high rate of injuries has continued to occur in excavations throughout the 14 years since Subpart P was first adopted by OSHA. OSHA believes that this proposed revision of Subpart P will help reduce the current accident toll associated with excavation work.

III. Summary and Explanation of the Proposed Standard

This Notice of Proposed Rulemaking is intended to solicit data, views and arguments on the proposed revision of Subpart P. Comments and recommendations on the proposed revisions together with discussion, explanations, and supporting evidence are particularly solicited.

The reader should recognize that the standard proposed in this notice represents OSHA's current position with regard to the format and content of Subpart P. OSHA intends to evaluate the comments, recommendations, suggestions and evidence received in response to this notice. Based on the record of this rulemaking, the Agency will make modifications and changes in the final rule, where appropriate.

In order to facilitate the desired public comment, this notice not only includes the text and explanation of the proposal, but also identifies several issues to which OSHA directs the reader's attention for special consideration. OSHA wants to focus attention on these issues in order to encourage the submission of additional valuable information from interested persons.

Issues

1. It has been suggested to OSHA (Ex. 8, pp. 108–207) that the revision of Subpart P should include data on "standard practices" for protecting employees against cave-ins. This data would be in the form of tables and charts that could be understood and used by the journeyman worker. Employers would be required to "select" a system of protection from tables and

charts in Subpart P or, as an alternative, have a qualified engineer design the protective system. It has been suggested that OSHA include as "standard practice," generic tables and charts for metal hydraulic shoring, timber shoring, trench shields, protection for footing excavations such as bell-bottom pier holes, and sloping and benching systems.

A. What is the feasibility of this approach?

B. Do such tables and charts now exist?

C. How could such tables and charts be developed for use with manufactured systems without containing proprietary information?

D. With what method of soil classification should all such systems be correlated?

E. What limitations would apply to the use of generic tables and charts?

F. How could such tables and charts incorporate the flexibility needed to insure that technical advances in cave-in protection could be implemented rapidly?

G. In addition to any generic tables and charts that could be created, what supporting data would have to be included to explain their use and limitations?

2. In § 1926.652 of the proposal, OSHA would require, under certain circumstances, that protective systems (which are defined to include shoring, shields, sloping, underpinning, etc.) be designed by a "qualified person" or a "qualified engineer." The definition of "qualified engineer" that OSHA is proposing is new (See proposed § 1926.650(b)(13)). The definition of "qualified person" is provided in current § 1926.32(l).

OSHA has been asked to consider limiting design responsibilities to a "qualified engineer," thus eliminating the "qualified person" as used in the existing standard. This would set up a more stringent level of expertise for design responsibilities, but would exclude individuals who are fully capable of performing the required duties at the higher level of expertise, if they do not possess an engineering degree.

A great deal of debate on this issue has not provided a conclusive answer. (This is further discussed in this preamble in § 1926.650 title: *Scope, Application and Definitions Applicable to This Subpart.*) Since this issue has not been resolved satisfactorily, OSHA is proposing that design and tabulated data be prepared by either a "qualified person" or a "qualified engineer," in order to alert the public to the Agency's concerns.

In order to consider this issue further, OSHA requests comments on the following questions:

A. Should OSHA limit all design responsibility to a "qualified engineer"? Please provide detailed cost data, and rationale for the response.

B. What evidence is available to support that requiring a "qualified engineer" will decrease the risk of injuries and fatalities in excavation work?

C. Should OSHA limit design responsibilities to a "qualified engineer" in unusual situation (for example, excavations under the foundation of buildings)? Please provide a detailed response.

D. If OSHA does limit design responsibility to a "qualified engineer," is the proposed definition of "qualified engineer" adequate for the purpose of this proposal?

E. If the proposed definition is not acceptable, what is a more acceptable definition of "qualified engineer" for purposes of this proposal?

F. What are the reasons why OSHA should or should not require a "qualified engineer" to be a "registered professional engineer"?

G. Should OSHA recognize "experience", or other factors such as training, as a factor for determining the qualifications of an individual to design protective systems?

H. What objective criteria are available to enable the employer to evaluate experience or other factors as a qualification?

I. Should such criteria be incorporated into the standard? If so, how?

J. Information collected indicates that few small excavation firms employ or hire a "qualified engineer". If OSHA does limit design responsibility to a qualified engineer what would be the likely impact on small business? What would be the costs of such a requirement? Would the costs fall disportionately on small business?

3. In proposed § 1926.652, the requirements for designing protective systems are set forth. Several approaches, described as options, are given. Employers can, but need not, choose to follow appendix B for sloping and benching or appendix C for timber shoring in trenches. If employers choose to follow either of these appendices, then appendix A must also be followed.

Appendix A describes a method of classifying soil conditions. Some form of manual and visual testing is required in order properly to classify a soil in accordance with the system described in the appendix. This requirement is stated in paragraph (c)(2) of appendix A.

There are several visual and manual tests that are described in appendix A. However, these tests are only *recommended;* it is not required that any of these particular tests be conducted. It has been suggested to OSHA that specific tests, such as the penetrometer or vane shear tests for cohesive soils, or laboratory tests for granular soils, should be made *mandatory.*

As an alternative to using appendix A, OSHA could allow employers to use any visual and manual test to classify soil, but could establish a preference for particular tests in the following manner. OSHA could state that in the event that there is a disagreement between the employer and OSHA as to the proper classification of the soil, a classification predicated on either a laboratory test, penetrometer, or shear vane test would be considered more accurate than a classification that is not based on these tests. Further, in the context of litigation, any classification which is predicated on a laboratory test, penetrometer, or shear vane test would be given a presumption of reliability over any classification not based on one of the aforementioned tests. However, this presumption of reliability could be rebutted by the party relying on other methods of classification.

A. Is there a need to mandate specific tests? Please provide a detailed response.

B. What is the feasibility of mandating a specific test or of the suggested alternative?

C. What limitations, if any, are there to the use of any particular tests under given soil conditions?

D. Should additional testing requirements be made mandatory? If so, which ones?

E. If certain tests were made mandatory, how frequently would they have to be conducted?

4. In the proposed standard, appendix B sets forth provisions for sloping and benching. Use of this appendix is optional, but when it *is* used, the specified maximum allowable slopes are mandatory. In the proposed appendix B, the maximum allowable slopes specified vary, primarily with soil type and time of exposure. Time of exposure is expressed as short-term and long-term, with the division point at 72 hours. Flatter slopes are required in long-term excavations. (A discussion of the effects of the passage of time on the stability of excavation sides can be found in Ex. 5, pp. 20–30.)

It has been suggested that the concept of time, expressed as short-term and long-term, should not be used in the proposed standard, and that only one

set of maximum allowable slopes should apply, regardless of the length of time an excavation is open (Ex. 8, pp. 304–308).

(Note.—This issue is discussed in greater detail below in this Preamble in the Summary and Explanation of appendix B).

A. Should the standard recognize the effects of the passage of time on the stability of excavation sides?

B. If 72 hours is not an adequate dividing point between short-term and long-term, what length of time should constitute the short-term?

5. It has been suggested that when shields are used as protection against cave-ins, employers should be required to have the *design specifications* for the shields available at the worksite, and that shields also should be certified that they can in fact withstand the specified maximum loads (Ex. 8, pp. 295–302, and pp. 186–208).

A. What effects would such a requirement have on manufacturers of shields and users of shields?

B. What is the current industry practice regarding the availability of design specifications and certification of shields?

6. It has been suggested that when a support system is used as protection against a cave-in, employers should be required to have the design specifications, including a plan or drawing and a statement as to the system's limitations, available at the worksite (Ex. 8, pp. 392–398).

A. What effects would such a requirement have on employers?

B. What is the current industry practice regarding the preparation and availability of drawings indicating the layout of support systems in excavations including trenches?

7. It has been recommended by the Advisory Committee for Construction Safety and Health (ACCSH) to include a new fall protection requirement in the revision of Subpart P. This provision would require that some form of warning such as a warning line, cones, signals, or barricades be used along the edges of excavations that are five feet or more in depth to warn employees who work adjacent to excavations, but who are not directly involved with the excavation activity, that a fall hazard exists (Ex. 8, pp. 256–272, 278–288, 408–420). OSHA solicits comments on the need for such a provision.

8. OSHA is proposing that certain inspections be required (See proposed paragraph 1926.651(k)). It was recommended that OSHA also require that a written log or record be kept at the jobsite of these inspections (Ex. 8, pp. 390–391, 402–404). The purpose of the written log would be to help ensure that the required inspections are made. Public comment is requested on whether such a record should be required, what the format and content of the record should be, and what costs would be incurred as a result of such a requirement. If such a record is advisible, why would a certification not be sufficient?

9. It was suggested that OSHA include a new provision in the proposed standard that would require that a "top-man" be present to observe the work being conducted within the excavation, and to watch constantly for signs of danger when employees are in an excavation. This requirement would apply whenever a shield or any other protective device or system is used to protect employees against cave-ins.

A. To what extent would such a requirement help to increase safety in excavation work?

B. What other job duties, if any, could be assigned to the "top-man" without impairing the duty to watch for signs of danger?

C. What should be the responsibilities of the "top man" in the event that a dangerous situation is identified?

D. What costs would be incurred as a result of adding such a requirement?

10. Section 1926.652 of this proposal allows three options for providing employee protection by sloping, and four options for the use of shoring. OSHA is considering allowing a fourth option to address sloping. This option would permit the use of tabulated data and would have similar requirements to Option Three which addresses shoring. The intent would be to allow the use of tabulated data based on a recognized soil classification system and prepared by a qualified person or a qualified engineer, in designing sloping and/or benching systems in a larger geographic area (for example a county or a portion of a county), as opposed to the proposed sloping Option Three which is site specific. OSHA solicits comments, opinions and data related to the feasibility of adding a fourth option to those addressing sloping. Additionally, OSHA needs to know if this type of data is currently available, and what restrictions should be applied if this type of option were to be allowed.

11. Section 1926.652(g)(1)(iv) of this proposed revision prohibits employees from being inside shields when the shields are being installed, removed or relocated. OSHA has been asked to permit employees to remain inside shields during repositioning (moving the shield along a trench as work progresses), if employees use proper precautions. OSHA solicits comments and opinions on the feasibility of this request and additionally requests input as to what work practices, precautions, etc., should be required if this practice is permitted.

12. The proposed appendix A to Subpart P of Part 1926 provides a consistent soil classification system for use with the standard. Under this system, hardpan and caliche soils are considered "Type A" soils. OSHA has been asked to consider moving hardpan and caliche soils to the stable rock classification, thereby relaxing the protective measures required in these types of soils. OSHA solicits comments, information and opinion on the feasibility and potential cost and benefits, of this request. Please supply supporting data. For the purpose of this issue, "caliche" means a hard soil layer cemented by calcium carbonate found in arid and semiarid regions; and "hardpan" means a hard, unbroken subsoil, or bedrock.

13. Section 1926.651(g)(2)(ii) of this proposal addresses bell bottom pier holes. OSHA has received oral comments indicating that this subject warrants additional coverage under a separate section in Subpart P due to the hazards associated with this type of excavation. OSHA solicits comments and opinion on the need for a separate section addressing bell bottom pier holes and additionally requests input as to what this section should address.

14. OSHA has been asked to permit the use of established regional practices for the construction of protective systems. The Agency feels this added flexibility could be beneficial, but that some criteria need to be established in order to insure that these practices indeed are effective. Some criteria that the Agency is considering are: Approval by local authorities (regional, state, municipal); and, a proven safety record of at least five years of successful application without any failures.

OSHA solicits comments and opinion on the use of established regional practices, and on criteria that should be used to determine if these practices are effective.

15. Under the current standard, a qualified person can determine the angle of repose for sloping, out the standard requires that this determination and the design of the slope be based on evaluation of specific factors (1926.651(e)), and refers the person designing the slope to *Table P–1* (1926.652 (a) and (b)).

Proposed § 1926.652(b)(3) differs from the current standard, in that if the employer chooses to use a qualified person or qualified engineer, the standard does not provide any

"minimum requirements" for slope design, or require evaluation of specific factors. Instead, OSHA requires that the designs be prepared by a qualified person or a qualified engineer, be in accordance with accepted engineering practice, and include an indication of the magnitude and configuration determined to be safe for the project.

A similar situation exists concerning proposed § 1926.652(c)(4) related to design of shoring systems.

In view of the greater flexibility provided the employer under this approach, OSHA solicits comments and opinions on the appropriateness of allowing this degree of employer discretion and requests input on how implementing these options would effect the degree of employee safety provided.

In addition, in order to ensure the adequacy of designs prepared by either a qualified person or a qualified engineer, and to provide a degree of consistency in these designs, OSHA requests input on the appropriateness of requiring that *specific* information be included on the design. The following factors are being considered: Types of soil test performed and results; intended or expected load conditions, environmental considerations; and design limitations. OSHA is open to the suggestion of other factors which could be included in the design.

Proposed Changes and Revisions to Subpart P

OSHA will evaluate, on the basis of all the evidence submitted to the public record, the likely effectiveness of the proposed revised and new provisions and will include in the final rule only those revised and new requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported by the final record.

The following discussion explains the significant substantive changes to Subpart P being proposed by OSHA. In the discussion, a paragraph citation preceded by the letter "E" refers to a paragraph in the existing standard (Part 1926). All other citations are to the proposal.

Section 1926.650—Scope, Application and Definitions Applicable to this Subpart.

Overview. Section 1926.650 contains two paragraphs. The first is a new statement describing the scope and application of the proposed revision of Subpart P. The second contains the definitions applicable to this subpart. This second paragraph replaces existing § 1926.653. Several of the proposed definitions are new, while others are revisions of existing definitions. Some existing definitions have been dropped, and therefore do not appear in this proposal. Specific changes are discussed below.

Discussion. Section 1926.650(a) states that this subpart applies to all open excavations made in earth surfaces and that excavations are defined to include trenches. OSHA is proposing this scope and application paragraph to help clarify where the standard will apply. Under the existing format, with separate sections for excavations and for trenches, questions of applicability have often been raised. The new format should eliminate these questions. The new application statement is intended to alert the user to the fact that whenever the word "excavation" is used in the proposed standard, it applies to all excavations, including those falling within the definition of a trench. However, it should be noted that OSHA jurisdiction does not apply to excavations, which fall under the statutory authority of other Federal agencies to prescribe or enforce occupational safety or health regulations, if that authority is being exercised.

While most of the proposed requirements in the proposal apply to all excavations, some (for example, § 1926.651(c)(2)) apply only to excavations which also meet the definition for trenches. Where a provision is intended to apply only to trenches, the intention is clearly stated in the standard.

Proposed § 1926.650(b) lists and defines all major words used in the proposed standard. Many of the definitions are the same as those in the existing standard, although some have been reworded for uniformity or greater clarity. The following words have been added to or changed from the existing definitions:

(b)(1) "Accepted engineering practices." This definition was revised to convey a more accurate concept of the intent of the definition. This is evidenced by the use of the phrase "standards of practice" instead of the term "standards," which has a particular meaning in relation to OSHA regulations. The term "registered architect" was dropped at the suggestion of the ACCSH and also as suggested in the workshops (Ex. 26). It was felt the term was inapplicable to the subject matter.

The definition of "accepted engineering practices" has been in use since the standard was first promulgated in 1971. It has been suggested, however, that the definition could be further improved if the words "or other duly-licensed or recognized authority" were dropped from the definition. The definition would then read as follows:

"Accepted engineering practices" means those requirements or practices which are compatible with the standards of practice required by a registered professional engineer."

It is felt that the portion of the definition that would be dropped is unclear, and that such language defines "accepted engineering practice" as something broader and less demanding than the standards required by engineers.

It has also been suggested to OSHA that "accepted engineering practices" should be defined as being limited to and not just "compatible with," the standards of practice required of a registered professional engineer, because it can be more readily determined whether or not a particular practice conforms to that level of standard required by a registered professional engineer.

Another suggested change is to add language that defines "accepted engineering practices" as those practices that are described in published literature, such as textbooks that are used or referenced in a university engineering curriculum.

OSHA is undecided about these issues, and has determined that additional information addressed to these issues is desirable. Therefore, OSHA requests that specific comments directed toward these issues be submitted during the comment period.

(b)(2) "Bell-bottom pier hole." The definition for this term replaces the definition for a similar term, "belled excavation," found in paragraph E § 1926.653(d). Although defined, the term "belled excavation" is not used elsewhere in the current standards. Instead, the term "bell-bottom pier hole" is used, in paragraph E § 1926.652(f).

The wording of the new definition revises the current wording. The new definition defines a "bell-bottom pier hole" as "a type of shaft or footing excavation" whereas the current definition of "belled-excavation" is defined as "a part of a shaft or footing excavation."

These changes are being made to make the standards more clear and consistent.

(b)(3) "Benching" (Benching System). This definition has been added to the standard. Benching is one method of protecting employees against cave-ins that is specifically mentioned in the proposed standard. The existing standard makes no mention of benching as a method of protection.

(b)(4) "Cave-in." This definition is new. This term replaces the terms "moving ground" and "hazardous ground movement," neither of which is defined in the existing standard. This deficiency has led to confusion as to what is meant by these terms. OSHA believes the new term more accurately and consistently conveys the intended concept of the hazard, while reflecting current industry terminology.

There is no specific quantity of earth material that constitutes a cave-in. The definition therefore does not address a specific quantity of material. Instead, it describes the mechanisms of the hazard and its results.

(b)(5) "Competent person." This definition is identical to the definition in § 1926.32(f) of Subpart C of the current Construction Safety and Health Standards. The term is used throughout existing Subpart P but is not defined within the Subpart, nor is any explicit reference made to the existing definition in Subpart C. Therefore, this definition would be added to Subpart P to help those regulated by the standard. A "competent person" is required in this Subpart wherever an assessment must be made of the working conditions with respect to safety. For example, the standard requires that a "competent person" monitor conditions that have been determined to be safe but could deteriorate quickly into hazardous conditions.

(b)(6) "Crossbraces." This definition replaces the existing definition "Braces (trench)" and remains essentially unchanged. The term "stringers" would be dropped from the current definition and replaced with the term "wales." The existing standard defines "wales" and "stringers" identically as "the horizontal members of a shoring system whose sides bear against the uprights or earth." OSHA believes use of the term "wales," which is more consistent with industry terminology, would improve the definition of "crossbraces." (See discussion for proposed paragraph (b)(28) of this section for more detail regarding the term "stringers.")

(b)(7) "Excavation." This definition has been modified only slightly from the existing definition in order to clarify and to convey more properly (along with the definition of "trench") the intended meaning. The word "cut" has been added to describe a type of excavation in accordance with accepted industry terminology. The word "trench" is added to remove any doubt that excavations, for purposes of this standard, include trenches.

The definition currently in E § 1926.653(f) contains a second sentence dealing with trenches and depth-to-width relationships. The concept of this sentence now appears in the definition of "trench" in revised form.

(b)(8) "Faces" or "Sides." This definition has not been changed. However, use of the term "walls" has been dropped from the standard. OSHA believes the interchangeable use of two terms, "faces" and "sides," instead of three separate terms, will help simplify the standard.

(b)(9) "Failure." This is a new definition. This definition is intended to apply to protective systems and to the members and connections of protective systems, where applicable. Use of the concept of "failure" introduces a measure for the performance of protective systems, their members and their connections. Such a measure is not present in the existing standard. This concept should help clarify the intent of the standard and the duty of employers to provide adequate protective systems.

(b)(10) "Hazardous atmosphere." This definition is new. It is taken with some modification from the definition of "Hazardous substance" in E § 1926.1926.32(k). The word "toxic" was added at the suggestion of the ACCSH.

There are several references to hazardous atmospheric conditions throughout the existing standard, i.e., E § 1926.650(g), E § 1926.651(v), and E § 1926.652(f). These provisions are grouped together under the single heading of *Hazardous atmospheres* in this proposal. The definition is provided to clarify further the intent of the proposed standard.

(b)(11) "Kickout." This definition is changed by substituting the new term "crossbrace" for the current term "brace," and by dropping reference to the term "shore." The first change is made for purposes of consistency in the use of terms. The second change is made in order to clarify the definition. The term "shore," as used in the current definition of "kickout," is not defined. However, in accordance with accepted industry terminology, a "shore" is considered to be a vertical member, such as a post, or as defined in the current standard, an "upright." It is not OSHA's intention however, to define "kickout" as failure of any vertical member. Therefore, use of the term "shore" is dropped in the proposed revisions of "kickout."

(b)(12) "Protective system." This definition is new. References are made throughout the proposal to "protective systems." The approach taken in the proposed standard is to classify under the concept of "protective system" all systems and methods of protecting employees from cave-ins, material that may roll or fall from an excavation face or into an excavation, and the collapse of adjacent structures.

(b)(13) "Qualified engineer." This definition is new. The term is used in the proposed standard as an option to a qualified person where *design* of protective systems and structures, such as ramps, is required.

As discussed in the *Issues* section of this preamble, there is extensive debate on the merits of requiring only a "qualified engineer" to perform design functions. OSHA is requesting additional information in order to resolve this controversy. The following discussion is provided as background on this issue.

The current definition of "qualified" in § 1926.32(1) provides: "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project."

The existing definition has been criticized as inadequate by the Advisory Committee on Construction Safety and Health (ACCSH) (Ex. 8, pp. 112–186), in that it is too broad in its scope and is not specific enough. For example, it has been suggested that under the existing definition, an individual who lacks an understanding of the principles upon which designs of complex structures are based, could nevertheless be considered "qualified" on the basis of experience in excavation work alone. It has also been suggested that to allow a "qualified person," as currently defined in § 1926.32(1), to determine the degree of sloping would *allow* any person with any amount of experience in trenching to decide to slope as little as possible even if it entails risk of a cave-in.

OSHA's enforcement experience with the use of "qualified" person where there has been an accident or injury indicates that trenching experience has often been used as a rationale to misapply the current standard, and to provide protective systems which are inadequate either by accepted engineering standards or by *Tables P–1* and *P–2;* or to provide no protection at all. Considering the number of trench cave-ins each year, OSHA questions the considerations that were used to make some assessments, and solicits comment on the need to require specific criteria that must be met and documented by qualified persons or qualified engineers under proposed § 1926.652 (b)(3) and (c)(4).

OSHA is not entirely convinced that requiring a "qualified engineer" for all

design responsibilities, as was suggested, is the appropriate solution. Many individuals without an engineering degree are capable of designing an adequate protective system, while persons with engineering degrees may lack relevant experience in design of protective systems for excavations. Additionally, OSHA needs to consider the availability of engineers to fill the anticipated need generated by such a requirement; the willingness of the available engineers to assume the liability for the design; and, the impact of the compliance costs, especially to small business.

As discussed above, the Advisory Committee on Construction Safety and Health (ACCSH) considered the adequacy of the existing definition (Ex. 8) and suggested the following, more specific definition for this Subpart: " 'Qualified person' means a registered professional engineer in a civil, structural, or soil mechanics discipline with specific education in excavation shoring techniques, or an individual with five year's experience in excavation shoring techniques."

This definition, however, would allow an individual with five years of experience in excavation work to prepare designs regardless of whether the individual had demonstrated ability in design of protective systems. OSHA does not believe there is a justification upon which to base any requirement for a specific amount of experience, be it five years or any other specific period. Further, the ACCSH definition refers only to experience or education in shoring techniques. Thus, the issues of which individuals should be allowed to make determinations on *sloping*, and what would constitute adequate experience in *sloping*, are left unanswered by the ACCSH definition.

OSHA believes, however, that experience is a significant factor that can contribute to the overall qualifications that an individual possesses to design complex systems. In OSHA's opinion, a definition is needed which emphasizes that a thorough understanding of engineering principles as practiced in excavations is necessary, and which also identifies that relevant experience is an important factor in determining if an individual is "qualified."

Further, in OSHA's opinion, a person need not be a "registered professional engineer" in order to be "qualified" for purposes of this Standard, as is suggested in the ACCSH definition. This is true because an individual may be fully able to design adequate protective systems but may not have attained recognition as a "registered professional engineer." To attain this recognition, an individual must pass a written examination. Such examinations are administered by each state. Certain qualifications are required before an individual will be allowed to take the test. Typically these include a combination of education from an approved institution and specific engineering related work experience. In some instances, individuals without the required education can substitute greater amounts of experience and become eligible for the examinations. Because of these requirements, there can be individuals qualified to design protective systems who are not eligible to obtain registration.

Another reason OSHA does not believe registration should be required is because registration is usually not specific with regard to a specific engineering discipline. An individual could become a registered professional engineer but be unable to design a cave-in protective system because of a lack of education and experience in the essential knowledges necessary for this work.

OSHA has developed a proposed definition of "qualified engineer." This definition is used in this proposal in conjunction with "qualified person." OSHA seeks comment on the proposed definition of "qualified engineer," and the current definition of "qualified person" and solicits suggestions on how to improve these definitions.

While OSHA believes that the continued use of a "qualified person" will provide significant protections to reduce the incidence of injuries and fatalities in excavation work, commentors are urged to provide data, in as much detail as possible, addressing the comparative effectiveness of a "qualified engineer" requirement. In making its final determination, OSHA will rely on the information and data received.

(b)(15) "Qualified person." This definition is identical to that in § 1926.32(e) and is included here for convenience.

(b)(16) "Sheeting." This definition is new. The definition is one of several that define the various members of a support system. It is intended to add consistency and clarity to the standard.

This definition contains some wording from the current definition of "sheet pile" (E § 1926.653(i)). The definition for "sheet pile" has been dropped since the term is not used in the proposed standard. "Sheeting" is a broader term. It includes all special types of sheeting, including sheet piles, where the purpose is to retain earth in position.

(b)(17) "Shield." This definition is new and it replaces the existing definition of "Trench shield" found in E § 1926.653(p).

The concept of a shield, as used in the proposed standard, is different from the concept of a shield concept defined in the existing standard. The new definition does not place any limits on the material from which a shield may be constructed.

The major difference in definition, however, is the manner in which shields are defined to provide protection. Unlike the current standard, the proposed standard does not refer to shields as devices which provide protection to employees by supporting the sides of an excavation and thereby preventing cave-ins. Shields generally do not prevent cave-ins, but, rather, protect employees from cave-ins that do occur. They provide a limited but safe sheltered space for employees to work within.

Shields are one of several types of protective systems that may be used to guard employees from cave-ins and other hazards. Some shields are designed to be expandable. Once in place they can be altered such that their faces are pressed against and actually begin to support the sides of the excavation. In this configuration, depending on the degree of support provided, such a device may also be considered to be a support system.

(b)(18) "Shoring" (Shoring system). This definition is new. The term "Shoring" is frequently used in the existing standard. Its use is maintained in the proposed standard. The definition is provided to clarify what is meant by the term since it is undefined in the present standard.

(b)(20) "Sloping" (Sloping system). This definition is new. As with "shoring," this term is used frequently in both the existing standard and the proposal to refer to a method of protecting employees against cave-ins. The definition is provided to lend consistency to the proposed standard and to clarify what is meant by "sloping."

An existing definition of "slope" found in E § 1926.653(1) is not used in the proposal because the concept defined in this definition is not applicable in the proposed standard. The existing definition states that "slope" means "the angle with the horizontal at which a particular earth material will stand indefinitely without movement."

The new definition of "sloping" is a broader concept referring to a "system" or "method" of protecting employees by preventing cave-ins. The slope or

multiple slopes used in a sloping system will vary with the soil types involved and the conditions of exposure, i.e., loads and environmental conditions. However, the slopes used need not be those that will prevent any movement of the slope indefinitely. The requirement is that employees be protected from a cave-in of the slope and from loose material that may fall or roll from the slope while there is employee exposure to the possibility of such hazards.

(b)(21) "Stable rock." This is a new definition. There is no definition for rock or rock conditions in the existing standard. Reference is made to rock in the existing standard in the footnotes to *Table P–2*, "Trench Shoring—Minimum Requirements." The footnotes state that "Shoring is not required in solid rock, hard shale, or hard slag."

It is recognized in the industry that excavations in rock normally do not present a cave-in hazard because of the inherent stability of rock, and the ability of rock to carry loads. However, rock varies to a great extent in its ability to remain intact while exposed, just as soils do. There are conditions that are found in some rock formations, such as fractures and seams of less stable material, that present a serious hazard. When such conditions are encountered in rock, it cannot be considered stable.

The proposed definition for "stable rock" has been developed from the definition that was proposed by the National Bureau of Standards (NBS) at the workshops. Originally, NBS used the term "unfractured rock," instead of "stable rock." However, many comments were made that it is impossible to excavate any rock without fracturing it in some way. The Construction Advisory Committee suggested that the definition be changed to "stable rock" (Ex. 8, p. 356). This recommendation was incorporated into the NBS definition.

Rock conditions that are unstable, i.e., cannot be excavated with vertical sides and remain intact while exposed, can be made equivalent to stable rock if a proper system is used to support the excavation side. A note to this effect is placed at the end of definition of "stable rock" to alert the user to this possibility.

(b)(22) "Structural Ramp." This definition has been added to differentiate between ramps made from soil or rock and ramps built from materials such as wood or steel.

(b)(23) "Support system." This is a new definition. There is no definition of support system in the existing standard. However, examples of supporting systems are given in E § 1926.651(f), such as "supporting systems; i.e., piling, cribbing, shoring, etc., ..." The concept of a support system as used in the proposed standard remains the same as in the existing standard. The definition is included to provide a more clearly defined concept.

As previously discussed, within the structure of the proposed standard the concept of "protective system" is used. A "support system" is one type of protective system. It is further noted that a "shoring system" is a type of support system. Support systems are more broadly defined than shoring systems to include structures that support adjacent structures or underground facilities, whereas shoring systems are defined as systems that support the sides of an excavation.

(b)(24) "Tabulated data." This definition is new. It is included to clarify OSHA's intent that tables and charts contained in State regulations of State plan states are acceptable for use under the option provided by proposed § 1926.652(c)(3).

(b)(25) "Trench (Trench Excavation)." This definition remains basically unchanged from the existing definition in E §1926.653(n). The changes that have been made are for the purpose of clarifying the definition. For example, the words "trench excavation" have been added to indicate more clearly that trenches are considered to be excavations.

A Note has been added to the end of the definition of the word "trench." The substance of this Note comes from the second part of the existing definition of "excavation" found in E § 1926.653(f) and deals with depth-to-width relationships in trenches. The wording has been revised to indicate more clearly how a portion of a large excavation can become a trench, for purposes of the proposed standard, as a result of creating a relatively narrow space between the side of an excavation and a structure that has been constructed in the excavation.

The proposal is structured such that most of the provisions apply to all types of excavations. However, some of the provisions of Subpart P apply only to excavations that are trenches. For example, § 1926.651(c)(2) sets forth requirements for means of access and egress in trenches, and § 1926.652(c)(1) sets forth the option of using Appendices A and C for determining the configuration of timber shoring in trenches. Those provisions in the proposal that apply only to trenches are clearly indicated by use of the word "trench" within the provision.

(b)(28) "Uprights." This definition revises the existing definition in E § 1926.653(r). The definition is changed so as to be more consistent with definitions of other shoring system members that are in the proposed standard, and to expand on the concept of the term.

The term "uprights," as used in the proposed standard refers only to upright members used in trench shoring systems. Such uprights are usually spaced some distance apart when in position. Normally uprights are referred to as "sheeting" when they are positioned such that they are very closely spaced, in contact with adjacent uprights, or interconnected. The proposed definition of "uprights" is intended to clarify the application of the proposal in each of these positions.

(b)(29) "Wales." Paragraph E § 1926.653(s) of the current standard refers the reader to paragraph E § 1926.653(m) for the definition of "Wales." Paragraph E § 1926.653(m) states that "stringers" (wales) are "the horizontal members of a shoring system whose sides bear against the uprights or earth." However, the term "stringers" is also referred to in paragraph E § 1926.650(d) as the supports for plank steps, which is inconsistent with its definition.

OSHA is proposing to address this problem by dropping use of the word "stringers." In the proposal, only the term "wales" is defined and used to refer to the horizontal members of a shoring system. The term "stringers" does not appear in the proposal and need not be defined.

For reasons to be discussed below, the following terms which are contained in the current standard are not used, and therefore need not be defined in the proposal: E § 1926.653(b) "Angle of repose"; E § 1926.653(c) "Bank"; E § 1926.653(n) "Hard, Compact soil"; .E § 1926.653(j) "Sheet pile"; E § 1926.653(l) "Slope"; E § 1926.653(m) "Stringers"; E § 1926. 653(o) "Trench jack"; E § 1926.653(q) "Unstable soil"; and E § 1926.653(t) "Walls."

The term "angle of repose," as defined in the existing standard, is not consistent with its use in the civil engineering field. The existing definition in E § 1926.653(b) defines "angle of repose" as "the greatest angle above the horizontal plane at which a material will lie without sliding." The specific standards in E § 1926.651(e), E § 1926.651(g) and E § 1926.651(h) speak of determining the "angle of repose," excavating to the "angle of repose," and flattening the "angle of repose," all of which suggest that a single "angle of repose" can be determined for any particular soil. However, in the American Society for Testing and Materials (ASTM) Standard D 653–67,

"Standard Definitions of Terms and Symbols Relating to Soil and Rock Mechanics," "angle of repose" is defined as follows:

"Angle between the horizontal and maximum slope that a soil assumes through natural processes. For dry granular soils the effect of height is negligible; for cohesive soils the effect of height of slope is so great that the "angle of repose" is meaningless."

What this essentially means is that there is no one "angle of repose" for a given type of soil, for in practice, most soils encountered have some degree of cohesion. In addition, while the "angle of repose" for granular soils is unaffected by the height of the cut, it does change in response to densification, and in changes in environmental conditions or exposure.

The concept of "angle of repose," as used in the current standard, differs from that accepted by the civil engineering community and has led to confusion as to the meaning and intent of the standard. To eliminate this confusion, OSHA believes that use of the term "angle of repose" should not be continued. Therefore, it is not used in the proposed standard.

The term "bank" is defined in paragraph E § 1926.653(c) as "a mass of soil rising above a digging level." This definition is not entirely clear in its meaning because the use of the term "digging level." The OSHRC has interpreted the term "digging level" to mean "the level at which digging is commenced" (2 BNA OSHC 1130). Under this interpretation, the sides of trenches would not be considered "banks" because the sides of trenches would be below "the digging level" rather than above it. However, the wording of paragraph E § 1926.652(a) suggests that sides of trenches be included in the meaning of the term "bank." For example, paragraph E § 1926.652 states:

"Banks more than five feet high shall be shored, laid back to a stable slope, or some other equivalent means of protection shall be provided where employees may be exposed to moving ground or cave-ins." (Emphasis added). The OSHRC interpretation does not conflict with the above wording. However, the paragraph goes on to state: "*Trenches less than five feet in depth shall also* be effectively protected. . . ." (Emphasis added). Thus, the wording of paragraph E § 1926.652(a) seems to equate "banks" with sides of trenches, in contradiction to the OSHRC interpretation. In addition, it is stated in paragraph E § 1926.652(a): "Refer to Table P–1 as a guide in sloping of banks." *Table P–1* is titled "Approximate Angle of Repose for Sloping of Sides of Excavations." Thus, "banks" and "sides" are again seemingly equated, in contradiction to the OSHRC interpretation.

OSHA is proposing to eliminate the use of the term "bank" to eliminate the problems discussed above.

The terms "hard, compact soil" and "unstable soil" in the current standard describe particular soil conditions. These terms are not used in the proposal. In the reformatting of the proposed standard, all references to particular soil conditions have been deleted from the standard itself, and appear instead in the appendices. Furthermore, all soil conditions are defined in the appendices in a completely new soil classification system which does not use the terms "hard, compact soil" or "unstable soil."

The reasons for eliminating the definitions for "sheet pile," "slope," and "walls" have been discussed above in the discussions of paragraphs (b)(15), (b)(19) and (b)(8) respectively.

The term "trench jack" is not used in the proposal and need not be defined.

Section 1926.651—General Requirements.

Overview. Proposed § 1926.651 contains requirements for the protection of employees against several different types of hazards of excavation-related work. The section is arranged with eleven major paragraphs, most of which are revisions of the current requirements in sections E § 1926.650, E § 1926.651, and E § 1926.652. Changes have been made to clarify ambiguous language and eliminate redundant requirements. Some paragraphs have been reformatted to improve ease of understanding. Other revisions have been made to clarify OSHA's intentions as to the scope and application of current provisions of the excavation standard. New requirements have been added to protect employees against known hazards where gaps in coverage currently exist.

Discussion. Paragraph (a), "surface encumbrances," requires that surface encumbrances that are located so as to create a hazard to employees be made safe or removed. The hazard presented by surface encumbrances, including trees and boulders, primarily arises if excavation operations undermine or otherwise cause such encumbrances to become unstable and fall or collapse onto employees. Surface encumbrances can also impede smooth traffic flow on excavation sites. The wording of this requirement is changed only in a minor way from the existing requirement in E § 1926.651(b).

The requirement applies to all employees involved in construction activities at the worksite. The existing paragraph includes the wording "involved in excavation work or in the vicinity thereof at any time during operations." OSHA proposes to drop this additional wording as it is redundant.

The requirement that surface encumbrances be removed or made safe "before excavating is begun" does not appear in the proposal. In many instances, it is not feasible to remove all surface encumbrances from a site before excavating is begun simply because the site is too large. The proposal would require such removal whenever surface encumbrances are encountered.

Paragraph (b), "Underground installations," specifies the requirements for dealing with existing utility and other underground installations that may be encountered during excavation operations. These requirements are based on those in existing paragraph E § 1926.651(a). This existing paragraph has been reformatted. Four separate subparagraphs are proposed to improve clarity.

Underground installations include all types of utility lines either in service or abandoned. They also include foundations and underground storage tanks of all kinds.

Employees may be exposed to serious hazards as a result of damage to underground installations. Flooding, shock, asphyxiation, electrocution, fire and explosion, and collapse of undermined installations are some of the hazards that result when underground installations are damaged. These hazards can be eliminated if the locations of underground installations are properly identified prior to excavation, and if such installations are properly supported or protected when excavation takes place near them.

Paragraph (b)(1) specifies that the "estimated location" of underground installations "that maybe encountered during excavation work shall be determined prior to opening an excavation." This requirement differs from the existing requirement which requires only that an effort be made to determine whether such installations will be encountered and, if so, where such underground installations are located.

At the suggestion of the Advisory Committee (Ex. 8, p. 358), the proposed requirement is more stringent than the existing rule. OSHA believes that the proposed revision is needed to prevent many of the accidents involving damage to underground installations and to

protect employees from such accidents. The proposed language will insure that the effort to locate existing installations is carried to the point where, at the very minimum, an estimated location is determined.

It is recognized that the existence of underground installations is not always readily apparent. However, in many locations there are features which would indicate the presence of underground installations. An example of this would be in a housing subdivision where there are no utility poles. It could reasonably be assumed that certain utilities are underground in this situation. The proposal also recognizes those situations in which underground installations are not known to exist beforehand, but can be determined through the exercise of reasonable diligence prior to excavating.

Paragraph (b)(2) requires that utility companies be contacted and advised of proposed work before the start of actual excavation. Frequently utility companies can help verify the locations of the underground facilities. This requirement is unchanged from the existing standard.

Paragraph (b)(3) requires that as the excavation approaches the estimated location of an underground installation, the exact location be determined. This requirement is unchanged from the existing standard. There are several ways to locate the exact location of underground installations. These include careful probing and hand digging. In the February 1972 amendments (37 FR 3512), the original language, which stated "... the exact location shall be determined by careful probing or hand digging ..." was changed to allow other, equally effective means of locating such installations. OSHA is proposing to expand the provision to provide examples of methods of locating these installations.

Paragraph (b)(4) requires that underground installations be removed, protected or supported as necessary when uncovered to safeguard employees. This proposed provision is intended to prevent injuries suffered by employees which result from damage to exposed installations, contact with energized lines, the collapse of unsupported installations and other similar exposures. The existing requirement requires only that installations be properly supported. This is insufficient to protect employees adequately. Removal or protection of exposed installations are other means to protect employees that at times can be more appropriate.

Paragraph (c) sets forth the requirements for access to and egress from excavations. These requirements are found throughout the existing standard in E § 1926.650 (b), (c), and (d), E § 1926.651(x) and E § 1926.652(h). The requirements have been grouped into a more logical order but have not been changed to any great extent. These requirements address hazards resulting from inadequate design and construction of ramps and runways and from inadequate placement of exits in trenches.

Paragraph (c)(1) specifies five general requirements for the design and construction of ramps and runways.

Paragraph (c)(1)(i) requires that structural ramps be "designed by a qualified person, a qualified engineer or a person under the direction of a qualified engineer, in accordance with accepted engineering practices." This differs from the existing requirement in E § 1926.651(x) which requires ramps to be "designed *and constructed* by *qualified persons* in accordance with accepted engineering practices." (Emphasis added.) The requirement for design by "qualified persons" was also changed so that the language used would be consistent with other language and requirements in the proposal.

The actual *construction* of ramps is usually not spoken of in terms of engineering practices. Therefore, OSHA is proposing to revise the existing language to maintain this distinction. The proposed language would require that structural ramps be "constructed in accordance with their design" instead of in accordance with accepted engineering practice.

This paragraph addresses the hazard of structural ramps collapsing under heavy vehicle or personnel load conditions because of underdesigned members or connections. In some large excavations, ramps of steel or wood are provided for vehicle access and egress. More frequently, however, earthen ramps are used. These earthen ramps are created out of material that is left in place as the excavation is made. Such earthen ramps are not considered structural ramps. For this reason, the word "structural" is added to clarify when design of particular ramps by a qualified individual is necessary. OSHA requests comment and data on whether structural ramps used by a limited number of employee (5 or less) should be required to be designed by a qualified individual or alternatively, should structural ramps be a certain height before a qualified individual is required?

Paragraphs (c)(1)(ii) through (c)(1)(v) address the hazards of trips, slips and falls. These requirements are the same as the requirements in existing paragraphs E § 1926.650(b), E § 1926.650(c) and E § 1926.650(d). The words "raised walkways," "walkways" and "sidewalks" have been dropped in the proposal since these terms are embodied in the concept of runways.

Paragraph (c)(2) requires that a safe means of egress be located in trenches four feet (1.2 m) in depth so as to require no more than 25 feet (7.6 m) of lateral travel for employees. This requirement is the same as in existing paragraph E § 1926.652(h). Ladders, stairs, or ramps are considered adequate to meet this requirement. As defined in proposed definition § 1926.650(b)(14), ramps may be constructed in the earth, and therefore this means of exit is added to the list of examples of acceptable methods of egress.

Paragraph (d), "Exposure to vehicular traffic," requires that employees exposed to vehicular traffic be provided with and wear warning vests made of reflectorized or high-visibility material.

Employees, particularly those involved in trenching work, frequently work where vehicular traffic flow is maintained in close proximity to the excavation operations. Employees may be assigned to direct traffic flow onto or off of construction sites or adjacent to construction sites. These employees are exposed to the hazard of being struck by such vehicles. This hazard is increased during dark or near-dark periods of the day. The provisions of this paragraph are intended to reduce this hazard.

This requirement differs from the existing requirement in paragraph E § 1926.650(f). The words "be instructed to" have been deleted. The proposed requirement is for employees to "wear" such vests, whereas the current standard states: "Employees . . . shall be instructed to wear. . . ." This change is necessary to clarify the intent of the standard.

Paragraph (e), "Exposure to falling loads," requires that no employee be permitted under loads handled by lifting or digging equipment. In addition, it requires that employees stand away from vehicles that are being loaded or unloaded to avoid being struck by any spillage. These requirements are basically unchanged from the existing requirements in E § 1926.650(h). The words "power shovels, derricks, or hoists" were changed to "lifting or digging equipment" in the first sentence. This change was made to make the requirements apply more generally to all kinds of lifting or digging machines rather than be limited to those listed, as is implied in the existing standard. In this way, backhoes and other such equipment are clearly intended to be included in these requirements.

In the second sentence, the words "or unloaded" were added. OSHA believes that the hazard to employees from loads falling during unloading is just as great as during loading. Therefore, this requirement was added to ensure the safety of employees during these operations.

A note within paragraph (e) indicates that operators of vehicles may remain in cabs that provide adequate protection from falling loads during loading and unloading operations. This is consistent with safe industry practice and current OSHA standards in E § 1926.601—"Motor Vehicles."

Paragraph (f), "Warning system for mobile equipment," addresses the hazard of equipment being driven over the edge of an excavation. The requirement states that where the operator does not have a clear and direct view of an excavation, and he or she is required to operate equipment adjacent to or approaching that excavation, then a warning system such as barricades, hand or mechanical signals, or stop logs shall be utilized. The warning system is intended only to warn the operator as to the location of the edge of the excavation. It can, but need not, be designed to prevent a vehicle from being driven over the edge of an excavation.

This requirement replaces the requirement in existing paragraph E § 1926.651(s). That paragraph requires: "When mobile equipment is utilized or allowed adjacent to excavations, substantial stop logs or barricades shall be installed."

The language of the current standard is unclear as to its intended meaning because of use of the word "substantial." Use of this word makes it difficult to determine if the intent of the rule is to prevent mobile equipment from going overboard into an excavation or if the intent is to remind an operator not to proceed any further toward the edge of an excavation.

Due to the nature of some of the heavy mobile equipment that is operated on construction sites, it is often impractical to construct barricades substantial enough to prevent equipment from going overboard into an excavation. On trenching sites, where lengths of an excavation are often open for great distances, or for very short periods of time, requiring barriers of such magnitude would place an unreasonable burden on the employer. Use of such systems can also impede efficient out safe methods of backfilling.

It is OSHA's opinion that there are equally effective and far less costly alternatives available to protect workers in and around excavations from the danger of mobile equipment. Therefore, the proposed requirement would both clarify when warning systems are needed and identify the types of warning systems that are acceptable to protect vehicle operators and workers in excavations. OSHA believes that signals from observers can be used effectively for purposes of protecting employees against the hazard in question. Signals are currently specified in other existing standards as an acceptable means of guiding mobile equipment when this equipment is backing up. In § 1926.601(b)(4), it is stated:

(4) No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

(i) The vehicle has a reverse signal alarm audible above the surrounding noise level; or

(ii) The vehicle is backed up only when an observer signals that it is safe to do so.

The language of the proposal recognizes that methods of signaling can be considered effective and clarifies the intent of the existing mobile equipment requirements.

An additional revision is being proposed regarding paragraph E § 1926.651(s). The words "if possible the grade should be away from the excavation" currently appear at the end of the existing paragraph. Although the language is advisory it does provide an example of a safe practice to follow in addition to the required practices. OSHA is, therefore, proposing that this advisory language be maintained.

Paragraph (g), "Hazardous atmospheres," contains requirements for preventing employee exposure to hazardous atmospheres through the use of testing and controls. It also sets forth requirements for the use of emergency rescue equipment where hazardous atmospheric conditions exist or could develop during work in an excavation.

The existing standard contains provisions in paragraphs E § 1926.650(g), E § 1926.651(v) and E § 1926.652(f) for protecting employees against hazardous atmospheric conditions. Generally, the existing language is not specific regarding testing requirements, and it may not be clear as to how the requirements set forth in Subpart P interface with requirements set forth in Subparts D and E, "Occupational Health and Environmental Controls" and "Personal Protective and Life-saving Equipment," respectively. Therefore, language has been added to clarify these areas, as noted below.

Paragraph (g)(1) addresses atmospheric testing and controls. Language has been added to clarify that the requirements in paragraphs (g)(1)(i) through (g)(1)(iv) are in addition to the requirements set forth in Subparts D and E.

Paragraph (g)(1)(i) requires testing for oxygen deficiency or gaseous conditions in excavations greater than four feet (1.2 m) in depth where these conditions exist or could reasonably be expected to exist. Further, it is required that the testing be done before employees enter the excavation. If no employees enter such an excavation, testing need not be done. This differs from the existing language which requires that: "In locations where oxygen deficiency or gaseous conditions are possible, air in the excavation shall be tested."

The definition of "confined" or "enclosed space" in existing paragraph E § 1926.21(b)(6)(ii) includes ". . . open top spaces more than four feet in depth such as pits, tubs, vaults, and vessels." The four foot (1.2 m) depth requirement in the proposed rule was added to clarify where testing is required for excavations, and to be consistent with this existing definition.

The existing language requiring that tests be performed "where oxygen deficiency or gaseous conditions are possible" was changed to a requirement that OSHA believes is more reasonable, but still provides worker protection. Taken literally, the conditions listed in the existing language are possible in any given excavation if the proper circumstances are present. However, in some circumstances these hazardous atmospheric conditions are more likely to be expected to exist or occur than in other circumstances. For example, work involving the extension or maintenance of sewer utility or gas utility systems, work near refineries or near areas where petroleum distillates are handled or stored, and work near landfills or hazardous waste dumps are situations where hazardous atmospheric conditions could occur (Ex. 8, pp. 224–226, 369–370). Atmospheres in excavations in such situations must be tested.

However, it is OSHA's opinion that it is not reasonable to require that all excavations be tested routinely since it is unlikely that oxygen deficiency or gaseous conditions will occur in the vast majority of situations. Where the conditions are such that these hazards could not reasonably be expected to occur, OSHA believes that routine testing should not be required. Accordingly, the requirement is written to reflect what OSHA believes to be a more reasonable approach to testing.

The examples cited above of areas that are more likely to be hazardous are not intended to be a comprehensive list.

There are many unique circumstances that could result in the formation of a hazardous atmosphere in excavation-related work. An excavation that is free of hazardous atmospheric conditions on any particular day may not be safe the following day. To ensure that employees are continually protected against the development of hazardous atmospheres in excavations, OSHA is proposing to require that daily inspections (not necessarily involving air testing) for evidence of potentially hazardous atmospheric conditions be conducted by a competent person. This requirement is in proposed § 1926.651(k)(1). It is intended that such inspections be conducted to identify areas or situations where hazardous atmospheric conditions exist, or could reasonably be expected to exist, during the course of work. Where such areas or situations are identified, the requirements of paragraph (g) apply.

Proposed paragraph (g)(1)(ii) is being added to clarify when protection against exposure to oxygen deficiency is required, and to identify the precautions that are acceptable to prevent such exposures. Oxygen deficiency is not specifically defined in the existing excavation standard. However, the existing requirements for air quality for supplied air in E § 1910.134(d)(1), which has been identified as applicable to the construction industry, states that "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G–7.1–1966." This specification denotes a concentration of 19.5 percent oxygen as the lower limit for synthesized air. Additionally, in existing standard E § 1910.94, a concentration of oxygen of 19.5 percent is a lower limit that is specified. Therefore, the 19.5 percent limit for oxygen is specifically identified in the proposed standard in order to be consistent with the existing requirements and to clarify when testing and protection are required.

The existing standard requires that employees subjected to oxygen deficiency be protected with approved respiratory protection as set forth in Subpart D. However, the use of increased ventilation can be as effective or more effective in dealing with oxygen deficient atmospheres. Therefore, this type of protection is also identified as acceptable in the proposal.

Paragraph (g)(1)(iii) addresses the hazards posed by the accumulation of flammable gases. The proposed standard requires that adequate precautions be taken to prevent employee exposure to atmospheres containing a concentration of flammable gas in excess of 20 percent of its lower flammable limit (LFL). This differs from the existing requirement which states in E § 1926.651(v): "When flammable gases are present, adequate ventilation shall be provided or sources of ignition shall be eliminated."

As stated, the existing provision requires that ventilation be provided when a flammable gas exists in any concentration or, as an alternative, that sources of ignition be eliminated. OSHA believes that this requirement is too restrictive at low concentrations of flammable gas in the atmosphere, but not nearly restrictive enough where high concentrations exist. By indicating a limit to the allowable concentration of a flammable gas, the proposal notifies employers of the level of performance required to protect employees.

Paragraph (g)(1)(iv) is a new requirement that is added to clarify further the intention of the existing requirements for testing. Testing is not an effective method of preventing exposure to hazardous atmospheres if it is used only to detect hazardous conditions initially and then not used again. Therefore, the proposal requires the employer to conduct additional testing to ensure that atmospheres remain safe whenever controls are used that are intended to reduce the levels of atmospheric contaminants to acceptable levels.

Paragraph (g)(2)(i) requires that emergency rescue equipment be readily available wherever hazardous atmospheric conditions exist or may reasonably be expected to develop during work in an excavation. This requirement is different from the existing requirement in E § 1926.651(v) only to the extent that the requirement for the equipment to be "attended" is deleted in the proposal. The manner in which the word "attended" is used in the current standard implies that personnel be with and responsible for the equipment even when not in use. This is not the intent of the standard, and this word is being dropped.

Paragraph (g)(2)(ii) requires that employees entering bell-bottom pier holes, and similar pier hole footing excavations that are not belled at the bottom, wear a harness with a lifeline, and that the lifeline be individually attended. These requirements are based on those in existing paragraph E § 1926.652(f).

The existing requirements in E § 1926.652(f) apply only to bell-bottom pier holes. These holes are a special type of footing excavation into which employees descend to inspect the hole configuration. However, employees are also at times required to descend, to conduct similar inspections, into similar footing excavations that are not belled at the bottom. These employees must be protected against the same hazards that can exist in bell-footings. Therefore the language of the proposal is changed to reflect this need.

The purpose of this requirement is to allow rapid rescue of an employee in the limited space of these special types of excavations without exposing other employees to the associated hazards. Because of the configuration and unusual depths of this type of excavation, an oxygen deficient or other hazardous atmosphere could occur very quickly, requiring rapid removal of any exposed employee.

The intent of the requirement that lifelines "shall be individually manned that while the lifeline is actually in use, personnel be assigned to oversee the individual to whom the lifeline is attached.

The current standard provides that lifelines "sgall be individually manned and be separate from any line used to *remove* materials excavated from the bell footing" (emphasis added). The proposal would revise this language to require that lifelines "shall be separate from any line used to *handle* materials . . . ." (emphasis added). This clarification is to indicate that the lifeline must be separate from any line used to *remove or supply* any materials from or to the footing excavation.

Paragraph (h), "Protection against water accumulation," contains four provisions that address the accumulation in and the control and removal of water from excavations. Water is present, or very likely to be present, during the course of work in many excavations. Water accumulation can result from surface water entering the excavation, from ground water, from rain or melting snow, or from leaking or damaged utilities such as water or sewer lines. Water creates muddy or slippery surfaces that expose employees to slips and falls. Rapid accumulation, such as from a damaged water supply line, has even resulted in drownings (Ex. 9). The action of water against the sides of excavations can cause undermining and cave-ins. Accumulated water will saturate the sides of excavations and weaken them to the point where cave-ins are very likely to occur even in very shallow excavations. Further, where protective systems are in place, accumulated water can adversely affect the capacity of the systems.

The existing requirement in E § 1926.651(p) states: "Water shall not be allowed to accumulate in an excavation." Taken literally, accumulated water in any amount, in any part of an excavation, violates the existing standard. However, OSHA does not believe this to be the intent of the standard. At times, such as during sudden rain storms, for example, or when snow melts, it is impossible to keep some amount of water from accumulating. Additionally, in excavations which employees do not enter, but where there is accumulated water, there is no exposure to a hazard. Further, there are certain excavations, such as long trenches, where water accumulated in isolated sections would not pose a hazard because employees would not enter those sections.

OSHA is proposing to revise the existing requirement to recognize that not all water accumulated in excavations poses a hazard. In addition, it is OSHA's opinion that it is not always necessary to remove all water from an excavation in which employees are expected to work. Paragrapn (h)(1), as proposed, allows employees to work in excavations in which there is accumulated water, or in which water is accumulating, but only under the circumstances where such conditions have been anticipated and adequate precautions have been taken to protect employees against the hazards posed by water accumulation. The precautions could range from providing dewatering equipment to special cave-in protection.

Work can be conducted safely in excavations when there is accumulated water. For example, the record contains information on a pipeline contractor who installed several miles of pipe in a trench where the water table was only three to four feet below the surface of the ground (Ex. 25). The work required the use of divers to place sections of pipe at depths of up to 18 feet. Employees were protected from cave-ins of the sides of the trench by the use of shields.

Depending on the amount of water and the particular hazard in question, the precautions necessary to protect employees adequately will vary. Employers are alerted to this by the Note following paragraph (h)(1). The Note identifies several examples of the types of protection that might be necessary to provide an adequate level of protection. These include the use of special support or shield systems, dewatering to control the level of water, and the use of a safety harness and lifeline.

Paragraph (h)(2) addresses the use of water removal equipment as a means to control the accumulation of water. These proposed rules require that such equipment be monitored by a competent person to ensure proper operation.

Water removal or control is generally undertaken to provide a dry work area. The process can also be used to contribute to improved stability of excavation sides, and it is done in emergencies when sudden inflows of water occur. When the equipment that is used to remove or control the flow of water into excavations malfunctions, hazards that were eliminated when the equipment was working can become significant.

The requirements in paragraphs (h)(2) are new. The existing standard does not directly address water removal operations but, as discussed above, it requires that water not be allowed to accumulate in excavations. The type of water removal equipment needed in any given circumstance will vary depending on the volume of water that must be removed or controlled. In a very large excavation, for example, failure of water removal equipment may affect only a portion of the area within the excavation. Therefore, the precautions to be taken will, of course, also vary in the event failure of the equipment occurs. Such precautions could involve removal of all employees to a safe area if they are all exposed. Where the problem is more isolated, only the employees in the area that are exposed to the added danger would have to be removed.

Paragraph (h)(3) requires that suitable means be used to prevent surface water from entering an excavation and to provide adequate drainage of the area adjacent to the excavation. This requirement is unchanged from the existing requirement in E § 1926.651(p) except for minor word revisions.

Paragraph (i), "Stability of adjacent structures," contains three paragraphs that address the hazard of unstable structures adjacent to excavations. The collapse of unstable structures endangers employees in excavations and in the area around excavations. Structures can become unstable when excavation takes place close enough to the structures so as to reduce the ability of the soil to support them.

Paragraph (i)(1) requires that support systems be provided for the protection of employees and to ensure the stability of structures that are endangered by excavation operations. This requirement is unchanged from the existing standard in E § 1926.651(o). The words "support systems" are used to be consistent with the remainder of the proposed standard. The three examples of support systems generally used for this purpose—shoring, bracing and underpinning—are unchanged from the current standard.

Paragraph (i)(2) prohibits excavating below the level of the base or footing of any foundation or retaining wall. However, there are four exceptions to this prohibition. The first two exceptions are unchanged from the existing requirements in E § 1926.651(n). These are: Paragraph (i)(2)(i), which reads "a support system such as underpinning is provided to ensure the safety of employees and the stability of the structure," and paragraph (i)(2)(ii) which reads "the excavation is in stable rock." Minor revisions to the language have been made for consistency with the language used in the proposal.

The third and fourth exceptions are new and have been added to clarify the intent of the standard. This clarification is necessary because the existing standard can be interpreted to apply only to excavation at and immediately below foundations or retaining walls. However, the loads imposed on the soil at the excavation site from adjacent structures are not limited to the immediate area of the structure, but also extend some distance from the structure. This distance varies with the depth of the excavation. Generally, this distance can be estimated as being equal to the depth of the excavation. Thus, a critical plane is formed sloping up from the bottom of the excavation toward the structure at an angle of 45 degrees (one horizontal to one vertical or 1H:1V). If the footing or foundation remains completely below this plane, then the conventional assumption is that it probably will not be affected by excavation operations. The possibility remains, however, that the stability of the structure could be affected in some way. Calculating the effect that excavation activity has on the soil supporting a structure is a highly complex procedure involving expertise in soil mechanics, structural analysis, judgment, and experience. While the discussion above is in terms of generalities, each circumstance must be evaluated on the specifics of the situation.

Therefore, to address this situation, and to recognize that special skills are needed to evaluate such situations, the third exception to the general prohibition against excavation adjacent to buildings and structures is added in the proposal in paragraph (i)(2)(iii). This exception would permit excavation whenever "a qualified person, a qualified engineer, or a person under the direction of a qualified engineer determines that the structure is sufficiently removed from the

excavations so as to be unaffected by the excavation activity."

The fourth exception to the prohibition against excavating adjacent to structures recognizes that some excavation activity will not present a hazard to employees. It states in paragraph (i)(2)(iv) that such excavation is permitted whenever "a qualified person, a qualified engineer, or a person under the direction of a qualified engineer determines that such work will not pose a hazard to employees." Where it is determined that no hazard to employees will occur, such excavation activity can proceed below the base of the foundation. Such a situation could occur if a building were on a continuous concrete footing, such as a grade beam, and excavation was undertaken in a very limited area below the footing. Where the footing could safely span the excavation, no instability in the structure would occur. Again, each circumstance must be evaluated on the specifics of the situation.

Paragraph (i)(3) prohibits excavation under sidewalks and pavements unless employees are protected from the collapse of such structures. This applies not only to employees in the excavation but to employees who may be required to use the undermined structure. This requirement revises the existing language of E § 1926.650(a) which requires that sidewalks be shored to carry a minimum live load of 125 pounds per square foot.

The existing requirement does not protect employees adequately because it does not cover all pavements, but only "sidewalks." Loads on pavements during construction operations frequently can exceed the minimum load specified. Therefore, the proposal would cover pavements as well as sidewalks. In addition, the live load specification has been changed to a more performance-oriented requirement to be consistent with the overall approach taken in this proposed standard. OSHA believes that the performance language will provide the employer greater flexibility in determining the most effective means of protecting employees.

Paragraph (j), "Protection of employees in excavations," contains requirements for the protection of employees from the hazards of cave-ins, loose rock or soil that could fall or roll from an excavation face, and from material that could fall or roll into an excavation. These requirements are contained in three separate paragraphs.

Paragraph (j)(1) requires that employees in excavations be protected from cave-ins in excavations by the installation or use of an adequate protective system which meets the requirements of proposed § 1926.652 "Requirements for protective systems." This requirement is written in performance-oriented language, which is consistent with the approach of the overall proposed standard. This paragraph consolidates and replaces several existing requirements and paragraphs. The existing paragraphs affected include E § 1926.651(c), E § 1926.652(m), E § 1926.651(q), E § 1926.652(a), E § 1926.652(b), E § 1926.652(c), E § 1926.652(e), E § 1926.652(f), and E § 1926.652(k).

The existing standard is arranged in a format consisting of § 1926.651, "Specific Excavation Requirements" and § 1926.652, "Specific Trenching Requirements." Each of these sections contains provisions designed to protect employees against cave-ins. The substantive requirements for "excavations" often overlap those for "trenches." Thus, an excavation employer is not always sure which of the current standards apply to a particular situation.

Some of the current requirements indicate when cave-in protection is required and provide some flexibility as to how it is to be provided. For example, E § 1926.651(c) states: "The walls and faces of all excavations in which employees are exposed to danger from moving ground shall be guarded by a shoring system, sloping of the ground, or some other equivalent means."

On the other hand, some provisions set forth specific means of compliance. For example, E § 1926.652(f) states: "Employees entering bell-bottom pier holes shall be protected by the installation of removeable-type casing of sufficient strength to resist shifting of the surrounding earth."

Some of the current requirements specify the earth conditions in which cave-in protection is required. For example, E § 1926.652(b) states: "Sides of trenches in unstable or soft material, 5 feet or more in depth, shall be shored, sheeted, braced, sloped, or otherwise supported by means of sufficient strength to protect the employees working within them. (See Tables P–1, P–2 . . .:)"

In *Table P–1,* terms such as "compacted angular gravels," "compacted sharp sand," and "average soils" are used to describe the earth conditions. In *Table P–2,* terms such as "hard, compact," "likely to crack," and "soft, sandy, or filled" are used to describe the earth conditions.

Other requirements specify when special or additional precautions are necessary. For example, E § 1926.651(m) states: "Special precautions shall be taken in sloping or shoring the sides of excavations adjacent to a previously backfilled excavation or a fill, particularly when the separation is less than the depth of the excavation. Particular attention also shall be paid to joints and seams of material comprising a face and the slope of such seams and joints."

The existing requirements do not appear in any specific order. In addition, it is not always clear which provisions apply to a given situation. However, the one common feature of all the existing requirements is that cave-in protection is required. Therefore, based on this central requirement, OSHA is proposing to revise its existing standards to allow any of several types of protective systems to be used, provided that the system will provide protection against cave-ins. OSHA intends this revision to be more performance-oriented than the current standard, while providing greater clarity and guidance as to what steps the employer must take to protect employees from cave-ins.

OSHA believes that there is a potential for a cave-in in virtually all excavations. However, experience has shown that the probability of a cave-in depends upon the combined effects of many factors (Ex. 5). These factors include the depth of the excavation, the type of soil involved, the ability of the soil to resist stress, the stress imposed on the soil from the weight of the soil itself and from static and dynamic surcharge loads, and from changes in the ability of the soil to resist stress due to exposure to environmental conditions over a period of time. In recognition of the low probability of a cave-in occurring in certain circumstances, the proposal, as does the current standard, sets forth two exceptions to the requirement to provide cave-in protection.

Paragraph (j)(1)(i) states that excavations in stable rock are exempt from cave-in protection requirements. This exception is consistent with the existing standard which states in Note (1) to *Table P–2* that "shoring is not required in solid rock, hard shale, or hard slag." The term "stable rock" is used in the proposed standard instead of the above terms and is defined in § 1926.650(b)(20) of the proposal.

The second exception, which is stated in paragraph (j)(1)(ii), allows the suspension of the requirement to provide cave-in protection in excavations less than five feet (1.5 m) in depth, *but only if a competent person first examines the ground* and finds no indication that a cave-in should be expected (emphasis added).

The exception in paragraph (j)(1)(ii) continues the existing exception applying to excavations less than five feet in depth. In addition, it clarifies that cave-in protection is not required only after a competent person first examines the ground and finds no evidence that a cave-in is expected.

The existing standard in paragraph E § 1926.652(a) states: "Trenches less than five feet in depth *shall also be effectively protected when examination of the ground* indicated hazardous ground movement is expected" (emphasis added). On its face this requirement does not clearly require that an examination first be conducted. However, paragraph E § 1926.651(i) states: "Daily inspections of excavations shall be made by a competent person. If evidence of possible cave-ins or slides is apparent. . . ." This paragraph clearly establishes that such inspections must be conducted by a competent person. The proposal clarifies that inspections must first be conducted before an employer can use the exception of not providing cave-in protection in excavations less than five feet in depth. There would be a presumption that excavations less than five feet deep need to be protected unless there is a determination by a competent person that such protection is not needed.

Paragraph (j)(2) addresses a hazard similar to cave-ins, although not of the same magnitude. Loose rock or soil could fall or roll from an excavation face and, in sufficient volumes endanger an employee even when an adequate cave-in protective system is in place. For example, when a shield is used in conjunction with sloping, the possibility exists for material to loosen and slide down and over the top of the shield, thus endangering employees.

The existing standard, E § 1926.651(j), addresses this hazard. It states: "Sides, slopes, and faces of all excavations shall meet accepted engineering requirements by scaling, benching, barricading, rock bolting, wire meshing, or other equally effective means." The proposed standard does not change the requirement other than to revise the language for improved clarity. References to rock bolting and benching are removed. Rock-bolting and benching are considered types of primary support system intended to prevent cave-ins. They are not generally used to prevent material from falling into an excavation after the primary cave-in protective system is in place.

Proposed paragraph (j)(3) requires that employees be protected from excavated or other materials or equipment that could fall or roll into excavations. This protection can be accomplished by keeping all material and equipment at least two feet (.61 m) from the edge of excavations or by the use of sufficient retaining devices. The proposed requirement does not change the existing two foot (.61 m) setback requirement in E § 1926.651(i). It is, however, written in more concise language.

The intent of this requirement is to protect employees against excess material falling into excavations. Obviously, materials such as excavated soil and stored construction supplies also place a superimposed load on the edge of the excavation. Such loads can be the cause of cave-ins and must be considered when determining what protection is necessary under other provisions of the standards.

The application of the existing two-foot setback requirement to trenching has been questioned in the past because the requirement appears in existing § 1926.651 "Specific Excavation Requirements," and not in § 1926.652 "Specific Trenching Requirements." However, the requirements in paragraph (j) of § 1926.651 have always applied to all excavations, including trenches. The format changes in the proposal, as well as other changes, have been made to clarify this question of application.

Paragraph E § 1926.651(i)(1) states that ". . . material shall be effectively stored and retained. . . ." Similarly, in E. § 1926651(i)(2), it is stated that ". . . the employer may use effective barriers or other effective retaining devices. . . ." Interested persons have expressed concern as to what these provisions require and have indicated that they should be clarified in the proposed revision.

As stated above, the intent of these requirements is to prevent material or equipment from falling or rolling into excavations. The level of protection necessary to prevent this from occurring will vary in most instances. Simply placing material two feet (.61 m) from the edge of the excavation could be sufficient in one instance, while use of a barrier could be the most effective method in another situation. However, use of a barrier in addition to the distance requirement could be necessary in yet another instance in order to "keep" materials from entering the excavation. The capacity of any barrier or retaining device must be independently determined so as to meet the needs of the particular situation and to comply with the standard.

The proposed language of § 1926.651(j)(3) is written in performance-oriented language and requires "the use of retaining devices that are sufficient to prevent material or equipment from falling or rolling into excavations." The duty to provide protection is clearly stated, but the employer is allowed some discretion in determining the necessary capacity of the retaining devices by use of the word "sufficient." Clearly a device is "sufficient" (and "effective") if it can be shown to be able to resist any forces that may reasonably be expected to be applied to it.

The language of the existing requirement in paragraph E.651(i) is different from the language that was originally promulgated. As originally promulgated in 1971, the requirement was stated as follows: "Excavated or other material shall not be stored nearer than four feet from the edge of any excavation and shall be stored and retained as to prevent its falling back into the excavation" (36 FR 7389, April 17, 1971). Upon the recommendation of the Advisory Committee for Construction Safety and Health (ACCSH), it was proposed to change this provision to require that "In excavations which employees may enter, which are more than five feet in depth, excavated or other materials shall be stored and retained four feet or more from the edge of the excavation. In excavations which are five feet or less in depth, all materials shall be stored and retained at least two feet from the edge of the excavation" (36 FR 19088, September 28, 1971).

This amendment was proposed "in order to allow more flexibility in storing and retaining excavated materials adjacent to an excavation, while at the same time insuring the safety of those employees working in the excavation site" (37 FR 3513, February 17, 1972). The comments in response to the proposal indicated that the proposed change was too rigid to allow employers digging shallow trenches (less than five feet in depth) and having narrow rights-of-way to meet the requirement. Alternative methods of storing and retaining such material were suggested which would provide equivalent employee protection.

The ACCSH considered the comments submitted in response to the proposal, and the suggestions made by the OSHA staff, and as a result recommended that the language proposed be changed "to permit all appropriate alternative methods which will protect employees working in excavations from the hazards of falling materials" (37 FR 3515, February 17, 1972). The ACCSH recommendations were adopted and the proposed language was revised to become what are now the existing requirements in paragraph E § 1926.651(i).

OSHA has received comments concerning the existing two foot (.61 m) requirement. It has been suggested that this requirement be changed to one foot (30.5 cm) for excavations five feet (1.52 m) or less in depth. No data to support this suggestion has been submitted to OSHA other than the comment that such a requirement is practical and adequate.

OSHA is not proposing to make that suggested change at this time. However, OSHA requests that specific comments regarding this issue be submitted during the comment period.

Paragraph (k), "Inspections," requires that daily inspections of excavations, the adjacent areas, and protective systems be made for evidence of any hazardous condition. It also requires that the inspections be made by a competent person. If hazardous conditions are identified, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to insure their safety. These requirements consolidate existing requirements in E § 1926.650(i), E § 1926.651(d), and E § 1926.651(o).

The existing requirement in E § 1926.650(i) states: "If evidence of possible cave-ins or slides is apparent, all work in the excavation shall cease until the necessary precautions have been taken to safeguard employees." This is the only requirement that specifically identifies what is necessary if a hazardous condition is identified, and it only applies to evidence of cave-ins or slides. It is OSHA's opinion that during the course of work in excavations other hazardous conditions can develop, and that the object of daily inspections must be to identify these conditions as well as to take precautions to protect employees. Therefore, the proposed requirement is written with this intent.

The existing provision also requires that "all work in the excavation shall cease . . . ." OSHA recognizes that in many instances a hazardous condition may be limited to only a small area of the excavation. For example, inspection might reveal a weakness in the support system which increases the possibility of a cave-in in a small area of a very large excavation. In such a situation, OSHA does not believe it is necessary to require that "all work" throughout the entire excavation cease until this isolated problem is repaired. Therefore, OSHA is proposing to change the requirement to require that "exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety." The obligation is on the employer to determine which areas are hazardous, and which employees are exposed to those areas.

Section 1926.652—Requirements for protective systems.

Overview. Section 1962.652 contains requirements pertaining to protective systems. These include a combination of performance-oriented requirements and more specification-oriented requirements.

The requirements are arranged so that the duty or performance-oriented requirements are stated in the beginning of the section.

The seven major paragraphs address: (a) Capacity of protective systems; (b) design of sloping and benching systems; (c) design of support systems, shield systems, and other protective systems; (d) materials and equipment; (e) installation and removal of support systems; (f) sloping and benching systems; and (g) shield systems.

The last three paragraphs primarily address work practices that are required, whereas the first four paragraphs address the adequacy of the system designs and materials.

Some of the requirements and language of this section are new. However, the major portion are revisions or consolidations of existing provisions.

Paragraph (a), "Capacity of protective systems," is new language that has no counterpart in the current standard.

Paragraphs (b) and (c) contain design requirements for protective systems that are presented as options that employers can choose among. The format and contents of these paragraphs are significantly different from the current standard.

Paragraph (d), "Materials and equipment," consolidates existing requirements in paragraphs E § 1926.651(1) and E § 1926.652(d). In addition, new requirements are added pertaining to the use of manufactured materials and equipment, and provisions applying to damaged material or equipment.

Paragraph (e), "Installation and removal of support systems," combines existing, revised and new requirements. The existing requirements affected are E § 1926.652(d), E § 1926.652(f), E § 1926.652(i), E § 1926.652(j) and E § 1926.651(f). New requirements are included prohibiting application of excessive loads, and allowing limited excavation below the bottom of support systems.

Paragraph (f), "Sloping and benching," contains a requirement addressing work on slopes. This is a new requirement.

Paragraph (g), "Shield systems," contains requirements that address the use of shields in excavations. These requirements are new.

Discussion. Paragraph (a) is a twofold requirement. First, it requires that protective systems be designed in accordance with the requirements of paragraphs (b) and (c) of § 1926.652. Second, it requires that protective systems have the capacity to resist, without failure, all loads that are intended or could reasonably be expected to be applied to or transmitted to the system.

The existing standard does not contain a requirement directly addressing the capacity of protective systems. Such a requirement, however, is consistent with the approach taken in this proposal which utilizes performance-oriented language where possible. As discussed earlier, proposed § 1926.651(j)(i) sets forth those situations in which cave-in protection is required, and identifies the hazards from which employees are to be protected. Therefore, the employer must first select a protective system for these conditions and hazards. Once a protective system has been selected, proposed § 1926.652(a) sets forth performance criteria that must be met by that system. It provides that "protective systems shall have the capacity to resist, without failure, all loads that are intended or could reasonably be expected to be applied or transmitted to the system." The paragraphs immediately following § 1926.652(a) address different methods and approaches that can be used to provide the required level of protection.

Section 1926.652(b) contains requirements for the design of sloping and benching systems. This paragraph provides three sets of alternatives that are available to employers who decide to use sloping and benching as a means of cave-in protection. Design of other types of cave-in protection is addressed in § 1926.652(c).

The alternative requirements are arranged in order of increasing degree of performance required, based upon the degree to which the employer performs soil classification and analysis.

In the first option, § 1926.652(b)(1), employers who do not want to make any effort to classify the soil are required to cut excavation sides to angles that are not greater than either of two specified angles, depending on the length of time the excavation will be open. In § 1926.652(b)(1)(i), the requirement is to slope at an angle not greater than one and one-half horizontal to one vertical (34 degrees measured from the horizontal) for excavations that will be open for 72 hours or less. In § 1926.652(b)(1)(ii), the requirement is to

slope at an angle not greater than two horizontal to one vertical (27 degrees measured from the horizontal) for excavations that are to be open longer than 72 hours.

In OSHA's opinion, the slopes required by this paragraph are safe for virtually all soils. Since, under this option, the employer is not required to make any attempt to differentiate between more stable and less stable soil types, the slopes required are conservative to ensure that employees will be protected adequately in those instances where poor soil conditions are encountered.

The required slope angles specified are identical to the slope angles that are required for the worst soil condition determined under Option (2) below. As will be explained below, the employer is required, under the second option, to differentiate between more stable and less stable soil types. Steeper slopes are allowed in soils determined to be more stable. By requiring slopes, in Option (1), that are the same as the worst case under Option (2), a necessary level of consistency in the requirements is maintained. If steeper slopes were allowed under Option (1), the situation could arise where an employer would be required to slope an excavation to a greater degree after making an effort to determine the soil type than would be required if no soil classification had been made at all. Sloping is set at a worst case angle in Option (1) to assure that protection is provided even where the employer makes no determination of soil type or stability.

In § 1926.652(o)(1)(iii), the requirements state that the configurations of slopes excavated under Option (1) must conform to the configurations illustrated in *Figure B–1* of Appendix B to Subpart P. This is to assure that slopes permitted under Option (1) are at least as protective as those set forth under the second design option in § 1926.652(b)(2).

In the second design option, § 1926.652(b)(2), designs must be in accordance with the conditions and requirements set forth in Appendices A and B to Subpart P. In brief, Appendix A is a method of classifying soil and rock conditions taking into account soil, environmental, and load conditions. Appendix A divides all soils into four classifications: Stable Rock, Type A, Type B and Type C. (See discussion for Appendix A below.) Appendix B contains requirements specifying the maximum allowable slopes for each of the four classifications. In stable rock, vertical sides are allowed. For Types A, B, and C the maximum allowable slopes vary, with steeper slopes allowed for Type A. The allowable slopes vary depending on whether the exposure is long-term or short-term. For purposes of the proposal, long-term is considered to be greater than 72 hours, while short-term is 72 hours or less. (NBS recommended 72 hours as the dividing line between long and short-term (Ex. 26.)) Slopes are required to be less steep in the long-term than in the short-term. This is because in the long-term excavation sides are much more likely to be exposed to excessive loads or to factors which cause a reduction in the ability of the excavation side to remain stable, or both—significantly increasing the likelihood of a cave-in. The range of slopes allowed varies from one-half horizontal to one vertical (1/2H:1V) for Type A, short term, to 2H:1V for Type C, long term. Appendix B also contains illustrations of five types of sloping and benching systems that are acceptable. (See discussion for Appendix B below.)

In general this proposal is expected to result in a net cost reduction, however some provision may result in cost increases. One such example could be the use of proposed *Table B–1* for sloping versus current *Table P–1*. Please provide specific examples where cost increases or decrease could occur. In your response please indicate the number of jobs in which these potential cost increases or decreases would occur.

The requirements of Appendices A and B are mandatory when design Option (2) is chosen. In the third option, § 1926.652(b)(3), three requirements are set forth. The first, § 1926.652(b)(3)(i), requires that sloping and benching systems be designed in accordance with accepted engineering practice by a qualified person or a qualified engineer. However, a person under the direction of a qualified engineer is also allowed to design sloping and benching systems under this option, because in this relationship, the qualified engineer would still be *responsible* for the design. The term "qualified engineer" is defined in proposed § 1926.650(b)(13).

A second requirement under this option, in § 1926.652 (b)(3)(ii), is that designs be in written form and include, as a minimum, the following information: (a) An indication of the magnitude of the slopes that were determined to be safe for the particular project; (b) an indication of the configurations that were determined to be safe for the particular project; and (c) the identity of the qualified individual responsible for the design.

The third requirement, set forth in § 1926.652(b)(2)(iii), is that at least one copy of the design be maintained at the jobsite while the slope is being constructed. After that, the design need not be kept on the jobsite, but a copy must be made readily available to the Secretary upon request.

In OSHA's opinion, these requirements are necessary for use in enforcing the standard, and also to increase the likelihood that adequate designs will be prepared. Under this option, the employer is allowed a wide range of discretion to determine the degree of the hazard and to determine the necessary level of protection against the hazard. It provides no specific restrictions as to maximum allowed slopes or configurations that an engineer could design. Therefore, under this option, slopes steeper than those allowed under the first two options could conceivably be used. Configurations different from those allowed under the first two options could also be used.

Option (3) is the most performance-oriented of the options provided and relies heavily on the competence and expertise of the person selected by the employer to design the system.

In order to ensure the adequacy of designs prepared under Option 3, OSHA is considering requiring that these designs provide additional information such as: What soil tests were performed and the results of those tests; what are the intended or expected load conditions; what consideration was given to environmental conditions; and, what are the limitations of the design. The Agency solicits opinion and recommendations on this subject.

Because of the wide discretion allowed, OSHA believes that stricter requirements are needed to verify that design requirements have been met. Therefore, OSHA is proposing that designs be in written form, and that they be made readily available to the Secretary upon request.

In OSHA's opinion, requiring that designs be in written form will not impose a significant burden upon employers. When an employer utilizes an individual to design a sloping and benching system, the results of the design effort must be communicated to the employer, and to those responsible for implementing the design, in some manner. Customarily this is not done orally, but by the preparation of a written plan. In OSHA's opinion, these requirements reflect current industry practice.

OSHA is revising the portions of Subpart P relating to sloping for several reasons. The existing standard allows only one approach to be used to determine the degree of slope required to protect employees against cave-ins. This approach requires that excavations

be sloped to the "angle of repose." As noted earlier, this term, as currently defined, does not conform to its use in civil engineering and has resulted in considerable confusion in the field. In addition, the existing approach is not consistent with OSHA's desire to place greater emphasis on the use of performance-oriented standards. More flexibility is possible by allowing the employer the choice to use any of several acceptable approaches to provide the required level of safety for employees.

OSHA is also revising the standard so as to provide greater clarity as to what is required of the employer. Interviews with contractors have indicated that some provisions in the existing standard relating to sloping are difficult to understand (Ex. 3).

This difficulty is due apparently to the limitations of the present format in which specific requirements relating to sloping appear in various places in the standard but in no apparent order. It also results from the fact that the soil types currently specified in *Table P–1* (compacted sharp sand, average soil, etc.) are not defined. The use and application of the terms "hard, compact soil" and "unstable or soft material" in the current standard have been the source of considerable confusion and have resulted in considerable litigation. In addition, there are other related format problems that have been discussed previously in this Preamble.

It was stated earlier that the existing Subpart P is divided into two sections containing specific requirements. § 1926.651 is titled "Specific Excavation Requirements" and § 1926.652 is titled "Specific Trenching Requirements." In § 1926.651 there are several references to sloping. These references appear in paragraphs E § 1926.651(c), E § 1926.651(d), E § 1926.651(g), E § 1926.651(h), E § 1926.651(j), and E § 1926.651(m). These requirements specify can be used as a method of protection against that sloping cave-ins and require that when sloping is used that "all slopes be excavated to at least the angle of repose. . . ." In addition, it is required that adjustments be made to the angle of repose, i.e., flattening, when certain conditions are present. These requirements are not presented in a concise, logical order and there is no guidance given to the employer in § 1926.651 indicating either what the "angle of repose" is or to what degree it must be adjusted for the specific conditions mentioned. Although *Table P–1* does give an indication of certain "angles of repose," this Table is located in § 1926.652 and no direct reference to the Table is made in § 1926.651. Further, as discussed earlier, there are technical problems with the use of the term "angle of repose." (See *§ 1926.650—"Scope, Application, and Definitions Applicable to this Subpart."* The discussion of the term "angle of repose" follows the discussion of proposed definition (b)(27) "Uprights.")

In current § 1926.652, reference to sloping appears in paragraphs E § 1926.652(b), E § 1926.652(c), and E § 1926.652(k). These requirements, in general, are intended to give more specific guidance to employers as to the degree of sloping required. *Table P–1* is referenced in both paragraph E § 1926.652(a) and paragraph E § 1926.652(b), but the language of the existing standard is apparently not sufficiently clear for some employers regarding the use of *Table P–1*. For example, in paragraph E § 1926.652(a), it is stated "Refer to *Table P–1* as a *guide* in sloping of banks." (Emphasis added.) Some employers have contended that the table is, therefore, not mandatory. However, paragraph E § 1926.652(b) is phrased in a manner more consistent with its intended mandatory nature.

Other difficulties have arisen relating to specific terms used in the current standard. For example, 45 degrees is indicated in *Table P–1* as the appropriate angle for sloping "average soil." "Average soil" is not defined in the existing standard, nor are the other terms used in *Table P–1*. Further, only two terms used in the standard itself to describe soils are presently defined. These terms are "hard compact soil" and "unstable soil." Neither term appears in *Table P–1*, and even paragraphs E § 1926.652(b) and E § 1926.652(c) use somewhat different terms "unstable *or* soft" and "hard *or* compact." (Emphasis added).

OSHA has concluded that these difficulties can be eliminated, and at the same time a more effective standard for sloping can be created. OSHA believes that the best way to address these difficulties is to revise significantly the language and format of the current standard.

OSHA is, therefore, proposing a format that allows employers to choose from among the three design alternatives described earlier—alternatives that allow the employer some flexibility to determine the degree to which excavation sides must be sloped to protect employees against cave-ins.

The calculation of the degree to which excavation sides must be sloped to protect employees against cave-ins can be a difficult task. This is true because there are many factors that must be taken into account which affect the stability of sloped excavation sides. These factors include: The soil type and its ability to resist stress; changes in the ability of the soil to resist stress due to the effects of exposure to environmental conditions such as freezing, thawing, or rain; loads imposed due to the particular configuration of the excavation; and loads imposed due to the presence of water or the variation of the water content of the soil. Other factors include: Loads imposed by the presence of structures, equipment, overlying material or stored equipment or material; and loads imposed due to dynamic forces such as vibration from equipment, blasting, traffic, or other sources.

Employers have to contend with soil as it is found in place. However, soil conditions cannot be depended upon to remain constant on any particular construction site. As a material used in construction, soil is unreliable because there is no control over its structural quality; its properties vary from place to place and change with the passage of time due to environmental exposure. There are an infinite number of combinations of conditions and factors that can affect its stability. Because soil is so variable, a great degree of caution must be exercised when relying on its strength to provide a sloping system with a desired level of protection.

There are practices that are accepted by the engineering community that can be followed to determine safe slopes for most situations. These practices involve analyzing soil samples to determine properties of the soil; evaluating intended or expected load conditions and sequences; and considering the possible effects of environmental exposure. Soil analysis can be accomplished in the field, using simple field testing techniques. Soil analyses can also be done more extensively and accurately in the laboratory. Slope stability analysis is often used to predict the behavior of a slope. Full scale models have also been used to predict expected behavior.

In OSHA's opinion, however, it is not feasible or necessary to require a rigid soil exploration and analysis program, or a slope stability analysis, for every trench or other excavation that is made. To avoid such specifications in the standard, OSHA is proposing two options in which the required slope angles are specified. In the opinion of the Agency, these two approaches will serve the needs of the industry and provide safe working conditions for employees. OSHA also recognizes that

the first two options could be unnecessarily restrictive in some situations. Thus, OSHA is proposing the third design alternative to allow the employer to determine the degree of protection required for any particular circumstance. Under this option, the employer is allowed to assess the soil conditions, the load conditions, and the effects of environmental conditions and to then determine the slope required to protect employees. There are certain restrictions imposed on employers who use this optional approach—primarily that the employer must rely on a "qualified person," a "qualified engineer" or a person under the direction of a "qualified engineer" to determine the safe slope.

It was suggested that OSHA require only a "qualified engineer" for the third option because of the complexity of designs involving soil analyses, interpretation of soil test results, and determination of slope stability. This suggestion was based on the opinion that a person with education and training in these areas is needed to assess properly the factors and conditions that affect the stability of the protective system. OSHA realizes that in order to become "qualified" some amount of experience is required. A person can gain experience by working under the direction of a person who is already a qualified engineer. It will be acceptable for designs to be prepared by a person who works under the direction of a qualified engineer. In this relationship, the qualified engineer would still be responsible for the soundness of the design. Therefore, OSHA is proposing that designs be done by a "qualified person," a "qualified engineer" or by a person under the direction of a "qualified engineer."

Additionally, experience in trench or excavation work alone, without appropriate understanding of engineering methods and principles, is not sufficient to be considered "qualified" to do analysis and design work. NBS has stated that "the number of accidents involving older, and presumably more experienced, personnel tends to refute the argument that experience alone is an adequate factor in judging trench wall stability" (Ex. 5, p. 5).

Different methods of analysis and design are used depending on the type of system that is being designed. Under the existing definition in § 1926.32(1), some critics contend that any person with some experience in trench excavation could conceivably be considered "qualified." OSHA has noted on the basis of its enforcement experience in inspecting excavations and excavation cave-ins, as well as on the NBS study, that experience alone in excavating trenches does not necessarily qualify an individual sufficiently to determine whether a particular soil will stand at a particular slope. Others argue that possession of an engineering degree *alone* doesn't necessarily qualify an individual to make these decisions, or guarantee that the designs prepared by these engineers will provide sufficient protection for employees.

It has been suggested that in order to be "qualified" a person should be a "registered" or "licensed" engineer (Ex. 8, pp. 107–208). In OSHA's opinion, a person need not be in possession of a license in order to be "qualified," nor does OSHA believe that possession of a license "guarantees" a person's qualifications to design cave-in protective systems. Many people who hold licenses to practice engineering have studied engineering principles and methods that are unrelated to the analysis and design of cave-in protection. A license may be evidence that an engineer has the background and capabilities to perform the analysis and design work required by the proposal, but only if it indicates specific knowledge and expertise in soil mechanics. It does not always indicate such specific expertise.

OSHA is proposing the new definition of "qualified engineer" which may be used to deal with the need for expertise in the design and installation of protective systems, and requests that specific attention be given to the proposed definition during the comment period.

In developing the overall approach related to the design of sloping and benching systems, and to protective systems in general, OSHA has considered other formats and alternatives. For example, a draft proposed standard was submitted to the ACCSH for review and comment on October 13 and 14, 1982. Transcripts of this meeting are part of the record of this proposed rulemaking (Ex. 8). In that draft, OSHA was considering a format that required that "all protective systems shall be designed by a 'qualified person' in accordance with accepted engineering practice to resist without failure all loads intended to be applied or transmitted to such systems." However, an appendix contained material that could be used to design sloping and benching systems in all excavations, or timber shoring in trenches. This approach was more in line with the one in the existing standard. The draft noted that protection systems designed in accordance with the appendix would meet the design requirements of the draft standard. This essentially gave employers two design options.

The ACCSH recommended a format whereby the employer would have the two design options more clearly identified. The employer would either have to follow the "standard practices" allowed in the appendix or, in the alternative, be required to have designs prepared by a "qualified person." However, the ACCSH recommended that the "qualified person" should be defined as a registered professional engineer, with expertise in civil engineering, soil mechanics or structural engineering; or a person with at least five year's experience in excavation work. Further, the ACCSH recommended that where this alternate approach to the design of protective systems was taken, the employer should be required to have on the project site plans and specifications for the designs (Ex. 8). The concern was that designs of protective systems should be undertaken only by persons with particular qualifications, such as licensed professionals, who could prove their qualifications by means of a license, or by someone who had extensive experience doing such work even though such a person did not have a formal education, i.e., an engineering degree. The basis for the suggestion to require plans and specifications on the project site was to make the requirements more enforceable, and to help ensure that the proper attention was given to the designs.

OSHA then gave consideration to a concept wherein two design options were clearly identified. The first option was to follow the requirements of the appendix; the second was to have a "qualified person" design the protective systems. However, in this concept, OSHA's intention was to define the "qualified person" using the existing definition in § 1926.32(1). This definition has been in use since the construction standards were first promulgated in 1971. However, as noted above, some commenters believe that the current definition does not incorporate a requirement that the "qualified person" have the specific expertise that is necessary for the proper design of protective systems. In recognition of the concern expressed by interested parties that adequate designs be prepared, OSHA considered other requirements that were to be linked to the design requirements. The first such requirement would provide that designs be based on

the results on specific analyses. Required analyses of the soil were considered, as well as analyses of possible load conditions. Second, OSHA would have required that designs be certified by the person responsible for the design. The certification would have been a statement to the effect that the design was done by a qualified person and was based on the results of the required analyses.

This approach was criticized as being unenforceable because under the existing definition of "qualified person," any employee with a minimum of experience in excavation work might be deemed to be "qualified." Critics contend that this could result in almost anyone being authorized simply on the basis of several years of experience in digging trenches to prepare the designs and certify the designs and to be in compliance with the standard. It was felt that the result would be inadequate designs and, thus, inadequate protection against cave-ins. This approach seemed to give total discretion to employers to determine the extent of the hazard, and to determine the required means to abate the hazard without providing OSHA with an adequate means to enforce the problems while maintaining flexibility and performance orientation, OSHA then developed the proposed approach which is used in the present proposal.

This approach continues to permit a "qualified person," as defined in 1926.32(l), to have design responsibility, but introduces the concept of a "qualified engineer" as an alternative. In order to ensure the adequacy of the designs prepared by either a "qualified person" or a "qualified engineer" and to provide a degree of consistency in these designs, OSHA is considering requiring that additional data be provided on all these designs. This is discussed earlier in this preamble where several types of data are specifically mentioned (soil tests and results, expected load conditions, environmental considerations and design limitations). The Agency solicits comment on the type of data essential to making these determinations and the appropriateness of requiring them to be included as part of the design.

This approach also highlights OSHA's concern related to ensuring safe working conditions without being overly restrictive by prohibiting design of protective systems by persons that have the knowledge, expertise and capabilities to do so, but lack an engineering degree.

OSHA has concluded that a standard utilizing the alternatives allowed in the present proposal would be more effective than the approach found in the existing standard. This is because of the added flexibility employers would have to determine the most feasible option for their particular circumstances. It is also because the proposal would help to remove most of the difficulties of interpretation and application experienced with the existing standard. The organization of the proposed standard is improved over the existing standard. Terms and phrases are more clearly defined and used. Thus, the misunderstandings that frequently occur using the existing standard would be reduced.

OSHA hopes that the proposed approach, as well as the specific options allowed, and the specific angles and configurations allowed, will be carefully considered during the comment period.

Paragraph (c) of § 1926.652 contains requirements that apply to the design of support systems, shield systems, and protective systems other than sloping and benching systems. The requirements in this paragraph are set forth in a format similar to those set forth in paragraph (b)—Design of Sloping and Benching Systems. Paragraph (c) is subdivided into four paragraphs. Each of the four paragraphs is an option employers can elect to follow to meet the requirement to provide cave-in protection.

The first option, in paragraph (c)(1), applies to the design of timber shoring in trenches. When employers elect to use this option, the requirements state that: "Designs for timber shoring in trenches shall be determined in accordance with the conditions and requirements set forth in Appendices A and C to this Subpart."

Basically, as noted earlier, Appendix A sets forth a method of classifying soil conditions into four types: Stable Rock, Type A, Type B, and Type C. Stable Rock, however, is exempt from the requirement to provide cave-in protection. (See proposed § 1926.651(j)(1)(i).)

Appendix C contains data to be used to select timber shoring for use in trenches that are up to 20 feet (6.1 m) in depth. Soil conditions must first be classified as Type A, Type B, or Type C, in accordance with Appendix A. Appendix C contains three tables, one for each of the soil types, from which various configurations of shoring can be selected. Appendices A and C are discussed later in this Preamble in greater detail.

The second option, paragraph (c)(2), allows the use of designs based on or drawn from manufacturer's tabulated data. The manufactured systems generally addressed by the paragraph include metal hydraulic shoring and shields. In the past, manufacturers have developed tabulated data that indicated the conditions for which their various products could be used.

The requirements of § 1926.652(c)(2)(i) state that designs "that are drawn from manufacturer's tabulated data shall be in accordance with all specifications, recommendations, limitations, and warnings issued or made by the manufacturer." In § 1926.652(c)(2)(ii), it is required that "deviation from the specifications, recommendations, and limitations issued or made by the manufacturer shall only be allowed when the manufacturer issues specific written approval." A third requirement, in § 1926.652(c)(2)(iii), states that manufacturer's specifications, recommendations, limitations, and warnings, and the approval required in § 1926.652(c)(2)(ii), be in written form at the jobsite during construction of the protective system. After that the data may be stored off the jobsite, but a copy shall be made readily available to the Secretary upon request.

A trend in the construction industry has been to use and rely more and more on products that are manufactured systems of protection. The design of particular products such as trench shields can be highly complex. A single manufacturer is likely to have available a range of products, each intended for use in different circumstances. The employer is concerned with using a product that is intended for use in a particular situation.

It is, therefore, incumbent on the employer to ascertain all that the manufacturer specifies or recommends regarding the use of a particular product, and then use the product accordingly.

An employer, then, is allowed a degree of discretion as far as choosing a particular product for use. In OSHA's opinion, the likelihood that manufactured products will be used in the manner intended will be enhanced if the specifications and recommendations that the employer uses to select such products, including the limitations set by the manufacturer on their use, is required to be at the jobsite while the system is being constructed and made readily available to the Agency upon request. Therefore, OSHA is proposing such requirements.

In the third option, paragraph (c)(3), it is specified that designs can be selected from other tabulated data, such as tables and charts, that have been prepared by or under the direction of a qualified person or a qualified engineer. The use of State regulations, promulgated under an OSHA approved

State plan and determined to be "as effective as" Federal regulations, is acceptable to meet the requirements of this provision. Additionally, this paragraph is intended to allow employers to develop and use general designs that can be used repetitively and that meet the needs of their particular circumstances. OSHA recognizes that the design of protective systems can be a highly complex engineering procedure that involves elements of soil mechanics and structure engineering. In reality, each case is unique. Therefore, repetitive use of a general design must be done with caution. Designs for general applications have limits that must not be exceeded or the safety of employees will be endangered. Tabulated data, therefore, can only be used safely when the necessary information is provided that explains the limitations of the data and demonstrates that the system is safe under prevailing soil, load, and environmental conditions.

OSHA is proposing, therefore, new requirements that are intended to increase the likelihood that tabulated data will be used properly. These new requirements are set forth in four paragraphs within paragraph (c)(3).

In paragraph (c)(3)(i), it states that designs "shall be selected from and be in accordance with tabulated data, such as tables and charts."

In paragraph (c)(3)(ii), it is explicitly stated that the tabulated data shall be prepared by a qualified person, a qualified engineer or a person under the direction of a qualified engineer.

In paragraph (c)(3)(iii), it is required that the data be in written form. It is also required that at a minimum, certain information be included with the data. Basically, the information required includes instructions for the use of the data, the limits of application of the data, identification of pertinent parameters that affect the selection of a protective system drawn from the data, and identification of the qualified individual responsible for the preparation of the data. In paragraph (c)(3)(iv) it is required that at least one copy be maintained at the jobsite while the protective system is being constructed and that it be made readily available to the Secretary upon request.

In OSHA's opinion these requirements for documentation are needed to provide a balance to the wide discretion that is allowed employers in providing a system of protection, and in order to assure that employees are adequately protected.

In the fourth design option, paragraph (c)(4), the requirements are stated in three paragraphs within paragraph (c)(4). In paragraph (c)(4)(i), the requirements state that protective systems shall be designed in accordance with accepted engineering practice by a qualified person, a qualified engineer, or by a person under the direction of a qualified engineer. This option gives employers the flexibility to design protective systems for unique applications. There are no specific restrictions or limitations regarding the application of designs allowed under this option. The employer, through the qualified individual, is thus given wide latitude to judge the degree of the hazard present and to determine the degree of protection required.

OSHA recognizes, because such wide latitude would exist under this provision, that the possibility of abuse of the discretion allowed would also exist. OSHA is, therefore, proposing additional requirements that are intended to increase the likelihood that the protective systems designed under this option will be adequate to protect employees. The first of these additional requirements is stated in paragraph (c)(4)(ii). It states: "Designs shall be in written form," and must, at a minimum, include "a plan indicating the sizes, types, and configurations of the materials to be used in the protective system," and "the identity of the qualified individual responsible for the design." The other additional requirement is stated in paragraph (c)(4)(iii). That paragraph states that "At least one copy of the design shall be maintained at the jobsite during the construction of the system, and the design shall be made readily available to the Secretary upon request."

These requirements are similar to those proposed by OSHA in § 1926.652(b)(3) for sloping and benching. The discussion of those requirements is equally applicable for the requirements proposed under the subject paragraph, especially the discussion on requiring more data related to selection factors used to determine the design.

Strong support has been voiced by the ACCSH for requiring designs by specially qualified personnel (EX. 8). As discussed under § 1926.652(b) above, there is concern that the existing definition of "qualified" in § 1926.32(1) is not adequate because it implies that, on the basis of experience alone, a person could be considered qualified. Because design of protective systems can be a difficult engineering problem, it requires special expertise, and it is crucial that adequate designs be used. Interviews with contractors indicate that the primary reason for the failure of protective systems is a lack of an adequate design of systems (Ex. 3).

OSHA would like to receive comments specifically addressing these proposed requirements. OSHA again requests that these proposals be carefully considered and that comments and views be submitted during the comment period.

There are many paragraphs distributed throughout the existing standard that set forth requirements pertaining to the *use* of shoring and other protective systems. Existing paragraphs (c), (m), (o), and (q) of § 1926.651, and paragraphs (b), (c), (e), and (f) of § 1926.652 state when use of a protective system is required. Other existing paragraphs contain requirements pertaining to the *design* of such systems. These include paragraphs (e), (f), and (k) of § 1926.651; and paragraphs (d), (g), and (k) of § 1926.652. These existing requirements have been revised and reorganized in the proposal in order to make the standard easier to follow and understand.

Some of the shoring requirements in the current standards have been criticized as being either too inflexible or too difficult to understand. For example, *Table P–2*, "Trench Shoring—Minimum Requirements," has been criticized by contractors as too inflexible (Ex. 3). *Table P–2* specifies sizes of timber shoring members but generally only specifies one configuration of members for any particular case. Each case is defined by three parameters: Soil condition, trench depth, and width of trench. OSHA notes that interpreting the Table as not allowing any deviation from the specified configurations is an inaccurate and overly restrictive reading of *Table P–2*. The Table only indicates certain configurations that will provide the required minimum protection. Other configurations that provide equivalent or greater protection are acceptable.

Another problem with *Table P–2* is that selection of a configuration is based on soil classifications and soil conditions that are not currently defined in the standard. The terms are not used in a manner that is consistent with the way other similar terms relating to soil conditions are used in the standard. Thus, it is difficult at present to use *Table P–2* to select the proper protection.

Another criticism that has resulted from a misunderstanding of the current standard is that the standard is ambiguous with regard to allowing the use of protective systems other than timber shoring. However, as a clarification, it should be noted that

several such protective systems are mentioned in the existing standard. These include shoring, sloping, use of shields, support systems, bracing, and sheet piling. In a footnote to *Table P–2,* trench jacks and steel sheet piling are specifically indicated as being acceptable substitutes for wood members. However, the lack of mention of other systems, particularly metal hydraulic shoring, has led to the mistaken impression among some interested persons that such systems are not allowed by the standard. OSHA emphasizes that this is not the case, either with the current standard or in the proposal.

In developing this proposal, OSHA has attempted to clarify the application of these and other provisions of the standard, and has made every effort to remove ambiguities and sources of confusion that have arisen in the current standards. Overall, the proposed requirements are intended to provide a greater degree of flexibility by providing the employer with alternative approaches that yield the same end result. The employer is free to choose the approach that is most feasible for any particular circumstance. Wide latitude is granted, but it is balanced and checked by requirements that are intended to make the standard enforceable.

OSHA is interested in the views of those affected by these proposed requirements and therefore again requests that comments be submitted that are directed specifically to the requirements proposed here.

Paragraph (d), "Materials and equipment," addresses the hazard to employees resulting from the use of damaged or defective items in protective systems. The material and equipment is relied upon to have a certain degree of structural capability. The loss of this capability due to defects or damage can result in the failure of a protective system.

Paragraph (d)(1) requires that materials and equipment used for protective systems shall be free from damage or defects that might impair their proper function.

Paragraph (d)(2) addresses manufactured equipment. It requires that such material be used and maintained in a manner consistent with the manufacturer's recommendations and in a safe manner so as to protect employees from hazards.

Paragraph (d)(3) requires that where equipment is damaged while in service, it be examined by a competent person for its suitability for continued use. When it is unsuitable, the material or equipment must be removed from service.

The existing requirements in E § 1926.651(1) and E § 1926.652(d) address the condition of materials used for support structures and systems. These requirements have been consolidated into proposed paragraph (d)(1), which covers all elements of protective systems, and which extends to other types of protective systems such as shields.

The existing standard does not refer specifically to manufactured items. Equipment such as shields and metal hydraulic shoring are used extensively in the industry today. However, to assure their safe use, these items must be used in strict accordance with the manufacturer's recommendations and instructions. In addition, the existing standard does not clearly address the problem of material becoming damaged while in use. Often material and equipment used in temporary protective systems are designed with only a slight factor of safety. If the equipment is damaged, there may be no factor of safety and employees are in immediate danger. Proposed paragraphs (d)(2) and (d)(3) address the need for employees to be protected in these circumstances.

Paragraph (e), "Installation and removal of support systems," contains requirements for the protection of employees during installation and removal of support systems.

Installation and removal of support systems are particularly hazardous periods in excavation work which can involve significant material-handling activity. Additionally, partially completed support systems will not react to loads in the same manner as the completed structures. Individual members can become overloaded and fail, leading to a general failure of other portions of the support system. Therefore, employees can be exposed to cave-ins, the collapse of adjacent structures, or collapse of the support system if the employees are not properly protected during installation and removal.

Paragraph (e)(1) contains six requirements that address these hazards. Four of these requirements are based on existing requirements found in three existing paragraphs, E § 1926.651(f), E § 1926.652(j), and E § 1926.652(1). The existing provisions have been grouped into a more logical, easier-to-follow format under only one paragraph heading. The requirements in E § 1926.652 that apply currently to specific trenching situations only would be extended to cover all excavations because the hazard addressed by those requirements exists whenever support systems are being installed or removed.

The other two proposed requirements are new. These specifically require protection for employees from cave-ins, the collapse of structures, or from being struck by members of the support system. The proposal requires, in addition, that individual members of support systems not be subjected to loads exceeding the design loads of those members.

Paragraph (e)(2)(i) contains a new provision that allows excavation to a level not greater than two feet (.61 m) below the bottom of the members of a support system of a trench. It applies *only* to trenches. This provision is one of the provisions recommended to OSHA by NBS based upon their studies (Ex. 6). It helps to clarify what was meant by the phrase "installed so as to be effective to the bottom of the excavation" found in E § 1926.652(d) of the current trenching standards. The proposed provision recognizes that trench support systems in some instances need not always be installed to the bottom of the excavation. If designed to resist the forces calculated for the full depth of the excavation, the system can be fully effective, even if it does not extend to the bottom.

Paragraph (e)(2)(ii) requires that installation of support systems be closely coordinated with the excavation of trenches. This is a revision of E § 1926.652(i). The Construction Advisory Committee suggested that this requirement be dropped (Ex. 8, p. 400) because it seemed to apply to all trenches even where there would be no employee exposure to cave-in hazards, i.e., where no employees enter the trenches. However, this paragraph is intended to apply only where employees are exposed to cave-in hazards. All OSHA standards apply only where there is potential exposure of employees to hazards, and therefore it is not considered necessary to state this for every requirement.

Coordination of installation of the support system with the excavation of the trench will reduce the possibility that a cave-in will occur. The longer a trench is open, the more likely it is to cave-in. Essentially, where employees will be expected to enter a trench, it is a safe work practice to install the support system as soon as possible after excavation. OSHA believes that this proposed requirement is necessary to assure employee safety in trenches.

Paragraph (f), "Sloping and benching systems," contains a new requirement prohibiting employees from working on the faces of excavations at levels above

other employees; except when adequate protection against falling material is provided. Obviously, employees can dislodge loose material and cause it to fall to lower levels. This dislodging activity, in fact, may be their work assignment. Employees at lower levels can be struck by falling material. With adequate protection from a barricade, net, shield or other protective device, this situation need not be hazardous.

Paragraph (g), "Shield systems," contains new provisions. These requirements are arranged in two paragraphs.

Paragraph (g)(1) contains four general requirements which basically address work practices not spelled out in the existing standard.

Shields, by their nature, provide protection only in the area within the structure. The remainder of the excavation is generally left unsupported and unshielded. Employees entering or exiting shields through these unprotected areas would be exposed to cave-in hazards. Therefore, the proposal would prohibit employees from passing through such areas to reach the shield.

Generally, shields are designed to be moveable. Employees would be exposed to unexpected shifting of the shield during installation, removal, or relocation. Therefore, when shields are being moved, employees are prohibited from being within the shield. (See Issue 11 above.)

Shields do not normally prevent cave-ins, but do protect employees in the event of a cave-in. The possibility exists that the magnitude of the forces imposed on a shield during a cave-in could shift the shield laterally if it is not restrained against such movement. If the employees are in the shield, this lateral movement could be hazardous. The proposal requires that shields be installed in a manner to restrict lateral movement in the event of the application of sudden lateral loads such as during a cave-in. One method of accomplishing this in trenches is to excavate the trench so that it is only as wide as is necessary to install the shield.

Shields are protective devices that must be specially designed and constructed. Because of the highly variable nature of soil conditions and loading caused by soil movement, shields have strict limitations on their use. These limitations are established by the manufacturer for manufactured shields, but in some situations shield systems are constructed on-site. It is more difficult to ascertain the limits of such shields. The design of shields is addressed in § 1926.652(c) of the proposal. However, in practice, load conditions could occur which a particular shield might not have been designed to support. For example, crossbraces might not have been designed to support vertical loads in addition to compressive loads. To deal with this protential hazard, the proposal would prohibit employers from subjecting shields to loads other than those considered in their design.

Paragraph (g)(2) applies only to trenches. It allows excavation in certain circumstances of earth material to a level not greater than two feet (.61 m) below the bottom of shields. The reasoning behind this is identical to that discussed in paragraph (e)(2)(i) above.

Relocated and Deleted Paragraphs. The fall protection requirements in existing paragraph E § 1926.651 (t) and (w) are not included in the proposed revision of Subpart P. These provisions, which require fall protection at remotely located excavations and on walkways or bridges crossing over excavations, respectively, would be relocated in Subpart M—Fall Protection, and would be redesignated as § 1926.500 (h) and (i). This action is consistent with OSHA's intention to locate all provisions relating to fall protection in construction together under one Subpart.

OSHA currently published a proposed revision of its fall protection standards in Subpart M. (See **Federal Register,** November 25, 1986). When this proposal is published as a final rule the excavation fall protection provisions incorporated will be placed in a new Subpart M.

OSHA is proposing to delete the following existing paragraphs: E § 1926.650(e), which requires personal protective equipment as set forth in Subpart E; E § 1926.651(r), which requires that blasting be performed in accordance with Subpart U; and E § 1926.651(y), which requires that ladders be in accordance with the requirements of Subpart L. These references are redundant in that they require nothing different or in addition to the requirements set forth in the respective subparts. In addition, they might mislead an employer into assuming that other subparts not referenced do not apply to excavations. The requirements of Subparts E, U, and L remain applicable to employees working in and around excavations as do the other subparts of Part 1926.

OSHA is proposing that paragraph E § 1926.652(g) also be deleted. This paragraph presently states: "Minimum requirements for trench timbering shall be in accordance with Table P–2." It also requires that compressive stresses in timber braces and diagonal shores not be in excess of certain allowable values as computed using the given formula. The requirements of this paragraph are not consistent with the approach taken in the proposal, which does allow the employer to select trench timbering from tables, but does not make the tables minimum requirements for all trench shoring.

In addition, OSHA believes that the equation set out in E § 1926.652(g)(2) is not appropriate for continuation in the standard. This equation is intended to be used for determining the maximum allowable compressive stress in braces and diagonal shores in a wood shoring system. OSHA has determined that the equation should not be carried forward because it is outdated. The use of the specified equation, in a slightly different form, was originally contained in the USA Standard A10.2—1944, "Safety Code for Building Construction." Since that time, new equations for determining allowable compressive loads have been developed. These newer equations are described in the "Timber Construction Manual" published by the American Institute of Timber Construction. The second edition was published in 1974. The more modern equations take into account the shape of the member, i.e., square or round, and the kind of wood used to produce the member. Allowable stresses, i.e., the maximum stresses to which a member should be subjected, vary depending upon the species of wood being considered. The equation given in E § 1926.652(g)(2) does not account for either of these factors.

However, even with the improved equations, OSHA does not believe that the newer equations should be specified in the revised standard. First, in OSHA's opinion, these equations are not necessary. As pointed out above, the particular equation specified is used only to determine the maximum allowable stress to which a certain structural member should be subjected. Today, such information generally is available in tabulated form for most species and grades of wood. Therefore, it is not necessary to use an equation in the standard and calculate maximum allowable stresses. Furthermore, knowing the maximum allowable stress alone is of little value. The *actual* stress to which a member is subjected or expected to be subjected must also be known and a comparison made between the actual and allowed stresses. If the actual stress exceeds the maximum allowable, then the particular member could not be used. Computing the actual stress, however, can be a highly complex engineering problem.

Another reason why use of equations is not required in the proposal is that

they address only one type of load situation. For example, the current equation is only intended to be used to calculate the maximum allowable compressive stress for wood members acting as columns under axial compressive loads. However, members are often subject to eccentric loads or lateral loads that create bending stresses in them. These other actual stresses, alone or in combination with axial compressive forces, may be critical. Therefore, the maximum allowable and actual stresses for various load conditions need to be considered in addition to the one load condition currently specified in the standard.

A final reason why specification of the given equation should be discontinued is that it applies only to wood members. Much less wood is used today than in 1944 when use of the equation was recommended. Other materials, primarily steel and aluminum, are used more frequently today and different equations are used to calculate allowable stresses in members of these materials.

OSHA is proposing, therefore, no longer to require the use of such specific equations. In OSHA's opinion, the alternatives set forth in the proposal for design of protective systems will provide added flexibility for the employer while increasing the degree of safety afforded the employees.

OSHA is also proposing other deletions. Two tables which are part of the present standard would be deleted by the proposal and would be replaced by material to be contained in the Appendices to the standard. The contents of these Appendices are discussed in detail below. *Table P–1*, "Approximate Angle of Repose for Sloping of Sides of Excavations," would, in effect, be replaced by Appendices A and B, which provide a detailed soil classification scheme and sloping requirements for the employer who selects the second option for designing sloping system protection.

Similarly, *Table P–2*, "Trench Shoring-Minimum Requirements," would be replaced with material in Appendices A and C.

Appendix A—Soil Classification

Appendix A details a method of classifying earth deposits, taking into account various environmental conditions, site-specific conditions, and soil-specific conditions. The results of the categorization of soils in accordance with this method would then be used subsequently to determine the level of protection against cave-ins that is required to protect employees.

It is not required in every instance that employers use this Appendix as the basis of classifying earth conditions. Use of this Appendix is an option that employers may choose. The option to use this Appendix is stated twice in the standard. First, it is stated in § 1926.652(b)(2) as one option that may be used to determine the requirements for sloping and benching. The option is stated a second time in § 1926.652(c)(1) as one option that can be used to determine the requirements for timber shoring. It should be noted again that the employer is required to select one of the options set forth in § 1926.652(b) if using a sloping system, or in § 1926.652(c) if using shoring, shields, or another system. When an employer chooses an option where this Appendix is to be used, *the employer must then adhere faithfully to the requirements and provisions of the Appendix.* The Appendix then becomes mandatory.

Appendix A is arranged into four major paragraphs. These are: (a) Scope and Application; (b) Definitions; (c) Requirements; and (d) Recommended Visual and Manual Tests.

The first paragraph states the scope of the Appendix and when it is applicable. Terms used throughout the Appendix are defined in the second paragraph. The requirements for making soil classifications are set forth in the third paragraph and basically state that the classifications, as defined in the previous paragraph, shall be determined based on the results of visual and manual analyses. Recommended visual and manual analyses are described in the fourth paragraph.

OSHA recognizes that all or none of the particular analyses described in the fourth paragraph may apply at any one time, and that other tests could be developed or used which would meet the intent of the standard. Therefore, these analyses are recommended, but not mandatory.

This soil classification system, as with all soil classification systems, is not intended for universal application. OSHA does not intend that the system be used to replace analysis and testing for engineering design. OSHA does not require sampling and testing for engineering design in the current standard, and does not believe it is warranted to require these procedures in the proposal. The decision to conduct a more sophisticated soil sampling and testing program, as with the current standard, would be left to the employer's discretion in the proposal. When an engineering analysis is desired, OSHA recommends that other presently accepted methods of soil sampling and testing be used. Such methods as those adopted by the American Society for Testing and Materials (ASTM) are accepted methods.

This soil classification system is being proposed in an effort to address a deficiency in the existing standard. The existing standard does not rely on a consistent method of classifying soils, but relies on terms that cannot be easily quantified, such as "hard and compact" and "soft and unstable." Further, there is an inconsistency in the terminology currently found in Subpart P. For example, one set of terms is used in *Table P–1* which indicates recommended slopes in certain materials, primarily granular. A different set of terms to describe soils is used as the basis of the divisions of *Table P–2* which specifies mininum requirements for timber shoring in trenches.

The soil classification system that is being proposed is intended to eliminate this deficiency. It is intended to provide construction personnel and OSHA Compliance Officers with a common language that can be used to assess the requirements and adequacy of sloping and shoring systems used to prevent cave-ins.

The proposed soil classification system was developed by the National Bureau of Standards (NBS). The background of the system is explained in more detail in Exhibit 5. OSHA has incorporated this classification system in the proposal based on the recommendations of NBS, after consultation with the ACCSH, and after a review by interested parties at the five industry-sponsored workshops. In addition, OSHA has used several American Society for Testing and Materials (ASTM) Standards, as well as other sources, to obtain information that, in OSHA's opinion, was needed to supplement and clarify the NBS recommendations. The ASTM Standards include:

(1) Designation: D653–67 (Reapproved 1973)—"Standard Definitions of Terms and Symbols Relating to SOIL AND ROCK MECHANICS," (Ex. 27).

(2) Designation: D2487–69—"Standard Method for CLASSIFICATION OF SOILS FOR ENGINEERING PURPOSES," (Ex. 28).

(3) Designation: D2488–69—Standard Recommended Practice for DESCRIPTION OF SOILS (VISUAL—MANUAL PROCEDURE)," (Ex. 29).

OSHA has used these sources to clarify and provide additional information in paragraph (b) of the Appendix, "Definitions," and in paragraph (d), "Recommended Visual and Manual Tests."

One example of the use of supplemental information involves the development of the definition of "cemented soil." NBS makes reference to cemented soil in its recommended definition of Type A soil, but provides no discussion as to what constitutes cemented soil other than to suggest that soils referred to as "hardpan" or "till" are examples of cemented soil.

Cemented soils are most commonly composed of granular, or course-grained particles. Carbonate salts—calcium carbonate being the most common—are the primary chemical agents that provide the cementation of the particles of soil. The action of the cementing agents adds to the strength of the soil by binding the particles together so that the soil can resist a greater degree of stress.

The quantity of the cementing agent in a soil sample can be estimated by subjecting a soil sample to a solution of dilute hydrochloric acid and visually noting the intensity of the reaction. Unfortunately, this test does not give a good indication of the strength of the cemented soil. However, a satisfactory estimate of the relative strength of a cemented soil can be made by conducting a dry strength test. This is a test that is conducted by crushing dry soil samples between the fingers. The dry strength test is used primarily for estimating the strength of fine-grained soils, i.e., clays, which have cohesive qualities. Conducting this test on cemented coarse-grained soils, however, can give good estimates of relative strength that are equivalent to the strength estimates of fine-grained soils.

In ASTM D2488 (Ex. 29), in a description of the dry strength test, it is noted that: "The presence of high-strength water soluble cementing materials, such as calcium carbonates, may cause exceptionally high dry strength. . . ." In the dry strength test, "high" strengths are indicated if "the sample cannot be crushed to powder by finger pressure, even though the sample may be broken." "Very high" strength is indicated "if the sample cannot be broken between the thumb and a hard surface." In another reference (*Handbook of Soil Mechanics,* Volume 1, p. 98, by Arpad Kezdi) under a discussion of the dry strength test, it is stated: "If the sample resists crushing by finger pressure altogether, the soil is an inorganic clay of high plasticity, or a coarse-grained soil aggregate cemented by some high-strength binder (e.g., calcium carbonate or iron oxide)."

Based on the discussions of cemented soils in this literature, OSHA has supplemented the NBS recommendations by developing a definition of "cemented soil" with the intent of clarifying the NBS recommendations. The definition of "cemented soil" is intended to include those soils that exhibit strengths at least equivalent to the strengths required for Type A cohesive soil. The result of this will be that some soils containing a slight amount of a cementing agent will not be considered as cemented soil, as such soil will not exhibit sufficient strength.

The soil classification system being proposed has not been used in practice. However, in OSHA's opinion, use of this system will be a major improvement over the terminology and practices used in the existing standard. Because this system has not been used in practice, OSHA believes that careful consideration and comment on this system by those affected by this standard should be undertaken. Therefore, OSHA requests that particular attention be given to the proposed soil classification system and to the issue of soil classification in general.

Appendix B—Sloping and Benching

This Appendix sets forth the requirements for sloping and benching when those methods are used for protecting employees against cave-ins.

Employers are not required in every instance to use this Appendix. Therefore, in this respect, it is not mandatory.

This Appendix is provided as one option that employers can use to meet the requirement to provide cave-in protection for employees. The option to use this Appendix is stated in § 1926.652(b)(2). It is the second option employers may choose to follow to determine the requirements for sloping and benching protective systems. When this option is chosen by the employer, *the provisions of this Appendix become mandatory.*

The slopes required vary, and are dependent upon the type of soil in which the excavation is made. To use this Appendix, soils must first be classified in accordance with the provisions of Appendix A to this Subpart—"Soil Classification."

Paragraph (a) of the Appendix is a scope and application statement.

Paragraph (b) sets forth applicable definitions. Two particularly important concepts are defined. These are "maximum allowable slope" and a concept based on a time of exposure. This time concept is expressed using the words "short-term" and "long-term."

In this Appendix, slopes are expressed as maximum allowable slopes. The maximum allowable slope is the steepest incline from the horizontal that will be acceptable under the most favorable site conditions for a particular type of soil. These slopes vary with the soil type in which the excavation is made, and the length of time that the excavation is open. In addition, the depth of the excavation is specifically taken into account in one instance. In Type A soils, the maximum allowable slope for the short-term can only be used in excavations up to 12 feet (3.6 m) in depth.

"Short-term exposure" means a period of time less than or equal to 72 hours. "Long-term exposure" is greater than 72 hours. The three-day or 72 hour dividing line is from an NBS recommendation based on the discussions at the industry-sponsored workshops (Ex. 26). OSHA solicits comments on whether this time frame is appropriate for distinguishing between long-term and short-term exposure.

The allowable slopes given for long-term exposure in this Appendix (in proposed *Table B–1*), coupled with the allowable configurations (given in proposed *Figures B–1.1 through B–1.5*), should provide a greater level of protection to employees than is now required by the existing standard. The existing standard does not require that the "time of exposure" be taken into account when determining required slopes.

The allowable slopes given for short-term exposure, coupled with the allowable configurations (given in the proposed *Figures B–1.1 through B–1.5*), should provide a level of protection that is equivalent to the level of protection that is required by the existing standard.

There is no scientific basis for the suggested length of time used to delineate short-term exposure. Various lengths of time from two hours to 10 days have been suggested and discussed. Some professionals in construction have suggested that the required slope not be related to time of exposure at all (Ex. 8, pp. 304–308).

OSHA believes this issue merits further discussion. Therefore, OSHA requests that careful consideration be given to the issue of "time" as it relates to the determination of maximum allowable slopes. OSHA requests that specific comment directed to this issue be submitted during the comment period for this proposal. (See also the *Issues* section of this Preamble for information related to this issue.)

Paragraph (c) of this Appendix states the requirements for sloping and benching. Primarily, it is required that soil types be determined in accordance with Appendix A; that the maximum allowable slopes be in accordance with

Table B–1 of this Appendix B; and that the configurations of the sloping and benching systems be in accordance with the illustrations in *Figures B–1.1 thru B–1.5.* Other requirements state when slopes less than the maximum allowable slope must be used.

This Appendix is intended to replace *Table P–1* found in the existing standard. The difficulties associated with the use of *Table P–1,* such as a lack of definitions of terms, are a major reason for replacing the table. Another reason for replacing the table is to provide a new set of provisions that are correlated with the soil classification system described in Appendix A. The reasons for providing a new soil classification system have been addressed earlier in this Preamble.

This new system is broader than the current standard in that more parameters must be considered when determining allowable slopes, and in that various allowable configurations of sloping and benching are illustrated. The system is based primarily on the recommendations made to OSHA by NBS (Ex. 6).

OSHA believes that this Appendix will provide employers with a realistic and flexible approach to sloping and benching. In OSHA's opinion, the maximum allowable slopes will provide a safe work area for employees in excavations when the soils are properly classified and the slopes properly made.

Appendix C—Timber Shoring for Trenches

Appendix C contains information that can be used to provide timber shoring in trenches. Timber shoring is one of several methods that can be used to provide protection for employees against cave-in hazards.

Employers are not required in every instance to use the Appendix. Therefore, in this respect, it is not mandatory. This Appendix is provided as one option that employers can use to provide cave-in protection. The option to use this Appendix is stated in § 1926.652(c)(1). When this option is chosen by the employer, *the Appendix becomes mandatory.*

The Appendix is structured as follows:

Paragraph (a) discusses the scope of the Appendix and its interrelationship with the requirements for protective systems in § 1926.652(b) or § 1926.652(c).

Paragraph (b) notes that the provisions of Appendix A to Subpart P must be followed for the purposes of soil classification. The configurations of timber shoring that can be selected using this Appendix are directly tied to the soil classifications described in Appendix A.

Paragraph (c) describes what information is contained within the Appendix.

Paragraph (d) indicates the basis and the limitations of the data in the Appendix.

Paragraph (e) is a description of how to use the tables.

Paragraph (f) contains examples to illustrate use of the tables.

Paragraph (g) contains notes that apply when using the tables.

Paragraph (g) is followed by three tables of data. There is one table for each of the three soil types. Stable rock is exempt from shoring requirements.

This Appendix is intended to replace *Table P–2,* "Trench Shoring—Minimum Requirements," which is found in existing Subpart P. This approach is being proposed primarily to address the problems detailed earlier in this Preamble concerning soil classification. This new approach provides a system that is correlated with the new proposed soil classification system detailed in Appendix A. This Appendix, however, also provides a greater degree of flexibility than the current standard in that the tables can be used to select a greater number of configurations than is currently possible with *Table P–2.*

The tables in this Appendix have primarily been developed based on recommendations and data provided to OSHA from NBS (Ex. 6). Data in the tables not specifically recommended by NBS (Ex. 6). Data in the tables not specifically recommended by NBS are provided based on traditional practice. NBS could find no evidence that traditional timber practice, if properly executed, is unsafe [Ex. 6, p. 65]

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V. Preliminary Regulatory Impact, Regulatory Flexibility and Environmental Impact Assessments

Introduction

The Occupational Safety and Health Administration (OSHA) has prepared this Preliminary Impact Assessment (PRIA) in compliance with Executive Order 12291 and the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 [5 U.S.C. 60 et seq.]). In this assessment, OSHA has estimated the economic impact of the proposed amendments to the trenching and excavation standard (29 CFR Part 1926 Subpart P).

Regulatory History

Congress passed the Construction Safety Act of 1969 (Pub. L. 91-54), thereby amending the Contract Work Hours Standards Act (40 U.S.C. 333), by adding section 107. This section provides for occupational safety and health standards for construction employees working on federal, federally-financed, or federally-assisted projects. In 1971, pursuant to section 107, the Secretary of Labor issued safety and health regulations for construction in 29 CFR Part 1518. The Occupational Safety and Health (OSH) Act (29 U.S.C. 650 et seq.), which was passed by Congress on December 29, 1970, and became effective 4 months later, ordered the Secretary of Labor to adopt established federal standards that were issued under other statutes. In accordance with section 6(a) of the OSH Act, in May 1971, the Secretary adopted the construction standards that had been issued under the Construction Safety Act in 29 CFR Part 1518. Later in 1971, these standards were redesignated as Part 1926. As part of this process, the regulations covering trenching and excavation (Subpart P, 1926.650-1926.653) were adopted as OSHA standards.

Need for Revision

The need to revise Subpart P has been recognized since it was first incorporated as an OSHA standard. Consequently, after the Advisory Committee on Construction Safety and Health (ACCSH) reviewed the standard and following the issuance of a Notice of Proposed Rulemaking (NPRM, 36 FR 19083, September 28, 1971), several amendments were made to the standard in 1972 (37 FR 3512, February 17, 1972). After another NPRM in 1972 (37 FR 15317, July 29, 1972), the standard was further amended (37 FR 24345, November 16, 1972).

Complaints and controversy, however, continued to surround the standard. As a result, in 1976, OSHA commissioned the National Bureau of Standards (NBS) to study the standard's compatibility with actual construction practices and to recommend modifications that could improve the standard's effectiveness. The results of the NBS study were published in several reports during 1979 and 1980.

These studies, other OSHA and state data, and private sources of information clearly revealed the need to modify the standard. Surveys of firms involved in trenching and excavation indicated the widespread confusion regarding what the standard required and allowed. Many contractors were critical of the standard, claiming that it was confusing, sometimes inadequate, and often irrelevant. The tables on sloping and shoring procedures were often described as confusing and inadequate in a number of ways. Contractors were also unsure as to whether new safety techniques, such as freezing the ground rather than shoring, were allowed, and they generally believed that the standard was too rigid and was insufficiently performance oriented. Because of these problems, OSHA is proposing revisions to the current standard in order to clarify existing language and to facilitate compliance. OSHA has determined that the proposed revisions are technologically and economically feasible. OSHA has also investigated the environmental impacts of the proposed amendments and has determined that they would not be significant.

In sum, the proposed revisions would correct and clarify some of the inconsistency and inflexibility of the language in the current standard. In addition, the proposal will have no adverse effects on worker safety, relative to the current standard. OSHA assesses the cost reduction of the proposed changes at $11.4 million to $42.4 million per year. The reduced costs to industry should translate into some savings for consumers. These cost savings will arise principally from allowing firms the flexibility to select less costly methods of providing a safe workplace and therefore are consistent with the Administration's program to reduce unnecessary burdens on industry. The cumulative impact of several recent proposed revisions to 29 CFR Part 1926 are presented in Table 1. Finally, as the net effect of the Subpart P proposal is less than $100 million, this regulatory action does not constitute a "major rule."

Industry Profile

Background

Trenching and excavation projects can vary in complexity. For example, a trench may be only a few feet deep and may be dug in less than 1 hour by one person using a backhoe; a small excavation may be simply a hole scooped out by a bulldozer. The construction of a 2-foot-deep trench may be a simple project, and one that is not covered by the standard, but the construction of a 30-foot-deep trench that will not cave-in requires a knowledge of engineering, geology, and soil mechanics, or considerable field experience.

TABLE 1.—COSTS OR COST SAVINGS OF PROPOSED SAFETY REGULATIONS BY 2-DIGIT SIC CONSTRUCTION CODES [1]

[Millions of dollars]

Standard	Total construction		SIC 15		SIC 16		SIC 17	
	Incremental costs [2]	Total costs [3]	Incremental costs	Total costs	Incremental costs	Total costs	Incremental costs	Total costs
Subpart L	(7.6)	7.6	(4.0)	5.0	(0.3)	(1.0)	(3.3)	3.6
Subpart M	(27.5)	(65.8)	(17.2)	34.5	(4.2)	3.5	(14.5)	27.8
Subpart X	8.4	12.5	4.1	6.1	0.9	1.3	3.4	5.1
Subpart K	(30.6)	48.0	(2.8)	4.3	(1.8)	2.9	(26.0)	40.8
Subpart N	2.2	5.8	0.2	0.6	1.5	3.9	0.5	1.3
Subpart Q	17.5	28.7	(1.2)	4.2	(0.7)	2.3	19.4	22.2
Subpart S	2.7	3.4	.....	.....	2.7	3.4	.....	.....
Subpart P	(11.4–42.4)	.....	(1.6–5.9)	.....	(2.4–26.7)	.....	(2.6–9.8)	.....
Total [4]	(61.8)	171.8	(24.6)	54.7	(18.9)	16.3	(26.7)	100.8

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

[1] Standard Industrial Classification (SIC) Codes 15: Building Construction—General Contractors and Operative Builders; SIC 16: Construction Other Than Building Construction—General Contractors; SIC 17: Construction—Special Trade Contractors (may include subcontractors working for contractors in the other two SIC categories).

[2] Costs of moving from full compliance with the existing standards to full compliance with the proposed standards.

[3] Costs of moving from current industry practice to full compliance with the proposed standards.

[4] Averages of the Subpart P savings were used to derive the total costs.

The major occupational hazards that occur in trenching and excavation work result from cave-ins, from exposure to underground utilities, and from material or equipment that may fall into the trench or the excavation. To protect against cave-ins, for example, proper precautions include bracing, sloping, benching, using shields, or freezing. Knowing when and how to use these techniques requires an understanding of the relationships among such factors as depth and width of the trench, soil type, hydraulic pressure, and other specific conditions present at the worksite. Recent advances in technology have also reduced the amount of time during which workers are physically exposed to the hazards of trenching. For example, new equipment includes trenching machines that dig and lay cable and remote-controlled equipment that compacts the soil in the trench.

Trenching is performed primarily by utility contractors who construct gas, sewer, water, and utility lines. Much of this work is performed as a result of competitive bids from state and local governments or local utilities. Surveys indicate that 70 percent of utility contractors receive about 90 percent of their business through competitive bidding. Minimizing costs, including safety-related costs, is therefore important to these contractors. Excavation work is performed for many kinds of construction, including buildings, bridges, towers, swimming pools, and port facilities.

A number of important economic and technical characteristics separate trenching from excavation work and make trenching the more hazardous activity. For example, large excavations tend to be adjacent to buildings that would collapse if the excavation were not shored. The possibility that damage suits would be initiated as a result of the collapse of these buildings provides strong incentives to shore these excavations. Thus, excavation safety is largely a byproduct of investments undertaken for other purposes. Even where other structures are not adjacent, excavations may be deep enough so that the risk of collapse of an unbraced wall, along with the concomitant economic expense of reexcavating, would give sufficient incentive to contractors to brace the walls. In contrast, such incentives are greatly diminished for trenching work. Trenches are less likely to be in close proximity to other structures, structures adjacent to trenches are less likely to collapse, and the cost of redigging a caved-in trench is far lower than reexcavating the foundation of a large building. For these reasons, an externality problem is more likely to exist for trenching than for excavation.

Industries and Economic Activity

Trenching and excavation occur chiefly in the following 13 four-digit Standard Industrial Classifications (SIC):

SIC 1521 General Contractors—Single Family Houses.

SIC 1522 General Contractors—Residential Buildings Other than Single Family Houses.

SIC 1541 General Contractors—Industrial Buildings and Warehouses.

SIC 1542 General Contractors—Non-Residential Buildings Other than Industrial Buildings and Warehouses.

SIC 1611 Highway and Street Construction Contractors.

SIC 1622 Bridge, Tunnel, and Elevated Highway Construction.

SIC 1623 Water, Sewer, Pipeline, Communication and Power Line Construction Contractors.

SIC 1629 Heavy Construction Contractors, Not Elsewhere Classified (NEC).

SIC 1711 Plumbing, Heating (Except Electrical) and Air Conditioning.

SIC 1771 Concrete Work.

SIC 1781 Water Well Drilling.

SIC 1794 Excavation and Foundation Work.

SIC 1799 Specialty Trade Contractors, NEC.

No published data exist that allow the estimation of either the total value of trenching and excavation work or the number of establishments and workers involved. Bureau of the Census data [1], however, do exist on the amount of contracted excavation work by four-digit SIC code. The data demonstrate that most of such work occurs in SIC 1794 and that most contract work in SIC 1794 is excavation work. Excavation work performed under another contract (e.g., as part of a high rise apartment) would be included in another category. Thus, although it is reasonable to assume that most contract work performed in SIC 1794 is for excavations, it cannot be assumed that most excavation work occurs in SIC 1794. Moreover, the Bureau of the Census publishes no data that specifically identify trenching as a

category of business. For these reasons, OSHA has estimated trenching and excavation activity in the followlng manner.

The Associated General Contractors of America (AGC) [2] conducted a survey of trenching contractors whose work closely corresponded to that in SIC 1623. The results of this survey were used to estimate the percentage of revenues in trenching and excavation for SIC 1623. The 96 responding firms indicated that 38 percent of their revenues were from trenching. Another survey also conducted by AGC [3] on the practices of contractors engaged in trenching and excavation found that of the 22 firms responding, an average of 36.5 percent of their revenues were derived from either trenching or excavation. The majority of these firms would probably be classified in SIC 1623, as most of their trenching work was for the construction of sewer and water lines. Based on these surveys, it seems reasonable to assume that no more than 15 percent of the revenues in SIC 1623 are derived from trenching and excavation. It becomes more difficult, however, to make a similar estimate for all other affected SIC codes. The trenching and excavation revenues for the other SICs in the construction industry are derived at a more aggregate level. For example, most of the trenching and excavation activity classified within SIC 15 involves the excavation of foundations for houses, offices, and warehouses. Foundation work for these types of structures ranges from 2 percent of the total costs for single-family houses to 12 percent for industrial buildings [4]. Because the foundation phase also includes all of the concrete costs not related to excavation, it is assumed that roughly 5 percent of the activity in SIC 15 would be affected by Subpart P. For SIC 16, the major affected activity, other than that in SIC 1623, would be highway, bridge, and other heavy construction. To estimate the trenching and excavation activities for this SIC code, a number of bids for these types of jobs were examined [5]. The excavation component of these bids was in the range of 1–5 percent of the total project costs. Based on this information, 5 percent has been used as a conservative estimate of the percent of revenues in SIC 16 that are affected by Subpart P. In SIC 17, the two main classifications affected are SIC 1711 (plumbing, heating and air conditioning) and SIC 1794 (excavation and foundation work). A best estimate of 1 percent of revenues was used for SIC 1711 based on average plumbing estimates from a construction estimation manual [6], where trenching and backfilling represented .7 percent of the total time required for the job . For SIC 1794, it was assumed that 45 percent of revenues are affected by Subpart P. This was based on the assumption that although SIC 1794 almost exclusively represents firms doing excavations and foundation work, the actual excavation activity affected by Subpart P is one phase, and once the walls are supported, laying the foundation, stripping, etc. become the other major cost factors of the job. This results in a total industry revenue estimate of § 12.42 billion for trenching and excavation work (see Table 2).

The Proposed Revisions to the Standard

Introduction

This section discusses the proposed revisions to OSHA's current trenching and excavation standard. The proposed revisions are intended to clarify the requirements of the standard and how these requirements may be satisfied as well as to eliminate discrepancies between requirements and current practices where there is no evidence that current practices pose a hazard to workers.

TABLE 2.—ESTIMATES OF TRENCHING AND EXCAVATION REVENUES BY INDUSTRY, 1982

Industry	Net revenues (In billions of dollars)	Proportion Subpart P related	Trenching and excavation revenues (In billions of dollars)
SIC 15 (except 1531)....	48.5	.05	2.43
SIC 16 (except 1623)....	44.2	.05	2.21
SIC 1623..	10.5	.40	4.20
SIC 1711..	28.8	.01	.29
SIC 1794..	7.3	.45	3.29
			12.42

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

The following paragraphs describe only those changes that appear to have significant economic impacts.

Changes in Format

The current standard consists of four main sections: General Protection Requirements, Specific Excavation Requirements, Specific Trenching Requirements, and Definitions. The General Protection Requirements also apply to each section of the standard. The use and application of these provisions, however, are not clearly identified in the current standard and some users did not understand their intent [2, Appendix D]. Consequently, the presentation and format of the standard have been revised in order to clarify the language and requirements of Subpart P. The proposed amended standard includes a section on Scope, Application and Definitions, followed by General Requirements, and then the Specific Requirements for Protective Systems. The existing standard contains two tables on sloping and shoring, whereas the revised standard contains three nonmandatory appendices that provide a soil classification system, describe tests for determining soil type, and provide designs for sloping, benching, and timber shoring. OSHA expects that this reorganization will clarify the standard and the applicability of the various provisions and appendices.

Changes in Provisions

Numerous changes have been made to specific provisions of the standard. In the following discussion, the changes are presented in broad groupings according to their expected effects, and important examples of these groupings are then examined.

Specific Changes

The first group of changes are called *specific* changes because, individually, they affect specific requirements of the standard. A number of these specific changes are designed to bring the requirements of the standard into conformity with current industry practices when doing so would not compromise safe work practices. Some of the specific changes are simply definitional in nature. For example, the existing standard defines "belled excavations," and the proposed standard defines and refers to "belled-bottom pier holes." Because belled excavations are actually called belled-bottom pier holes, the change simply brings the terminology of the standard into conformity with current usage.

The specific changes, however, involve more than just a change in wording; many change the actual requirements of the standard. For example, one such change alters the definition of a trench shield and states that it must protect employees from the hazards of cave-ins, but need not: protect against the occurrence of cave-ins. In addition, the existing definition specifies that shields must be composed of steel plates and braces, but the

proposed standard would allow homemade shields to be made of wood or other materials.

Many of the specific changes that OSHA is proposing are likely to lower costs but not increase worker risk. One is the change in the existing requirement that work must discontinue in trenches or excavations where water has accumulated. The proposed revision would allow work to continue under those circumstances where the proper precautions have been taken to protect employees. Another example of a cost-savings results from the modification of the provision for the use of emergency rescue equipment where adverse atmospheric conditions exist. The existing standard requires such equipment where hazardous atmospheres "may exist," and requires the equipment to be physically "attended" by a worker. The proposed standard would modify this requirement to apply only where such conditions "exist or may reasonably be expected to develop," and would remove the requirement for an attendant.

General Changes

The *general* changes affect several provisions of the standard. Perhaps the most important general changes are those specifying alternative acceptable ways for contractors to comply with the existing requirements for protective systems. Although most of the existing standard's provisions allow the use of alternative means of protection, the availability of these options or alternatives was not generally appreciated. For example, in one survey [2] of utility contractors, a number of respondents said that they complied with Tables P–1 and P–2 of the existing standard in order to prevent citations, indicating that they were unaware that alternatives were acceptable. In addition, there is some confusion about the minimum standards contractors must meet in order to be in compliance. The proposed revisions to the requirements for protective systems would also clarify such requirements.

Contractors who choose to use a support system, such as shoring, must follow one of four basic options: (1) They may use OSHA's Appendices A and C for soil classification and timber shoring, (2) they can use supports, shields, or other systems prepared in accordance with manufacturers', or other, tabulated data, (3) they can use other tabulated data such as that found in some state plans, or tabulated data prepared by or under the guidance of a qualified person, and (4) they can have the system designed by a qualified person or a qualified engineer, or under the direction of a qualified engineer.

These requirements represent a substantial change to the existing standard. The existing standard does not clearly specify the function of Table P–1 on sloping and Table P–2 on timber shoring or who may design sloping or support systems. For example, Table P–1 is required as "a guide" for trenches, which appears to imply that it is nonmandatory. Elsewhere, the standard states that trench banks are required to be "laid back to a stable slope," while excavations, which are defined to include trenches, are to be dug to the "angle of repose." These requirements are exceedingly vague. The existing Table P–2 on timber shoring is described as containing "minimum requirements," but it is unclear whether such requirements are to be interpreted as minimum performance requirements or whether contractors must follow the exact specifications of the table. Similarly, although the standard defines a trench as a form of excavation, the section on "Specific Excavation Requirements" contains the statement that support systems must be designed by a qualified person according to accepted engineering practices. However, it is unclear if these requirements would allow a qualified person to design a different timber shoring system than that contained in Table P–2.

Changes in Tables

The final type of amendment that distinguishes the proposed standard from the existing standard is intended to clarify and broaden the applicability of the material contained in Tables P–1 and P–2 of the current standard. The set of tables in the existing standard not only are confusing (as noted above), but also lead to inflexibility in application. For example, they contain no information about benching, or the combined use of sloping and benching practices. Table P–1 on sloping contains the note that "clays, silts, loams or nonhomogeneous soils require shoring or bracing," thus apparently implying that sloping is inappropriate in such situations. In addition, although Table P–1 notes the importance of both soil type and environmental conditions in determining proper sloping, it contains no method for determining either soil type or environmental conditions. Finally, Table P–2 on timber shoring for trenches contains only one set of specifications for a given soil type and depth. The specifications in Table P–2 could be cost-effective only inadvertently because the relative prices of types and grades of lumber can vary sharply both over time and by geographic region.

In contrast, the proposed appendices are designed to eliminate these problems. For example, the proposed standard's Appendix A on soil and environmental classification is intended for field use. As proposed, Appendix B on sloping clearly applies to all excavations including trenches, and sloping is allowed for clays, silts, and other soils. In the current standard these applications were not clearly identified. Benching and the combined use of sloping and benching are also discussed in this appendix. Appendix C on timber shoring is also more flexible than the requirements shown in Table P–2 of the current standard. This appendix contains as many as four sets of timber shoring procedures for a given soil classification and trench depth. Finally, in the revised standard, the use of these appendices would be nonmandatory.

OSHA believes that, overall, these changes would significantly increase the ease with which firms may comply with the regulation by increasing the flexibility, clarity, and usefulness of the standard.

Worker Risk

The element of risk involved in construction work was recognized by Congress in the Construction Safety Act (Pub. L. 91–54, 1969). This Act mandated the promulgation of safety and health standards for construction employees at federal or federally-financed/assisted projects. These regulations, based on existing standards, were published as 29 CFR Part 1518. When the OSH Act was enacted by Congress in 1970 it authorized the Secretary of Labor to adopt established federal standards. Hence, the then existing Construction Safety Act standards, including Subpart P, were incorporated into the new OSHA standards. Thus, the industry itself, as evidenced by the development of consensus standards, as well as Congress and the Secretary of Labor, have all determined that the construction industry, in general, and trenching and excavation work, in particular, present an undue risk to the workers involved.

The hazardous nature of construction work, especially that related to trenching and excavating (particularly trenching), has been documented. The fatality rate in SIC 1623, which is dominated by trenching, was estimated by OSHA at 42.7 deaths per 100,000 workers per year for 1977–1981, whereas for construction work generally, it was estimated at 29.0 deaths per 100,000 employees per year. Similarly, trenching

and excavation fatalities were estimated at 97 deaths per year, and injury rates were comparably high [7, 8, 9]. The incidence rate for injury among construction workers, including those doing trenching and excavation work, is about two times the all industry average (i.e., 14.8 injuries per 100 workers in construction compared with 7.6 injuries per 100 workers in all industries [10]). Since the injury rate for trenching and excavation is not readily available, OSHA solicits additional information on injuries and fatalities for use in the final analysis.

Moreover, data from OSHA's Fatality/Catastrophe Abstracts indicate that 74.8 percent of all fatalities in trenching and excavating came from cave-ins. It is generally accepted by the construction industry, by labor, and by insurance companies that shoring, shielding, and sloping to a sufficient angle eliminate or substantially diminish the risk of cave-in or fatality from cave-ins. The main provision of Subpart P that relates to trenching is the requirement of providing protection against death or injuries resulting from cave-ins by using methods that are now in use in the industry and that were prompted by the original consensus standards.

The proposed amendment to Subpart P has been compared to the current Subpart P to determine whether it would be less effective in reducing risk than the unamended, current Subpart P. Based on a review of the OSHA Fatality/Catastrophe Abstracts for 1974–1981, including 283 accidents and 223 fatalities in trenching and excavation, there is no evidence that the proposed amended standard would have been any less effective than the existing standard [11]. Rather, the primary purpose and effect of the proposed revisions are to clarify requirements and to add flexibility so that firms can tailor their protective measures to their particular situations. OSHA would appreciate receiving information on any differences in employee protection as a result of the proposal or any other methods of reducing the risk of trenching fatalities including the number of injuries and fatalities that would be avoided under these alternatives.

Incremental Costs

Methodology

The current Subpart P is an OSHA regulation by order of an Act of Congress. Any economic analysis attempting to discuss whether an Act of Congress is reasonable, feasible, or cost effective would be legally superfluous. Operating on the basis of the legal reasonableness, feasibility, and/or cost-effectiveness of current Subpart P, this economic analysis focuses only on the incremental effects of the amendments to Subpart P. The changes proposed to the current Subpart P represent numerous clarifications and amendments that in most cases increase the flexibility of and reduce the regulatory burden on private enterprise; the proposed amendments are expected to reduce the cost of regulation without impairing worker protection. OSHA estimates the economic effects of the proposed amendments to Subpart P, to be on the order of a $11.4 million to $42.4 million savings to the industry.

The discrete costs of providing the safety requirements under the existing or proposed standards are virtually impossible to isolate for a number of reasons. The costs of meeting individual requirements can be estimated, and from these, the costs related to Subpart P can be derived for a particular trenching or excavation job. The extension of this methodology beyond any given job, however, stretches the assumptions to implausible lengths in its application to the entire universe of trenching and excavation activities. This is primarily due to the broad diversity of these types of construction jobs and to the unknown number of miles of trench of various depths that are dug each year. In many other OSHA construction regulations, it has been reasonable to develop some model construction jobs, estimate OSHA costs, weigh these jobs in some manner, and then extrapolate to the entire country. In this case, even to consider the most major variations in trench depth and width, soil type, weather conditions, site locations, and protective systems necessitates the development of a complicated model based on tenuous assumptions at each level. This, in fact, was attempted by a firm under contract to OSHA. Because of the complexity of these technical issues, the contracted effort failed to produce reliable cost estimates.

On average, the proposal is expected to result in a net reduction in costs, however particular provisions may result in cost increases for some firms. Therefore, OSHA requests data on the cost of different alternatives for use in the final analysis.

Given the paucity of published data on the safety costs related to trenching and excavation, it was decided to rely upon the judgement of people in the business of digging trenches who would be in the best position to know the costs imposed by an OSHA regulation. They clearly have no incentive to underestimate such costs. This basic question was posed to the Associated General Contractors (AGC), which in turn queried a sample of its members (about two dozen contractors). No one was able to estimate precisely either the costs of particular Subpart P requirements or even to relate them as a percentage of all revenues. Similarly, a number of representatives of firms were contacted directly by OSHA and asked if they could estimate what percent of their costs of trenching or excavating stemmed directly from OSHA requirements, or conversely, how their costs would be affected were this particular regulation to disappear tomorrow. Once again, no one could provide precise estimates, owing in part to the variety of jobs and circumstances. Only after further probing did industry representatives indicate that only under the most extreme circumstances would Subpart P requirements account for even 5 percent of their total job costs.

In a further attempt to isolate these costs, all of the major publishers of construction industry cost indexes, as found in Engineering News Record [12], were contacted in an attempt to determine if either Subpart P or safety costs generally were calculated separately in the compilation of their costs. Of the 15 firms contacted, all stated that the labor and materials costs were considered individually, but that all safety costs were absorbed within overhead costs and could not be separately identified. In addition, bids on major construction projects that had been published over several years in Engineering News Record [5] were examined to determine whether safety costs were a line item in the specifications or itemized costs. None were found. If safety were a major cost factor, it would be expected that it would be an individual cost component in the bids. Based upon the above information, then, it can be assumed that all safety costs cannot exceed that portion of the costs represented by overhead. The costs associated with Subpart P are only one factor contributing to the total safety costs of a trenching or excavation job. In addition, items such as offsite wages, fringe benefits, financing costs, inventory, other administrative expenses, and profit are included in overhead costs.

The most recent Bureau of Labor Statistics (BLS) studies [13] of the distribution of construction contract costs for various types of construction projects found that for sewer line construction, overhead and profit accounted for 23.8 percent of the total contract costs. Before-tax profit alone

accounts for over 10 percent of the total; all other overhead items account for the remaining 13 plus percent. From this remainder it is assumed that no more than 5 percent of the total project cost can be attributed to all safety items, only a portion of which is a direct result of complying with Subpart P requirements. This, of course, may vary for individual jobs but should be fairly accurate for the industry as a whole. An additional study on the costs of constructing power plants [14] tends to support this estimate. The study found that for both nuclear and coal-fired plants the combined costs for both safety and environmental protection accounted for 8 percent of the total costs of construction. Given that in this industry environmental requirements tend to be significant, the cost for safety factors must be a relatively small part of the total project and certainly less than 5 percent ot the total.

An estimate of the amount of construction revenues affected by Subpart P and the incremental impact of the proposed amendments were made by the Office of Regulatory Analysis. The estimate of $12.42 billion of annual trenching and excavating revenues derived earlier was used as the basis of this cost assessment. It has been assumed that the 5 percent of the total construction job costs, as discussed earlier, can be used as an *upper bound* of the current costs imposed by the existing standard. Thus, the current cost of the existing standard is estimated at $621 million annually. Based on discussions with contractors and their representatives, OSHA estimates that the proposed amendments will save between 2 percent and 7 percent of the current cost of Subpart P. Thus, the savings arising from the proposed amendments range between $12.42 million and $43.47 million to the economy as a whole.

Recordkeeping Costs

It is necessary to estimate separately the cost of additional paperwork required by the proposed admendments. Contractors who choose to rely on engineering designs, tabulated data, or manufacturers' specifications for sloping, support, or other systems would be required to keep copies of the designs or specifications for as long as the job is in progress and to make them available to OSHA inspectors on request. OSHA assumes that all engineer-designed projects would already have the specifications and drawings necessary to comply with this requirement, and therefore, the proposed standard would generate no additional costs. Tabulated data from other sources, including manufacturers' specifications, might not be routinely kept on file; thus, the proposed standard could generate additional costs in these cases.

OSHA assumes that all affected contractors would comply with this requirement by making copies of the tabulated data or manufacturers' specifications that are used on projects and by putting these copies in binders that would be taken routinely to jobsites along with other necessary equipment. The costs of the standard would then be the costs of copying the relevant specifications and filing them in a binder. OSHA assumes that this would be a one-time effort for each affected jobsite and that it would require half an hour of clerical time at $7.64 * per hour, plus an additional $.75 to cover the cost of paper, copying, and other miscellaneous supplies.

OSHA has estimated the number of jobsites that would be affected by this recordkeeping requirement, based on building permit data [15]. There were 482,315 permits issued in 1984, excluding residential garages. There were 1,021,911 permits for residential buildings issued in 1984. Assuming 10 buildings per development, or with similar excavation designs at a site, this would result in 102,191 sites with excavation activity.

It was assumed that public construction would add an additional 10 percent to private sector projects that require some trenching and excavation work. This results in an estimate of 642,956 potentially affected projects each year. Under the proposed new rules only contractors who opt for trenching and excavation systems based on tabulated data (that is, standardized or existing plans or designs and not plans uniquely developed for a particular project) will be affected by new recordkeeping requirements. Based on estimates of the expected frequency of use of tabulated data, it was assumed that approximately 35 percent of the affected projects, or 225,035 jobsites, would be affected. Thus, the annual incremental recordkeeping costs would be $1,028,410 [225,035×(($7.64×½)+$.75)].

Total Costs

Based on the assumptions described in the previous sections of this chapter, OSHA estimates that the proposed standard would reduce annual trenching and excavation costs attributable to Subpart P by between $12.42 million and $43.47 million. Recordkeeping costs associated with all trenching and excavation activities would increase $1.03 million; thus, the total savings under the proposal would be between $11.4 million and $42.4 million for the economy as a whole.

OSHA believes that the proposed revisions will be less costly than the existing standard and that this conclusion accurately reflects the true relative costs of the current and revised standards. OSHA solicits additional cost and impact data for use in the analysis of a final standard.

Other Economic Effects

Environmental Impacts

The proposed revisions to Subpart P have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 et seq.), the Regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed standard would have no significant environmental impact.

Although safety standards rarely influence air, water, or soil quality, plant or animal life, or the use of land or other aspects of the environment, it is appropriate to examine whether the proposed revisions to the OSHA standard on trenching and excavation (29 CFR Part 1926, Subpart P) will alter the environment external to the workplace. Both trenching and excavation can have significant effects upon local environments. For example, erosion, runoff, and similar actions can result in environmental degradation. These potential impacts can be more or less severe depending upon how and where the trench or excavation is dug, how long it is left open, the disposition of the earth that is removed, etc. OSHA has determined, however, that the proposed revisions to Subpart P consist primarily of clarifications in work practices and procedures and are unlikely to have significant impacts on any of these activities; therefore, these revisions will have no significant environmental effects.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 95–353, 94 Stat. 1164 [5 U.S.C. 60 et seq.]), OSHA has assessed the impact of the proposed revisions and concludes that they would not adversely affect a significant number of small entities.

* Derived from the 1979 construction industry file clerk mean annual earnings reported in the 1980 Census [16] and adjusted to 1985 by using the employment cost index for white collar clerical workers [17] plus 30 percent for fringe benefits.

As is generally known, the burden of most regulation, especially the legal and paperwork burdens, can fall disproportionately on small enterprises. This occurs primarily because larger firms often have the legal and clerical support in place to handle the burdens imposed by government regulation.

Similarly, it may be true that the larger trenching and excavating firms are less affected by the requirements of Subpart P than their smaller rivals because the very size of the larger firms may have prompted the adoption of companywide construction practices that meet or exceed the minimum requirements in Subpart P.

It is therefore apparent that the amendments to Subpart P, which serve principally to reduce the cost of compliance by increasing the flexibility of the regulations and clarifying their intent, will also benefit smaller firms. Thus, clarifying Subpart P and explicitly stating the flexibility and choice available to firms will proportionately reduce compliance costs to small firms. OSHA solicits information on any disproportional impacts that small firms may experience as a result of the alternatives allowed under the proposal.

Simply put, the amendments to Subpart P will benefit large and small firms, and smaller firms will likely reap the larger proportional gains. Some portion of these savings will pass through to consumers or to state and local governments that often are the buyers in the trenching and excavation market. As the total, economy-wide savings from the proposed amendments are estimated to be from $11.4 million to $42.4 million, the overall effect on prices, output, and employment in the U.S. economy will be quite small, but favorable.

For these reasons, OSHA concludes that the proposed standard is unlikely to have an adverse impact on a significant number of small trenching and excavation companies. OSHA welcomes any additional information, data, or opinions regarding the effects of these revisions on small entities.

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13. U.S. Department of Labor. Labor Management Services Administration. Office of Construction Industry Services. Annual Construction Industry Report. Washington, DC: Government Printing Office, April 1980. P. 106.

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15. U.S. Department of Commerce. International Trade Administration Construction Review. Washington, DC: Government Printing Office, November–December 1985. Pp. 31; 39.

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VI. Recordkeeping

The proposed standard contains "collection of information" (recordkeeping) requirements pertaining to design of protective systems (§ 1926.652(b) and § 1926.652(c)). In accordance with 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public), OSHA has submitted the proposed recordkeeping requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments regarding the proposed recordkeeping requirements may be directed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, Washington, DC 20503.

List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Excavations, Occupational safety and health, Protective equipment, Safety.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal and all issues involved therein. The comments must be postmarked on or before June 15, 1987, and submitted in quadruplicate to the Docket Officer, Docket No. S–204, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3670, Washington, DC 20210. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657), section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal public hearing. The objections and hearing request should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked on or before June 15, 1987, and

submitted to the Docket Office at the aforementioned address;

3. The objections must specify with particularity the provisions(s) of the proposed rule to which objection is taken, and must state the grounds therefore;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

If objection and request for a hearing are timely filed, a hearing will be scheduled pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

VIII. State Plan Standards

The 25 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule or show OSHA why there is no need for action, e.g. because an existing standard covering this area is already "at least as effective" as the revised federal standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

IX. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend Part 1926 of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, DC, this 7th day of April 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

Part 1926 of 29 CFR would be amended as follows:

1. The authority citation for Subpart M of Part 1926, continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. By revising the authority citation for Subpart P of Part 1926, to read as follows:

Authority: Sec. 107, Contract Worker Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

§§ 1926.500 and 1926.501 [Amended]

3. By redesignating paragraphs (t) and (w) of § 1926.651 as paragraphs (h) and (i) of § 1926.500, respectively.

4. By revising Subpart P to read as follows:

Subpart P—Excavations

Sec.

1926.650 Scope, application, and definitions applicable to this subpart.
1926.651 General requirements.
1926.652 Requirements for protective systems.
Appendix A
Appendix B
Appendix C

Subpart P—Excavations

§ 1926.650 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This Subpart applies to all open excavations made in the earth's surface. Excavations are defined to include trenches.

(b) *Definitions applicable to this subpart.* (1) "Accepted engineering practices" means those requirements or practices which are compatible with standards of practice required by a registered professional engineer, or other duly licensed or recognized authority.

(2) "Bell-bottom pier hole" means a type of shaft or footing excavation, a portion of which is made larger than the cross section above to form a belled shape.

(3) "Benching" (Benching system) means a method of protecting employees against cave-ins by excavating the sides of an excavation to form one or a series of horizontal levels or steps, usually with vertical or near-vertical surfaces between levels.

(4) "Cave-in" means the separation of a mass of soil or rock material from the side of an excavation and its sudden movement into the excavation, either by falling or sliding, in sufficient quantity so that it could entrap, bury, or otherwise injure and immobilize a person.

(5) "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. (**Note:** the competent person can act as the employer's designee for the purpose of choosing a protective system from the options provided in § 1926.652 (b) and (c) of this section; but cannot take on original design responsibility allowed by § 1926.652 (b)(3), (c)(3) or (c)(4), unless otherwise qualified.)

(6) "Cross braces" means the horizontal members of a shoring system installed perpendicular to the sides of the excavation, the ends of which bear against either uprights or wales.

(7) "Excavation" means any man-made cut, cavity, trench, or depression in an earth surface, formed by earth removal and producing unsupported earth conditions (sides, faces).

(8) "Faces" or "Sides" means the vertical or inclined earth surfaces formed as a result of excavation work.

(9) "Failure" means the breakage, displacement, or permanent deformation of a structural member or connection so as to affect its supportive capabilities.

(10) "Hazardous atmosphere" means an atmosphere which by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, oxygen deficient, toxic, or otherwise harmful, may cause death, illness, or injury.

(11) "Kickout" means the accidental release or failure of a cross brace.

(12) "Protective system" means any method of protecting employees against cave-ins, from material that could fall or roll from an excavation face or into an excavation, or from the collapse of adjacent structures. Protective systems include support systems, sloping and benching systems, shield systems, and other systems that provide the necessary protection.

(13) "Qualified engineer" means a person who has attained (through

engineering education and experience) a special knowledge of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design; and who, therefore, is qualified to practice engineering, i.e., apply the principles and methods of engineering analysis and design to solve specific problems.

(14) "Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing or who by extensive knowledge, training, and experience has successfully demonstrated his ability to solve or resolve problems related to the subject matter, or the project.

(15) "Ramp" means an inclined walking or working surface used to gain access to one point from another, and that is constructed from earth or from structural materials such as steel or wood.

(16) "Sheeting" means the members of a shoring system such as dimensional lumber uprights, plywood or other materials that are driven or placed in contact with the earth, usually in a vertical position, for the purpose of retaining the earth in position and in turn being supported by other members of the shoring system.

(17) "Shield" (Shield system) means a structure that normally will not prevent a cave-in, but is able to withstand the forces imposed on it by a cave-in and thereby protect employees within the structure. Shields can be permanent structures or can be designed to be portable and moved along as work progresses. Additionally, shields can be either premanufactured or job built. Shields used in trenches are usually referred to as "trench boxes" or "trench shields."

(18) "Shoring" (Shoring system) means a structure such as a mechanical or timber shoring system that supports the sides of an excavation and which is designed to prevent cave-ins.

(19) "Sides." See "Faces."

(20) "Sloping" (Sloping system) means a method of protecting employees against cave-ins by excavating to form sides of an excavation that are inclined away from the excavation so as to prevent cave-ins. The angle of incline required to prevent a cave-in varies with differences in such factors as the soil type, environmental conditions of exposure, and application of surcharge loads.

(21) "Stable rock" means rock that can be excavated with vertical sides and will remain intact while exposed. (Note: Unstable rock is considered equivalent to stable rock when the rock material on the side or sides of the excavation is secured against caving-in or movement by rock bolts or another system that has been designed by a qualified engineer or a qualified person).

(22) "Structural Ramp" means a ramp built of material other than soil or rock.

(23) "Support system" means a structure such as underpinning, bracing, or shoring, which provides support to an adjacent structure, underground installation, or the sides of an excavation.

(24) "Tabulated data" means tables and charts prepared in accordance with accepted engineering practice by a qualified person, a qualified engineer or a person under the direction of a qualified engineer, and used to design and construct a protective system. Manufacturers' tables, or charts, or State regulations promulgated under an approved State plan and determined by OSHA to be "as effective as" Federal regulations, are other examples of acceptable tabulated data.

(25) "Trench" (Trench excavation) means a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet (4.6 m). (Note: If forms or other structures are installed or constructed in an excavation so as to reduce the dimension measured from the forms or structure to the side of the excavation to 15 feet (4.6 m) or less (measured at the bottom of the excavation), the excavation is also considered to be a trench.)

(26) "Trench box." See "Shield."

(27) "Trench shield." See "Shield."

(28) "Uprights" means the vertical members of a trench shoring system placed in contact with the earth and usually positioned so that individual members do not contact each other. (Note: Uprights placed so that individual members are closely spaced, in contact with or interconnected to each other, are often called "sheeting.")

(29) "Wales" means horizontal members of a shoring system placed parallel to the excavation face whose sides bear against the vertical members of the shoring system or earth.

§ 1926.651 General requirements.

(a) *Surface encumbrances.* Trees, boulders, and other surface encumbrances that are located so as to create a hazard to employees shall be made safe or removed.

(b) *Underground installations.* (1) The estimated location of utility installations, such as sewer, telephone, fuel, electric, or water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be determined prior to opening an excavation.

(2) Utility companies shall be contacted and advised of proposed work prior to the start of actual excavation.

(3) When excavation operations approach the estimated location of underground installations, the exact location of the installations shall be determined by acceptable means, such as probing with hand-held tools.

(4) While the excavation is open, underground installations shall be removed, protected, or supported as necessary to safeguard employees.

(c) *Access and egress.* (1) *Structural ramps.* (i) Structural ramps that are used by employees or equipment as a means of access to or egress from excavations shall be designed by a qualified person, a qualified engineer or a person under the direction of a qualified engineer, in accordance with accepted engineering practices, and constructed in accordance with their design.

(ii) Ramps and runways constructed of two or more planks shall have the planks securely connected together to prevent displacement.

(iii) Planks used for ramps and runways shall be of uniform thickness.

(iv) Cleats used to connect runway planks together shall be attached to the bottom of the runway or be beveled to prevent tripping.

(v) Ramps used in lieu of steps shall be provided with beveled cleats on the top surface to prevent slipping.

(2) *Means of egress from trench excavations.* A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are four feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees. (Note: A negotiable slope may be used as a means of egress unless climatic conditions (rain, snow, ice) create a hazard to the user.)

(d) *Exposure to vehicular traffic.* Employees exposed to vehicular traffic shall be provided with, and shall wear, warning vests or other suitable garments marked with or made of reflectorized or high-visibility material.

(e) *Exposure to falling loads.* No employee shall be permitted underneath loads handled by lifting or digging equipment. Employees shall be required to stand away from any vehicle being loaded or unloaded to avoid being struck by any spillage or falling material. (Note: Operators may remain in the cabs of vehicles being loaded or unloaded when the vehicles are equipped to provide adequate protection for the operator during loading and unloading operations.)

(f) *Warning system for mobile equipment.* When mobile equipment is operated adjacent to an excavation, or when such equipment is required to approach the edge of an excavation, and the operator does not have a clear and direct view of the edge of the excavation, a warning system shall be utilied such as barricades, hand or mechanical signals, or stop logs. (**Note:** If possible, the grade should be away from the excavation.)

(g) *Hazardous atmospheres.* (1) *Testing and controls.* In addition to the requirements set forth in Subparts D and E of this Part to prevent exposure to harmful levels of atmospheric contaminants and to assure acceptable atmospheric conditions, the following requirements shall apply:

(i) The atmosphere in the excavation shall be tested before employees enter excavations greater than four feet (1.22 m) in depth where oxygen deficiency (atmospheres containing less than 19.5 percent oxygen) or a hazardous atmosphere exists or could reasonably be expected to exist, such as in excavations in landfill areas or excavations in areas where hazardous substances are stored nearby.

(ii) Adequate precautions shall be taken, such as providing proper respiratory protection or ventilation in accordance with Subparts D and E of this Part respectively, to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen.

(iii) Adequate precautions, shall be taken such as providing ventilation to prevent employee exposure to an atmosphere containing a concentration of a flammable gas in excess of 20 percent of the lower flammable limit of the gas.

(iv) When controls are used that are intended to reduce the level of atmospheric contaminants to acceptable levels, testing shall be conducted as often as necessary to ensure that the atmosphere remains safe.

(2) *Emergency rescue equipment.* (i) Emergency rescue equipment, such as breathing apparatus, a safety harness and line, or a basket stretcher, shall be readily available where hazardous atmospheric conditions exist or may reasonably be expected to develop during work in an excavation.

(ii) Employees entering bell-bottom pier holes, or other substantially similar footing excavations, shall wear a harness with a life-line securely attached to it. The lifeline shall be separate from any line used to handle materials, and shall be individually attended at all times while the employee wearing the lifeline is in the excavation.

(h) *Protection against water accumulation.* (1) Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless these conditions have been anticipated and adequate precautions have been taken to protect employees against the hazards posed by water accumulation. (**Note:** The precautions necessary to protect employees adequately vary with each situation, but could include special support or shield systems to protect against cave-ins, water removal to control the level of accumulating water, and use of a safety harness and lifeline.)

(2) If water is controlled or prevented from accumulating by the use of water removal equipment, the water removal equipment and operations shall be monitored by a competent person to ensure proper operation.

(3) If excavation work interrupts the natural drainage of surface water (such as streams), diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering the excavation and to provide adequate drainage of the area adjacent to the excavation. (**Note:** Excavations subject to runoff from neavy rains will require an inspection by a competent person and compliance with (h)(1) and (h)(2) above.)

(i) *Stability of adjacent structures.* (1) Where the stability of adjoining buildings, walls, or other structures is endangered by excavation operations, support systems such as shoring, bracing, or underpinning shall be provided to ensure the stability of such structures for the protection of employees.

(2) Excavation below the level of the base or footing of any foundation or retaining wall shall not be permitted except when:

(i) A support system, such as underpinning is provided to ensure the safety of employees and the stability of the structure; or

(ii) The excavation is in stable rock; or

(iii) A qualified person, a qualified engineer or a person under the direction of a qualified engineer determines, based on accepted engineering practice, that the structure is sufficiently removed from the excavation so as to be unaffected by the excavation activity; or

(iv) A qualified person, a qualified engineer, or a person under the direction of a qualified engineer, determines, based on accepted engineering practice, that such work will not pose a hazard to employees.

(3) Sidewalks and pavements shall not be undermined unless a support system is provided or another method of protection to protect employees from the possible collapse of such structures.

(j) *Protection of employees in excavations.* (1) Employees snall be protected from cave-ins in excavations by the installation or use of an adequate protective system which meets the requirements of § 1926.652. However, the installation or use of a protective system is not required when:

(i) Excavations are made in stable rock; or

(ii) Excavations are less than five feet (1.52 m) in depth and examination of the ground by a competent person provides no indication that a cave-in should be expected.

(2) In addition to the protection against cave-ins required in paragraph (j)(1), adequate protection shall be provided to protect employees against loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

(3) Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least two feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent material or equipment from falling or rolling into excavations, or by a combination of both if necessary.

(k) *Inspections.* (1) Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

(2) Where the competent person finds evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

§ 1926.652 Requirements for protective systems.

(a) *Capacity of protective systems.* Protective systems shall be designed in accordance with the requirements of paragraphs (b) and (c) of this section and shall have the capacity to resist without failure all loads that are intended or could reasonably be expected to be applied or transmitted to the system.

(b) *Design of sloping and benching systems.* The slopes and configurations of sloping and benching systems shall be selected and constructed by the employer or his designee and shall be in accordance with the requirements of paragraph (b)(1); or, in the alternative, paragraph (b)(2); or, in the alternative, paragraph (b)(3) as follows:

(1) *Option (1)—Allowable configuration and slopes.* (i) Excavations that are open 72 hours or less shall be sloped at an angle not greater than one and one-half horizontal to one vertical (34 degrees measured from the horizontal).

(ii) Excavations that are open longer than 72 hours shall be sloped at an angle not greater than two horizontal to one vertical (27 degrees measured from the horizontal).

(iii) Slopes specified in paragraph (b)(1) (i) and (ii) of this section, shall be excavated to form configurations that are in accordance with *Figures B–1 through B–1.5* of Appendix B to this Subpart.

(2) *Option (2)—Determination of slopes and configurations using Appendices A and B.* Maximum allowable slopes, and allowable configurations for sloping and benching systems, shall be determined in accordance with the conditions and requirements set forth in Appendices A and B to this Subpart.

(3) *Option (3)—Design by a qualified person or a qualified engineer.* (i) Sloping and benching systems not utilizing Option 1 or Option 2 above shall be designed in accordance with accepted engineering practice by a qualified person, a qualified engineer, or a person under the direction of a qualified engineer.

(ii) Designs shall be in written form and shall include at least the following:

(A) An indication of the magnitude of the slopes that were determined to be safe for the particular project; and

(B) An indication of the configurations that were detemined to be safe for the particular project; and

(C) The identity of the person responsible for the design.

(iii) At least one copy of the design shall be maintained at the jobsite while the slope is being constructed. After that time the design need not be on the jobsite, but, as long as the excavation is open a copy shall be made readily available to the Secretary upon request. (Note: Readily available means provided during an inspection.)

(c) *Design of support systems, shield systems, and other protective systems.* Designs of support systems, shield systems, and other protective systems shall be selected and constructed by the employer or his designee and shall be in accordance with the requirements of paragraph (c)(1); or, in the alternative, paragraph (c)(2); or, in the alternative, paragraph (c)(3); or, in the alternative, paragraph (c)(4) as follows:

(1) *Option (1)—Designs using Appendices A and C.* Designs for timber shoring in trenches shall be determined in accordance with the conditions and requirements set forth in Appendices A and C to this Subpart.

(2) *Option (2)—Designs Using Manufacturer's Tabulated Data.* (i) Designs of support systems, shield systems, or other protective systems that are drawn from manufacturer's tabulated data shall be in accordance with all specifications, recommendations, and limitations issued or made by the manufacturer.

(ii) Deviation from the specifications, recommendations, and limitations issued or made by the manufacturer shall only be allowed when the manufacturer issues specific written approval.

(iii) Manufacturers' specifications, recommendations, and limitations; and manufacturer's approval to deviate from the specifications, recommendations, and limitations shall be in written form at the jobsite, during construction of the protective system. After that time this data may be stored off the jobsite, but a copy shall be made readily available to the Secretary upon request as long as the excavation is open. (Note: Readily available means provided during an inspection.)

(3) *Option (3)—Designs using other tabulated data.* (i) Designs of support systems, shield systems, or other protective systems shall be selected from and be in accordance with tabulated data, such as tables and charts.

(ii) The tabulated data shall have been prepared in accordance with accepted engineering practice by a qualified person, a qualified engineer, or a person under the direction of a qualified engineer, for the purpose of using the tabulated data to design and construct protective systems.

(iii) The tabulated data shall be in written form and include at least all of following:

(A) Identification of the parameters that affect the selection of a protective system drawn from such data;

(B) Identification of the limits of use of the data;

(C) Explanatory information as may be necessary to aid the user in making a correct selection of a protective system from the data;

(D) The identity of the person who prepared or directed the preparation of the data (unless using Nationally recognized tabulated data or tabulated data promulgated under an approved State plan).

(iv) At least one copy of the tabulated data shall be maintained at the jobsite, during construction of the protective system. After that time the data may be stored off the jobsite, but a copy of the data shall be made readily available to the Secretary upon request. (Note: Readily available means provided during an inspection.)

(4) *Option (4)—Design by a qualified person or a qualified engineer.* (i) Support systems, shield systems, and other protective systems not utilizing Option 1 , Option 2, or Option 3, above shall be designed in accordance with accepted engineering practice by a qualified person, a qualified engineer or a person under the direction of a qualified engineer.

(ii) Designs shall be in written form and shall include at least the following:

(A) A plan indicating the sizes, types, and configurations of the materials to be used in the protective system, and

(B) The identity of the person responsible for the design.

(iii) At least one copy of the design shall be maintained at the jobsite during construction of the protective system. After that time, the design may be stored off the jobsite, but a copy of the design shall be made readily available to the Secretary upon request. (Note: Readily available means provided during an inspection.)

(d) *Materials and equipment.* (1) Materials and equipment used for protective systems shall be free from damage or defects that might impair their proper function.

(2) Manufactured materials and equipment used for protective systems shall be used and maintained in a manner that is consistent with the recommendations of the manufacturer, and in a manner that will prevent employee exposure to hazards.

(3) When material or equipment that is used for protective systems is damaged, a competent person shall examine the material or equipment and evaluate its suitability for continued use. If the competent person determines that

the material or equipment is unable to support the intended loads or is otherwise unsuitable for safe use, then such material or equipment shall be removed from service.

(e) *Installation and removal of support systems.* (1) *General.* (i) Members of support systems shall be securely connected together to prevent sliding, falling, kickouts, or other failure.

(ii) Support systems shall be installed and removed in a manner that protects employees from cave-ins, structural collapses, or from being struck by members of the support system.

(iii) Individual members of support systems shall not be subjected to loads exceeding those which those members were designed to withstand.

(iv) When temporary removal of individual members is necessary, additional precautions shall be taken to ensure the safety of employees, such as installing other structural members to carry the loads imposed on the support system.

(v) When removal of the support system is done on a member-by-member basis, removal shall begin at, and progress from, the bottom of the excavation. Members shall be released slowly so as to note any indication of possible failure of the remaining members of the structure or possible cave-in of the sides of the excavation.

(vi) Backfilling shall progress together with the removal of support systems from excavations.

(2) *Additional requirements for support systems for trench excavations.* (i) Excavation of material to a level not greater than two feet (.61 m) below the bottom of the members of a support system shall be permitted, but only if the system is designed to resist the forces calculated for the full depth of the trench, and there are no indications while the trench is open of a possible cave-in below the bottom of the support system.

(ii) Installation of support system shall be closely coordinated with the excavation of trenches.

(f) *Sloping and benching systems.* Employees shall not be permitted to work on the faces of sloped or benched excavations at levels above other employees except when employees at the lower levels are adequately protected from the hazard of falling, rolling, or sliding material or equipment.

(g) *Shield systems.* (1) *General.* (i) Shield systems shall not be subjected to loads exceeding those which the system was designed to withstand.

(ii) Shields shall be installed in a manner to restrict lateral or other hazardous movement of the shield in the event of the application of sudden lateral loads.

(iii) Employees shall be protected from the hazard of cave-ins when entering or exiting the areas protected by shields.

(iv) Employees shall not be allowed in shields when shields are being installed, removed, or relocated.

(2) *Additional requirement for shield systems used in trench excavations.* Excavations of earth material to a level not greater than two feet (.61 m) below the bottom of a shield shall be permitted, but only if the shield is designed to resist the forces calculated for the full depth of the trench and there are no indications while the trench is open of a possible cave-in below the bottom of the shield.

Appendix A to Subpart P of Part 1926

Soil Classification

(a) *Scope and application.* (1) *Scope.* This Appendix describes a method of classifying soil and rock deposits based on site and environmental conditions, and on the structure and composition of the earth deposits. The Appendix contains definitions, sets forth requirements, and describes recommended visual and manual tests for use in classifying soils.

(2) *Application.* This Appendix applies when a sloping or benching system is designed in accordance with the requirements set forth in § 1926.652(b) as a method of protection for employees against cave-ins.

This Appendix also applies when timber shoring for trenches is designed as a method of protection against cave-ins in accordance with Appendix C to Subpart P of Part 1926. This Appendix also applies if other protective systems are designed and selected for use from data prepared in accordance with the requirements set forth in § 1926.652 (c)(2), and the use of the data is predicated on the use of the soil classification system set forth in this Appendix.

(b) *Definitions.* (1) "Cemented soil" means a soil in which the particles are held together by a chemical agent, such as calcium carbonate, such that a hand-size sample cannot be crushed into powder or individual soil particles by finger pressure.

(2) "Cohesive soil" means clay (fine grained soil), or soil with a high clay content, which has cohesive strength. Cohesive soil does not crumble, can be excavated with vertical sideslopes, and is plastic when moist. Cohesive soil is hard to break up when dry, and exhibits significant cohesion when submerged. Cohesive soils include clayey silt, sandy clay, silty clay, clay, and organic clay.

(3) "Dry soil" means soil that does not exhibit visible signs of moisture content.

(4) "Fissured" means a soil material that has a tendency to break along definite planes of fracture with little resistance, or a material that exhibits open cracks, such as tension cracks, in an exposed surface.

(5) "Granular soil" means gravel, sand, or silt, (coarse grained soil) with little or no clay content. Granular soil has no cohesive strength. Some moist granular soils exhibit apparent cohesion and temporarily stand on a vertical slope, but normally cannot be excavated with vertical sideslopes. Granular soil cannot be molded when moist and crumbles easily when dry.

(6) "Layered system" means two or more distinctly different soil or rock types arranged in layers. Micaceous seams in rock are considered layered.

(7) "Moist soil" means a condition in which a soil looks and feels damp. Moist cohesive soil can easily be shaped into a ball and rolled into small diameter threads before crumbling. Moist granular soil that contains some cohesive material will exhibit signs of cohesion between particles.

(8) "Plastic" means a property of a soil which allows the soil to be deformed or molded without cracking, crumbling, or appreciable volume change.

(9) "Saturated soil" means submerged soil that is below the ground water table, and very wet soil such as soil that forms the sides of an excavation from which water can be seen seeping; soil that forms the sides of an excavation that has been flooded to more than one-half its depth and has not been drained for at least one day; and soil in which water is retained by a shoring system.

(10) "Soil classification system" means a method of categorizing soil and rock deposits in a hierarchy of Stable Rock, Type A, Type B, and Type C, in decreasing order of stability. The categories are determined based on an analysis of the properties and performance characteristics of the deposits and the environmental conditions of exposure.

(11) "Stable rock" means rock that can be excavated with vertical sides and remain intact while exposed.

(12) "Type A" means cohesive soil with an unconfined compressive strength of 1.5 tons per square foot (tsf) (144 kPa) or greater, or cemented granular soil such as hardpan, till, or caliche, except that no soil is Type A if:

(i) The soil is fissured; or

(ii) The soil is subject to vibration from heavy traffic, pile driving, or similar effects; or

(iii) The soil has been previously disturbed; or

(iv) The soil is part of a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:IV) or greater; or

(v) The material is subject to other factors that would require it to be classified as a less stable material.

(13) "Type B" means:

(i) Cohesive soil with an unconfined compressive strength greater than 0.5 tsf (48 kPa) but less than 1.5 tsf (144 kPa); or

(ii) Granular soil that can stand on a slope of three horizontal to one vertical (3H:IV) or greater without slumping; or

(iii) Soil that meets the unconfined compressive strength or cementation requirements for Type A, but is fissured, subject to vibration, or has previously been disturbed; and

(iv) Dry rock that is not stable; and

(v) Material that is part of a sloped, layered system where the layers dip into the

excavation on a slope less steep than four horizontal to one vertical (4H:IV), but only if the material would otherwise be classified as Type B.

(14) "Type C" means:

(i) Cohesive soil with an unconfined compressive strength of 0.5 tsf (48 kPa) or less; and

(ii) Granular soil that cannot stand on a slope of three horizontal to one vertical (3H:IV) without slumping; and

(iii) Saturated or submerged soil; and

(iv) Submerged rock that is not stable; and

(v) Soil in a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:IV) or greater.

(15) "Unconfined compressive strength" means the load per unit area at which a soil will fail in compression. It can be determined by laboratory testing, estimated in the field using a pocket penetrometer, by thumb penetration tests, and other methods.

(16) "Wet soil" means soil that contains significantly more moisture than moist soil, but in such a range of values that cohesive material will slump or begin to flow when vibrated. Granular material that would exhibit cohesive properties when moist will lose those cohesive properties when wet.

(c) *Requirements.* (1) *Classification of soil and rock deposits.* Each soil and rock deposit shall be classified by a competent person as Stable Rock, Type A, Type B, or Type C in accordance with the definitions set forth in paragraph (b) of this Appendix.

(2) *Basis of classification.* The classification of the deposits shall be made based on the results of at least one visual and at least one manual analyses. Such analyses shall be conducted by a competent person.

(3) *Visual and manual analyses.* The visual and manual analyses, such as those recommended in paragraph (d) of this Appendix, shall be designed and conducted to provide sufficient quantitative and qualitative information as may be necessary to identify properly the properties, factors, and conditions affecting the classification of the deposits.

(4) *Layered systems.* In a layered system, the system shall be classified in accordance with its weakest layer. However, each layer may be classified individually where a more stable layer lies under a less stable layer.

(5) *Reclassification.* If after classifying a deposit, the properties, factors, or conditions affecting its classification change in any way, the changes shall be evaluated by a competent person. The deposit shall be reclassified as necessary to reflect the changed circumstances.

(d) *Recommended visual and manual test.* (1) *Visual tests.* Visual analysis is conducted to determine qualitative information regarding the excavation site in general, the soil adjacent to the excavation, the soil forming the sides of the opened excavation, and the soil taken as samples from excavated material.

(i) Observe samples of soil that are excavated and soil in the sides of the excavation. Estimate the range of particle sizes and the relative amounts of the particle sizes. Soil that is primarily composed of fine-grained clay material is cohesive material. Soil composed primarily of coarse-grained sand or gravel is granular material.

(ii) Observe soil as it is excavated. Soil that remains in clumps when excavated is cohesive. Soil that breaks up easily and does not stay in clumps is granular.

(iii) Observe the side of the opened excavation and the surface area adjacent to the excavation. Crack-like openings such as tension cracks indicate fissured material. If chunks of soil spall off a vertical side, the soil should be considered fissured.

(iv) Observe the area adjacent to the excavation and the excavation itself for evidence of existing utility and other underground structures, and to identify previously disturbed soil.

(v) Observe the opened side of the excavation to identify layered systems. Examine layered systems to identify if the layers slope toward the excavation. Estimate the degree of slope of the layers.

(vi) Observe the area adjacent to the excavation and the sides of the opened excavation for evidence of surface water, water seeping from the sides of the excavation, or the location of the level of the water table.

(vii) Observe the ability of the opened excavation to stand on a slope of three horizontal to one vertical or greater. Observe the ability of the opened excavation to stand with a vertical face. A soil may be Type A if it can stand with a vertical face for two hours or longer and there are no other disqualifying factors present.

(viii) Observe the area adjacent to the excavation and the area within the excavation for sources of vibration that may affect the stability of the excavation face.

(2) *Manual test.* Manual analysis of soil samples is conducted to determine quantitative as well as qualitative properties of soil and to provide more information in order to classify soil properly where doubt remains from visual analysis.

(i) *Plasticity.* Mold a moist or wet sample of soil into a ball and attempt to roll it into threads as thin as ⅛ inch in diameter. Cohesive material can be successfully rolled into threads without crumbling. For example, if at least a two inch (50 mm) length of ⅛ inch thread can be held on one end without tearing, the soil is cohesive.

(ii) *Dry strength.* If the soil is dry and crumbles on its own or with moderate pressure into individual grains or fine powder, it is granular (sand or silt). If the soil is dry and falls into clumps which break up into smaller clumps, but the smaller clumps can only be broken up with difficulty, it is a fissured clay. If the dry soil breaks into clumps which do not break up into smaller clumps, and which can only be broken with difficulty, and there is no visual indication the soil is fissured, the soil may be considered unfissured.

(iii) *Thumb penetration.* The thumb penetration test can be used to estimate the unconfined compressive strength of cohesive soils. (This test is based on the thumb penetration test described in American Society for Testing and Materials (ASTM) Standard designation D2488—"Standard Recommended Practice for Description of Soils (Visual—Manual Procedure.") Type A soils with an unconfined compressive strength of 1.5 tsf can be readily indented by the thumb, however, they can be penetrated by the thumb only with very great effort. Type C soils with an unconfined compressive strength of 0.5 tsf can be easily penetrated several inches by the thumb, and can be molded by light finger pressure. This test should be conducted on an undisturbed soil sample, such as the excavation face or a large clump of spoil, as soon as practicable after excavation to keep to a minimum the effects of exposure to drying influences. [NOTE: If the excavation is later exposed to wetting influences (rain, flooding), the classification of the soil must be changed accordingly.]

(iv) *Other strength tests.* Estimates of unconfined compressive strength of soils can also be obtained by use of a pocket penetrometer or by using a hand-operated shearvane.

(v) *Drying test.* The basic purpose of the drying test is to differentiate between cohesive material with fissures, unfissured cohesive material, and granular material. The procedure for the drying test involves drying a sample of soil that is approximately one inch thick (2.54 cm) and six inches (15.24 cm) in diameter until it is thoroughly dry:

(A) If the sample develops cracks as it dries, significant fissures are indicated.

(B) Samples that dry without cracking are to be broken by hand. If considerable force is necessary to break a sample, the soil has significant cohesive material content. The soil can be classified as a unfissured cohesive material and the unconfined compressive strength should be determined.

(C) If a sample breaks easily by hand, it is either a fissured cohesive material or a granular material. To distinguish between the two, pulverize the dried clumps of the sample by hand or by stepping on them. If the clumps do not pulverize easily, the material is cohesive with fissures. If they pulverize easily into very small fragments, the material is granular.

Appendix B to Subpart P of Part 1926

Sloping and Benching

(a) *Scope and application.* This Appendix contains specifications for sloping and benching when used as methods of protecting employees working in excavations from cave-ins. The requirements of this Appendix apply when the design of sloping and benching protective systems is to be performed in accordance with the requirements set forth in § 1926.652(b)(2).

(b) *Definitions.* (1) "Actual slope" means the slope to which an excavation face is excavated.

(2) "Distress" means that the soil is in a condition where a cave-in is imminent or is likely to occur. Distress is evidenced by such phenomena as the development of fissures in the face of or adjacent to an open excavation; the subsidence of the edge of an excavation; the slumping of material from the face or the bulging or heaving of material from the bottom of an excavation; and ravelling, i.e., small amounts of material such as pebbles or little clumps of material suddenly separating

from the face of an excavation and trickling or rolling down into the excavation.

(3) "Long term exposure" means a period of time that an excavation is open longer than 72 hours.

(4) "Maximum allowable slope" means the steepest incline of an excavation face that is acceptable for the most favorable site conditions as protection against cave-ins, and is expressed as the ratio of horizontal distance to vertical rise (H:V).

(5) "Short term exposure" means a period of time less than or equal to 72 hours that an excavation is open.

(c) *Requirements.* (1) *Soil classification.* Soil and rock deposits shall be classified in accordance with Appendix A to Subpart P of Part 1926.

(2) *Maximum allowable slope.* The maximum allowable slope for a soil or rock deposit shall be determined from *Table B-1* of this Appendix.

(3) *Actual slope.* (i) The actual slope shall not be steeper than the maximum allowable slope.

(ii) The actual slope shall be less steep than the maximum allowable slope when there are signs of distress. The slope shall be cut back to an actual slope which is at least ½ horizontal to one vertical (½H:iV) less steep than the maximum allowable slope.

(iii) When surcharge loads from adjacent structures, stored material or equipment, operating equipment, or traffic are present, a competent person shall determine the degree to which the actual slope must be reduced below the maximum allowable slope, and shall assure that such reduction is achieved.

(4) *Configurations.* Configurations of sloping and benching systems shall be in accordance with *Figure B-1.*

TABLE B-1.—MAXIMUM ALLOWABLE SLOPES

Soil or rock type	Maximum allowable slopes (H:V) [1]	
	Short-term exposure	Long-term exposure
Stable Rock:	Vertical (90°)	Vertical (90°)
Type A [See footnote (2)].	1/2:1 (63°)	3/4:1 (53°)
Type B	3/4:1 (53°)	1:1 (45°)
Type C	1-1/2:1 (34°)	2:1 (27°)

[1] Numbers shown in parentheses next to maximum allowable slopes are angles expressed in degrees from the horizontal. Angles have been rounded off.

[2] A short-term maximum allowable slope of 1/2 H:IV is allowed in excavations that are 12 feet (3.67 m) or less in depth. Short-term maximum allowable slopes for excavations greater than 12 feet (3.67 m) in depth shall be 3/4 H:IV (53°).

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FIGURE B - 1

ALLOWABLE SLOPING AND BENCHING CONFIGURATIONS

FIGURE B - 1.1

SIMPLE SLOPE

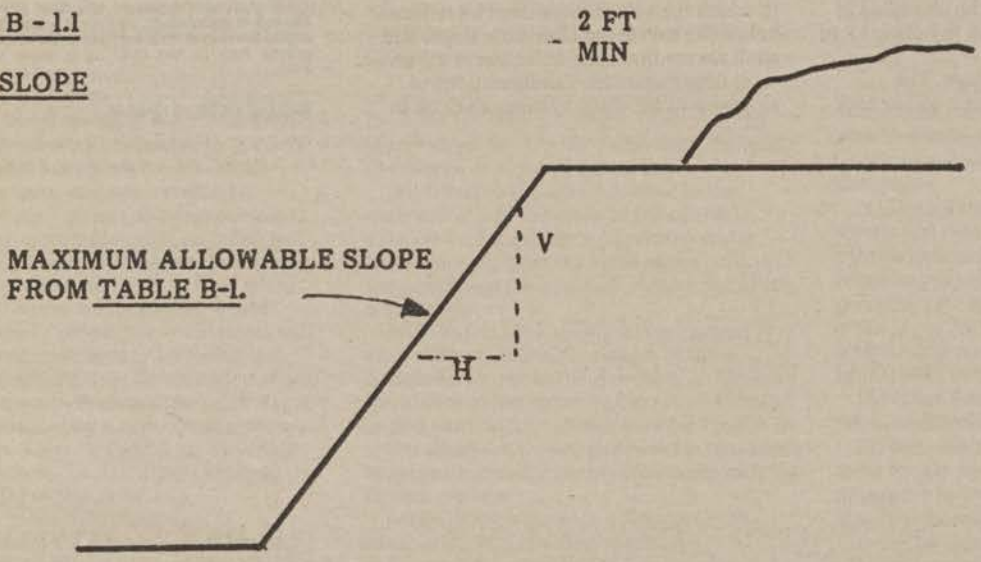
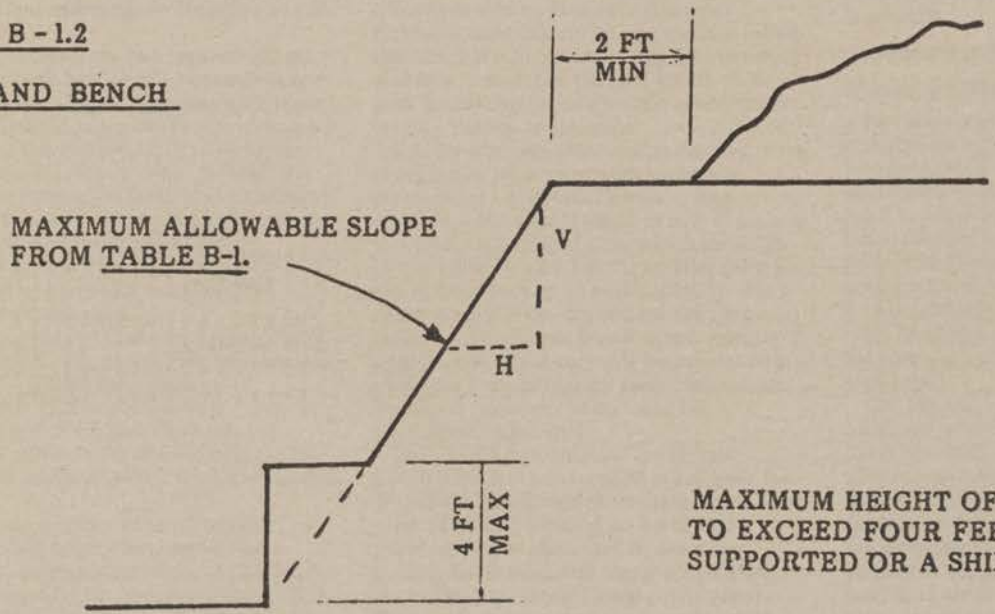


FIGURE B - 1.2

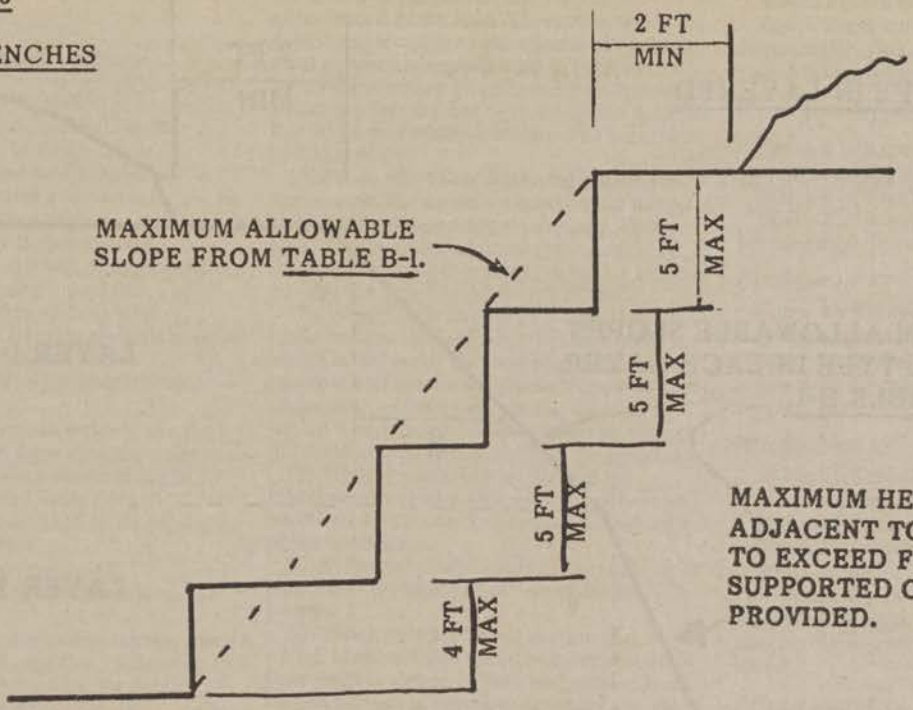
SLOPE AND BENCH



MAXIMUM HEIGHT OF BENCH NOT TO EXCEED FOUR FEET UNLESS SUPPORTED OR A SHIELD IS PROVIDED.

FIGURE B - 1.3

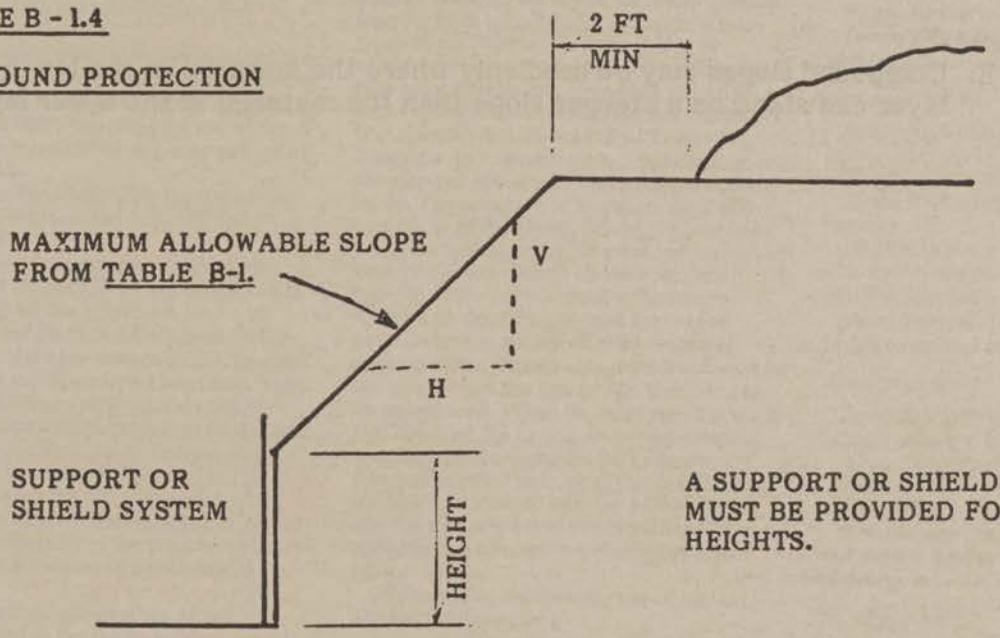
MULTIPLE BENCHES



MAXIMUM HEIGHT OF BENCH ADJACENT TO WORK AREA NOT TO EXCEED FOUR FEET UNLESS SUPPORTED OR A SHIELD IS PROVIDED.

FIGURE B - 1.4

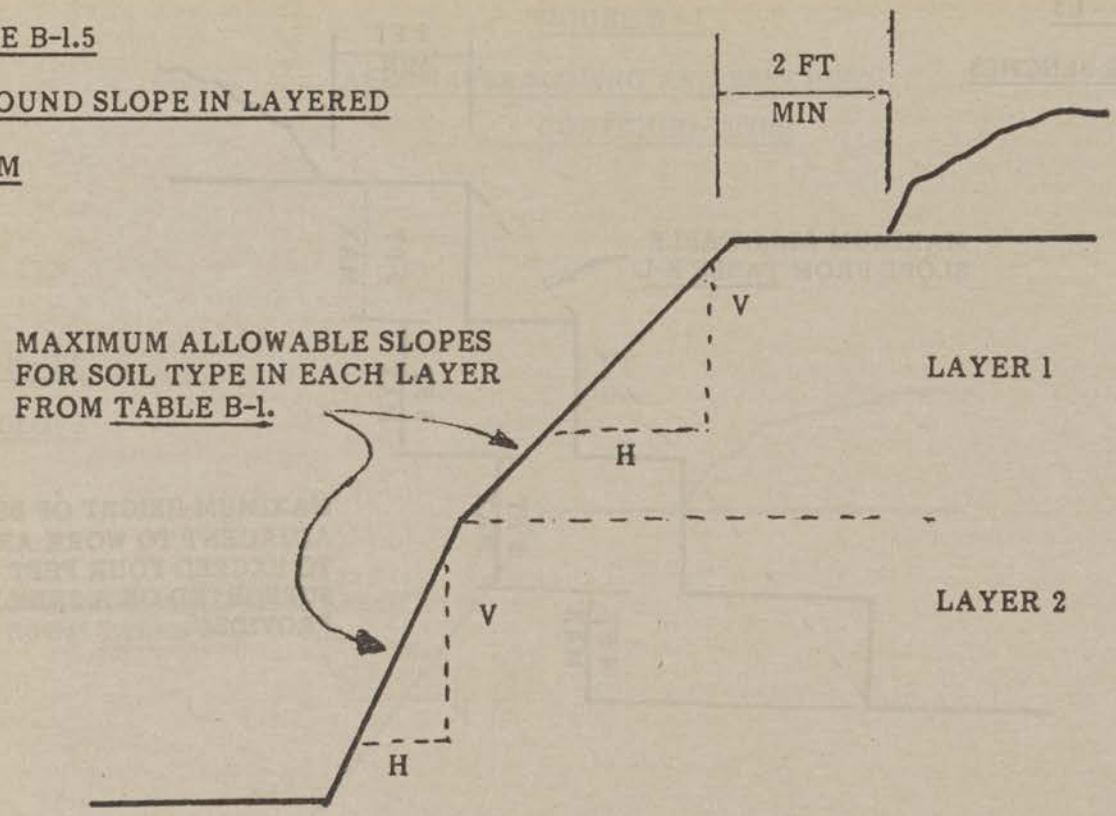
COMPOUND PROTECTION



A SUPPORT OR SHIELD SYSTEM MUST BE PROVIDED FOR ALL HEIGHTS.

FIGURE B-1.5

COMPOUND SLOPE IN LAYERED SYSTEM



NOTE: Compound slopes may be used only where the material in the lower layer can stand on a steeper slope than the material in the upper layer.

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Appendix C to Subpart P of Part 1926

Timber Shoring for Trenches

(a) *Scope.* This Appendix contains information that can be used when timber shoring is provided as a method of protection against cave-ins in trenches that do not exceed 20 feet (6.1 m) in depth. This Appendix must be used when design of timber shoring protective systems is to be performed in accordance with § 1926.652(c)(1). Other timber shoring configurations; other systems of support such as hydraulic and pneumatic systems; and other protective systems such as sloping, benching, shield, and freezing systems must be designed in accordance with the requirements set forth in § 1926.652(b) and § 1926.652(c).

(b) *Soil Classification.* In order to use the data presented in this Appendix, the soil type or types in which the excavation is made must first be determined using the soil classification method set forth in Appendix A of Subpart B of Part 1926.

(c) *Presentation of Information.* Information is presented in several forms as follows:

(1) Information is presented in tabular form in *Tables C–1.1, C–1.2, and C–1.3* following paragraph (g) of this Appendix. Each table presents the minimum sizes of timber members to use in a shoring system, and each table contains data only for the particular soil type in which the excavation or portion of the excavation is made. The data is arranged to allow the user the flexibility to select from among several acceptable configurations of members based on varying the horizontal spacing of the crossbraces. (Note: Stable rock is exempt from shoring requirements and therefore no data is presented for this condition.)

(2) Information concerning the basis of the tabular data and the limitations of the data is presented in paragraph (d) of this Appendix.

(3) Information explaining the use of the tabular data is presented in paragraph (e) of this Appendix.

(4) Information illustrating the use of the tabular data is presented in paragraph (f) of this Appendix.

(5) Miscellaneous notations regarding *Tables C–1.1 through C–1.3* are presented in paragraph (g) of this Appendix.

(d) *Basis and limitations of the data.* (1) *Dimensions of timber members.* (i) The sizes of the timber members listed are taken from the National Bureau of Standards (NBS) report, "Recommended Technical Provisions for Construction Practice is Shoring and Sloping of Trenches and Excavation." In addition, where NBS did not recommend specific sizes of members, member sizes are based on an analysis of the sizes required for use by existing codes and on empirical practice.

(ii) The required dimensions of the members listed in the tables refer to actual dimensions and not nominal dimensions of the timber. (Note: Employees wanting to use nominal size shoring have this choice under § 1926.652(c)(3), and are referred to Corp of Engineers or Bureau of Reclamation data.)

(2) *Limitation of application.* (1) It is not intended that the timber shoring specification apply to every situation that may be experienced in the field. These data were developed to apply to the situations that are most commonly experienced in current trenching practice. Shoring systems for use in situations that are not covered by the data in this Appendix must be designed as specified in § 1926.652(c).

(ii) When any of the following conditions are present, the members specified in the Tables are not considered adequate. Either an alternate timber shoring system must be designed or another type of protective system designed in accordance with § 1926.652.

(A) When loads imposed by structures or by stored material adjacent to the trench weigh in excess of the load imposed by a two-foot soil surcharge. (Note: The term "adjacent" as used here means the area within a horizontal distance from the edge of the trench equal to the depth of the trench.)

(B) When vertical loads imposed on crossbraces exeed a 240-pound gravity load distributed on a one-foot section of the center of the crossbrace.

(C) When surcharge loads are present from equipment weighing in excess of 20,000 pounds.

(D) When only the lower portion of a trench is shored and the remaining portion of the trench is sloped or benched unless: The sloped portion is sloped at an angle less steep than three horizontal to one vertical; or the members are selected from the tables for use at a depth which is determined from the top of the overall trench, and not from the toe of the sloped portion.

(e) *Use of Tables C–1.1, C–1.2 and C–1.3.* The members of the shoring system that are to be selected using this information are the crossbraces, the uprights, and the wales, where wales are required. Minimum sizes of members are specified for use in different types of soil. There are three tables of information, one for each soil type. The soil type must first be determined in accordance with the soil classification system described in Appendix A to Subpart P of Part 1926. Using the appropriate table, the selection of the size and spacing of the members is then made. The selection is based on the depth and width of the trench where the members are to be installed and, in most instances, the selection is also based on the horizontal spacing of the crossbraces. In instances where a choice of horizontal spacing of crossbracing is available, the horizontal spacing of the crossbraces must be chosen by the user before the size of any member can be determined. When the soil type, the width and depth of the trench, and the horizontal spacing of the crossbraces are known, the size and vertical spacing of the crossbraces, the size and vertical spacing of the wales, and the size and horizontal spacing of the uprights can be read from the appropriate table.

(f) *Examples to Illustrate the Use of the Tables:* (1) *Example 1.*

A trench dug in Type A soil is 13 feet deep and five feet wide.

From *Table C–1.1,* four acceptable arrangements of timber can be used.

Arrangement #1.

Space 4 × 4 crossbraces at six feet horizontally and four feet vertically.

Wales are not required.

Space 3 × 8 uprights at six feet horizontally. This arrangement is commonly called "skip shoring."

Arrangement #2.

Space 4 × 6 crossbraces at eight feet horizontally and four feet vertically.

Space 8 × 8 wales at four feet vertically.

Space 2 × 6 uprights at four feet horizontally.

Arrangement #3

Space 6×6 crossbraces at 10 feet horizontally and four feet vertically.

Space 8×10 wales at four feet vertically.

Space 2×6 uprights at five feet horizontally.

Arrangement #4

Space 6×6 crossbraces at 12 feet horizontally and four feet vertically.

Space 10×10 wales at four feet vertically.

Space 3×8 uprights at six feet horizontally.

(2) *Example 2.*

A trench dug in Type B soil is 13 feet deep and five feet wide. From *Table C–1.2* three acceptable arrangements of member are listed.

Arrangement #1

Space 6×6 crossbraces at six feet horizontally and five feet vertically.

Space 8×8 wales at five feet vertically.

Space 2×6 uprights at two feet horizontally.

Arrangement #2

Space 6×8 crossbraces at eight feet horizontally and five feet vertically.

Space 10×10 wales at five feet vertically.

Space 2×6 uprights at two feet horizontally.

Arrangement #3

Space 8×8 crossbraces at 10 feet horizontally and five feet vertically.

Space 10×12 wales at five feet vertically.

Space 2×6 uprights at two feet horizontally.

(3) *Example 3.*

A trench dug in Type C soil is 13 feet deep and five feet wide.

From *Table C–1.3* two acceptable arrangements of members can be used.

Arrangement #1

Space 8×8 crossbraces at six feet horizontally and five feet vertically.

Space 10×12 wales at five feet vertically.

Position 2×6 uprights as closely together as possible.

If water must be retained use special tongue and groove uprights to form tight sheeting.

Arrangement #2

Space 8×10 crossbraces at eight feet horizontally and five feet vertically.

Space 12×12 wales at five feet vertically.

Position 2×6 uprights in a close sheeting configuration unless water pressure must be resisted. Tight sheeting must be used where water must be retained.

(4) *Example 4.*

A trench dug in Type C soil is 20 feet deep and 11 feet wide. The size and spacing of members for the section of trench that is over 15 feet in depth is determined using *Table* C–1.3. Only one arrangement of members is provided.

Space 8×10 crossbraces at six feet horizontally and five feet vertically.

Space 12×12 wales at five feet vertically.

Use 3×6 tight sheeting.

(g) *Notes for Tables C–1.1, C–1.2, and* C–1.3.

1. Member sizes at spacings other than indicated are to be determined as specified in 1926.652(b), "Design of Protective Systems."

2. When conditions are saturated or submerged use Tight Sheeting. *Tight Sheeting* refers to the use of specially-edged timber planks at least three inches thick, steel sheet piling, or similar construction that when driven or placed in position provide a tight wall to resist the lateral pressure of water. *Close Sheeting* refers to the placement of planks side-by-side allowing as little space as possible between them.

3. All spacing indicated is measured center to center.

4. Wales to be installed with greater dimension horizontal.

5. If the vertical distance from the center of the lowest crossbrace to the bottom of the trench exceeds two and one-half feet, uprights shall be firmly embedded or a mudsill shall be used. Where uprights are embedded, the vertical distance from the center of the lowest crossbrace to the bottom of the trench shall not exceed 36 inches. When mudsills are used, the vertical distance shall not exceed 42 inches. (**Note:** Mudsills are wales that are installed at the toe of the trench side.)

6. Trench jacks may be used in lieu of or in combination with timber crossbraces.

7. Placement of crossbraces. When the vertical spacing of crossbraces is four feet, place the top crossbrace no more than two feet below the top of the trench. When the vertical spacing of crossbraces is five feet, place the top crossbrace no more than 2.5 feet below the top of the trench.

BILLING CODE 4510–26–M

TABLE C-1.1
TRENCH SHORING - MINIMUM TIMBER REQUIREMENTS FOR SOIL TYPE A (SEE NOTES)

ALL TIMBER SIZES ARE ACTUAL, NOT NOMINAL

DEPTH OF TRENCH (FEET)	SIZE AND SPACING OF MEMBERS													
	CROSS BRACES							WALES		UPRIGHTS				
	HORIZONTAL SPACING (FEET)	WIDTH OF TRENCH (FEET)					VERTICAL SPACING (FEET)	SIZE (INCHES)	VERTICAL SPACING (FEET)	MAXIMUM ALLOWABLE HORIZONTAL SPACING (FEET)				
		UP TO 4	UP TO 6	UP TO 9	UP TO 12	UP TO 15				CLOSE	4	5	6	8
OVER 5 UP TO 10	UP TO 6	4x4	4x4	4x6	6x6	6x6	4	NOT REQUIRED	--				2x6	
	UP TO 8	4x4	4x4	4x6	6x6	6x6	4	NOT REQUIRED	--					2x8
	UP TO 10	4x6	4x6	6x6	6x6	6x6	4	8x8	4			2x6		
	UP TO 12	4x6	4x6	6x6	6x6	6x6	4	8x8	4				2x6	
OVER 10 UP TO 15	UP TO 6	4x4	4x4	4x6	6x6	6x6	4	NOT REQUIRED	--				3x8	
	UP TO 8	4x6	4x6	6x6	6x6	6x6	4	8x8	4		2x6			
	UP TO 10	6x6	6x6	6x6	6x8	6x8	4	8x10	4			2x6		
	UP TO 12	6x6	6x6	6x6	6x8	6x8	4	10x10	4				3x8	
OVER 15 UP TO 20	UP TO 6	6x6	6x6	6x6	6x8	6x8	4	6x8	4	3x6				
	UP TO 8	6x6	6x6	6x6	6x8	6x8	4	8x8	4	3x6				
	UP TO 10	8x8	8x8	8x8	8x8	8x10	4	8x10	4	3x6				
	UP TO 12	8x8	8x8	8x8	8x8	8x10	4	10x10	4	3x6				
OVER 20	SEE NOTE 1.													

TABLE C-1.2

TRENCH SHORING - MINIMUM TIMBER REQUIREMENTS FOR SOIL TYPE B (SEE NOTES)

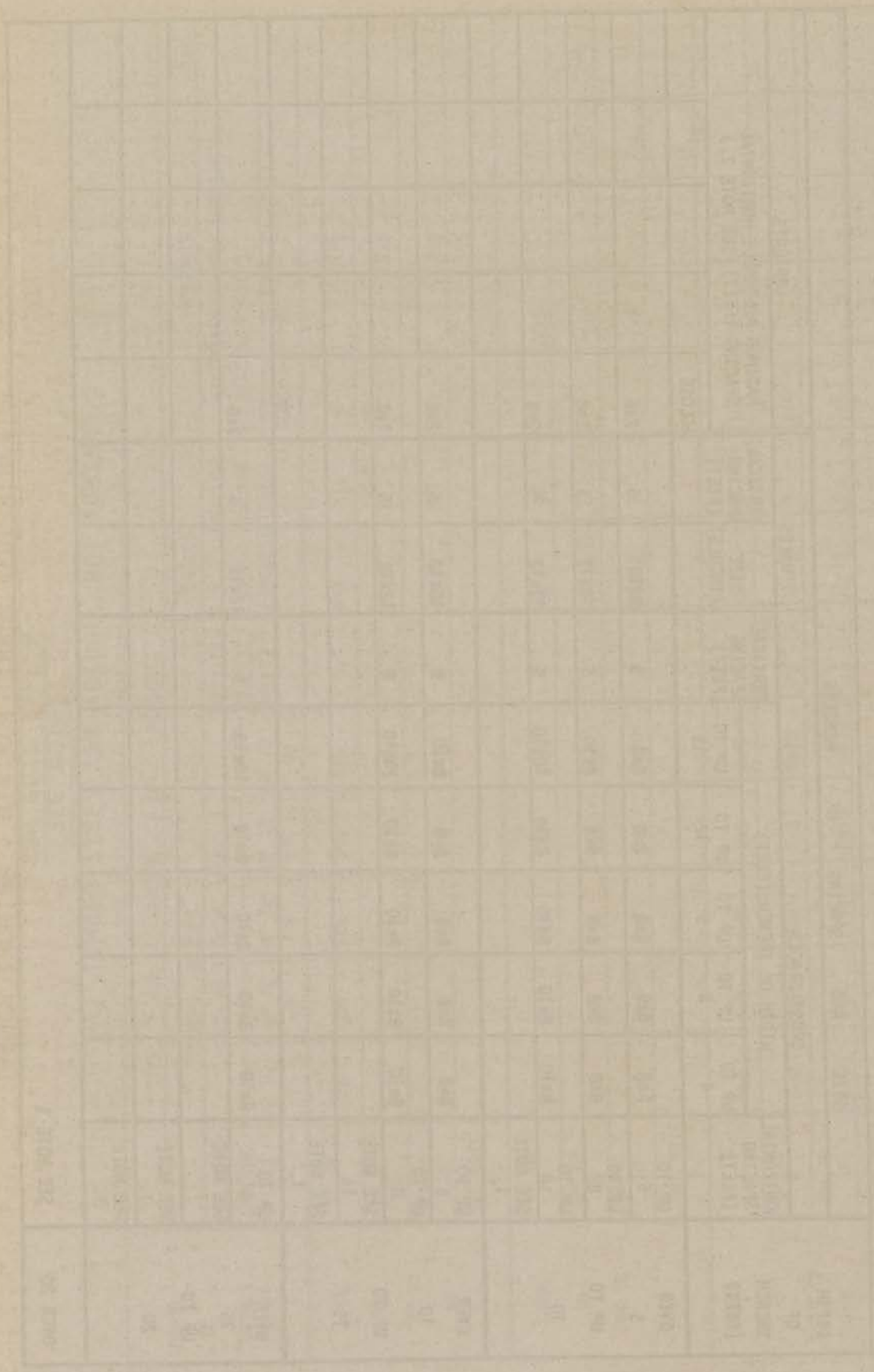
ALL TIMBER SIZES ARE ACTUAL, NOT NOMINAL

DEPTH OF TRENCH (FEET)	SIZE AND SPACING OF MEMBERS													
	CROSS BRACES						WALES		UPRIGHTS					
	HORIZONTAL SPACING (FEET)	WIDTH OF TRENCH (FEET)				VERTICAL SPACING (FEET)	SIZE (INCHES)	VERTICAL SPACING (FEET)	MAXIMUM ALLOWABLE HORIZONTAL SPACING (FEET)				
		UP TO 4	UP TO 6	UP TO 9	UP TO 12	UP TO 15			CLOSE	2	3		
OVER 5 UP TO 10	UP TO 6	4x6	4x6	6x6	6x6	6x6	5	6x8	5			2x6		
	UP TO 8	6x6	6x6	6x6	6x8	6x8	5	8x10	5			2x6		
	UP TO 10	6x6	6x6	6x6	6x8	6x8	5	10x10	5			2x6		
	SEE NOTE 1.													
OVER 10 UP TO 15	UP TO 6	6x6	6x6	6x6	6x8	6x8	5	8x 8	5		2x6			
	UP TO 8	6x8	6x8	6x8	8x8	8x8	5	10x10	5		2x6			
	UP TO 10	8x8	8x8	8x8	8x8	8x10	5	10x12	5		2x6			
	SEE NOTE 1.													
OVER 15 UP TO 20	UP TO 6	6x8	6x8	6x8	8x8	8x 8	5	8x10	5	3x6				
	UP TO 8	8x8	8x8	8x8	8x8	8x10	5	10x12	5	3x6				
	UP TO 10	8x10	8x10	8x10	8x10	10x10	5	12x12	5	3x6				
	SEE NOTE 1.													
OVER 20	SEE NOTE 1.													

[FR Doc. 87-8019 Filed 4-14-87; 8:45 am]
BILLING CODE 4510-26-C

TABLE C-1.3
TRENCH SHORING - MINIMUM TIMBER REQUIREMENTS FOR SOIL TYPE C (SEE NOTES)
ALL TIMBER SIZES ARE ACTUAL, NOT NOMINAL

DEPTH OF TRENCH (FEET)	SIZE AND SPACING OF MEMBERS														
	CROSS BRACES							WALES		UPRIGHTS					
	HORIZONTAL SPACING (FEET)	WIDTH OF TRENCH (FEET)					VERTICAL SPACING (FEET)	SIZE (INCHES)	VERTICAL SPACING (FEET)	MAXIMUM ALLOWABLE HORIZONTAL SPACING (FEET) (SEE NOTE 2.)				
		UP TO 4	UP TO 6	UP TO 9	UP TO 12	UP TO 15				CLOSE				
OVER 5 UP TO 10	UP TO 6	6x8	6x8	6x8	8x8	8x8	5	8x10	5	2x6				
	UP TO 8	8x8	8x8	8x8	8x8	8x10	5	10x12	5	2x6				
	UP TO 10	8x10	8x10	8x10	8x10	10x10	5	12x12	5	2x6				
	SEE NOTE 1.													
OVER 10 UP TO 15	UP TO 6	8x8	8x8	8x8	8x8	8x10	5	10x12	5	2x6				
	UP TO 8	8x10	8x10	8x10	8x10	10x10	5	12x12	5	2x6				
	SEE NOTE 1.													
	SEE NOTE 1.													
OVER 15 UP TO 20	UP TO 6	8x10	8x10	8x10	8x10	10x10	5	12x12	5	3x6				
	SEE NOTE 1.													
	SEE NOTE 1.													
	SEE NOTE 1.													
OVER 20	SEE NOTE 1													



federal register

Wednesday
April 15, 1987

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers; Notice of Proposed Rulemaking and Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-82-130]

Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy hereby proposes to amend its test procedures for dishwashers in order to establish procedures to accurately determine the estimated annual operating cost and the energy factor for dishwashers that operate with 50 °F inlet water and that utilize an electrical supply voltage of 240 volts. DOE is interested in receiving comment on the appropriateness of revising test procedures for all types of dishwashers with respect to the assigned value for inlet water temperature. These test procedures are a part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

The purpose of this notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule and to invite interested persons to participate in the rulemaking process.

DATES: Written comments on the proposed rule must be received by June 15, 1987.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on May 28. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., May 26, 1987.

Seven copies of the statement of each speaker for this hearing should be submitted at the hearing.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, statements and requests are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Dishwasher Test Procedures, Docket No. CE-RM-82-130, Room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9320.

The hearing will begin at 9:30 a.m., on May 28, and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section "III. Public Comment Procedures" of this notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Conservation and Renewable Energy, Mail Station CE-132, Room GF-217, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Room 6B-128, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9320

SUPPLEMENTARY INFORMATION:

I. Background

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub L. 94-163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619),[1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. Among other program elements, sections 323 of the Act requires that standard methods of testing be prescribed for covered products, including dishwashers. Test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for dishwashers were prescribed on August 3, 1977 (42 FR 39964, August 8, 1977). DOE amended the energy conservation program for consumer products by notice issued September 18, 1980 (45 FR 64108, September 26, 1980), so that the Assistant Secretary for Conservation and Solar Energy (now called Conservation and Renewable Energy) can temporarily waive test procedure requirements for a particular product. Waivers can be granted when design characteristics for the particular product either prevent testing of the product according to prescribed test procedures, or lead to results so unrepresentative of the product's true energy consumption characteristics as to provide materially inaccurate comparative data to consumers. On November 14, 1986, DOE issued a rule amending the test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver to manufacturers. In addition the rule made minor revisions to the petition for waiver procedures (51 FR 42823, November 26, 1986). Section 10 CFR 430.27(m) states:

> Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.

The dishwasher test procedures prescribed in 1977 were based on dishwashers using 140°F inlet water and operating with an electrical supply voltage of 115 volts. DOE amended the test procedures on Feburary 23, 1983, in order to accurately determine the estimated annual operating cost and energy factor for dishwashers that operate with 120°F inlet water (48 FR 9202, March 3, 1983).

ANDI-CO Appliances, Inc. (ANDI-CO) is an agent for a foreign appliance manufacturer that produces dishwashers. These dishwashers, in the normal mode, use cold water (50°F) only and heat it to a designated program-selected temperature and use an electrical supply voltage of 240 volts. ANDI-CO requested DOE to exclude these dishwashers from the prescribed test procedures. On August 12, 1984, ANDI-CO filed a Petition for Waiver of DOE's dishwasher test procedures for two models, Favorit Models 263 and 265. ANDI-CO claimed that these dishwashers incorporate features which are not addressed in the existing test procedures, and consequently, cannot be adequately tested under existing DOE test procedures for dishwashers. DOE granted a waiver and established an alternate test procedure for these models on May 8, 1985 (50 FR 21488, May 24, 1985).

Today's notice proposes to amend the DOE test procedures in order to establish procedures to accurately

[1] Part B of Title III of EPCA as amended by NECPA, 42 U.S.C. 6291-6309, is referred to in this notice as the "Act."

determine the estimated annual operating cost and energy factor for dishwashers that operate with 50°F inlet water and utilize an electrical supply voltage of 240 volts.

II. Discussion

In its petition, ANDI-CO stated that DOE's test procedure requirements for measurement of energy consumption yields an inaccurate estimate of the annual operating cost of dishwashers designed to operate with cold inlet water. In consideration of the ANDI-CO petition, DOE, by Decision and Order prescribed, on May 8, 1985 (50 FR 21488, May 24, 1985), excluded the Favorit Models 263 and 265 dishwashers from the prescribed test procedures and established an alternative test procedure for these models. This waiver remains in effect until DOE prescribes final test procedures suitable to dishwashers that operate with cold inlet water and utilize an electrical supply voltage of 240 volts. Also, in accordance with 10 CFR 430.27 (h), DOE must publish in the **Federal Register** a notice of proposed rulemaking appropriate to such dishwashers. Today's proposed test procedures for dishwashers satisfies this requirement and reflects the alternate test procedure established in the May 8, 1985, Decision and Order.

a. Water Temperatures

The dishwasher test procedure requirements for measurement of energy consumption are based upon an inlet water temperature to the dishwasher from the water heater of either 140°F or 120°F and a nominal water heater temperature rise of 90°F or 70°F, respectively. Based upon these inlet water temperatures and nominal water heater temperature rises, the inlet water temperature to the water heater assigned in prior test procedures for dishwashers has been 50°F., (i.e., 140 less 90, or 120 less 70). In order to be consistent across product types for all dishwashers, the cold inlet water temperature assigned in the ANDI-CO waiver was 50°F.

DOE is proposing that the water supply temperature for dishwashers using cold inlet water (50°F) be maintained between 48°F and 52°F and the water be heated to above 120°F in at least one wash phase of the normal cycle.

DOE and NBS have examined the matter of average inlet water temperature to water heaters. Specifically, in a report entitled "A Review of Energy Use Factors for Selected Household Applicances," NBSIR 85–3220, August 1985, NBS expanded the basis of a national average water inlet temperature by conducting a population-weighted analysis. Using a U.S. Geological Survey map, a single representative water heater inlet temperature was estimated for each State. Each State's temperature was then weighted by that State's estimated number of water heaters in order to compute a national average. On this basis, NBS recommended an average inlet temperature of 58°F for water heaters. The proposed inlet water temperature for dishwashers using cold inlet water (50°F) differs from that being proposed in a recent amendment of the water heater test procedures, where 58°F is proposed as the national average inlet water temperature for all types of water heaters, with 58°F±2°F used for laboratory tests. *See* 51 FR 7972 (March 13, 1987).

Similar to dishwashers using 120°F inlet water, DOE is proposing that dishwashers using cold inlet water (50°F) be tested with a test load of eight place settings plus six serving pieces as specified in the Association of Home Appliance Manufacturers Standard DW–1. DOE is proposing that the annual operating cost for dishwashers that use cold inlet water (50°F) be based on machine energy and that water heater energy not be included, as with dishwashers using 140°F or 120°F inlet water, because the dishwasher does not use inlet water that has been heated by the house water heater.

DOE is interested in receiving comment on the appropriateness of revising these test procedures for all types of dishwashers with respect to the assigned value for inlet water temperature.

b. Electrical Supply

ANDI-CO also stated that the DOE test procedures do not provide for testing units designed to operate with an electrical supply voltage of 240 volts. The test procedure only provides for testing dishwashers designed to operate with an electrical supply voltage of 115 volts.

DOE is proposing that electrical supply to dishwashers using cold inlet water (50°F) be maintained within two percent of 240 volts and within one percent of the nameplate frequency as specified by the manufacturer. It is DOE's understanding that dishwashers operating with cold inlet water (50°F) are the only dishwashers likely to utilize an electrical supply voltage of 240 volts. DOE is interested in comments on this point. DOE is also interested in receiving comment on the need for extending these new procedures to include dishwashers which may use other than electric energy as the means for heating cold inlet water.

III. Public Comment Procedures

a. Participation in Rulemaking

DOE has established a comment period of 60 days following publication of this Notice, for persons to submit written comments on this proposal. All written comments and transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of these documents by writing to the DOE Freedom of Information Reading Room at the address specified at the beginning of this Notice. Such persons are advised to contact the DOE Freedom of Information Room in advance of such requests to determine if there will be any charges associated with satisfying their request. Also, persons interested in obtaining a copy of the transcript of the public hearing have the option of purchasing it directly from the transcribing reporter for the public hearing. The identity of the transcribing reporter for the public hearing may be determined by contacting the person in DOE's Conservation and Renewable Energy Office of Hearings and Dockets whose address and telephone number appear at the beginning of this notice.

b. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed amendment set forth in this Notice to the address indicated at the beginning of the notice.

Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Dishwasher Test Procedures (Docket No. CE–RM–82–130)." Seven (7) copies are requested to be submitted. All comments received by the date specified at the beginning of this Notice and all other relevant information will be considered by DOE before final action is taken on the proposed regulation. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, and six (6) copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedures for Submitting Requests to Speak. The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed rule, to make a written request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice and must be received by the time specified at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays. Requests should be labeled "Dishwasher Test Procedures (Docket No. CE-RM-82-130)" both on the document and on the envelope. The person making the request should briefly describe the interest concerned and give a telephone number where he or she may be contacted.

DOE will notify speakers of the time they have been scheduled to speak at the hearing. Each person to be heard is requested to submit seven (7) copies of his or her statement at the hearing.

In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance of the hearing by so indicating in the letter requesting to make an oral presentation. Each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person who wishes to ask a question at the hearing may submit the question in writing to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Any further procedural rules regarding proper conduct of the hearing will be announced by the persiding officer.

IV. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage, and will not affect the quality of distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore has determined that prescribing test procedures under the energy conservation program for consumer products clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environment Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

V. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules". The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would make only minor changes in the test procedures for dishwashers to allow for more accurate determinations of estimated annual operating cost and energy factor. Therefore, DOE has determined that this proposed rule does not come within the definition of "major rule".

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule affects manufacturers of dishwashers. As previously discussed, the proposed changes would not have significant economic impacts, but rather would simply improve the test procedures. Therefore, DOE certifies that the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, energy conservation, household appliances.

Issued in Washington, DC, March 26, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, (42 U.S.C. 6291-6309).

1. Section 430.22 is amended by adding paragraphs (c) (1)(iii) and (2)(iii) as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(c) * * *

(1) * * *

(iii) When cold water (50°F) is used, the product of the following three factors:

(A) The representative average use cycle of 322 cycles per year times,

(B) The product of the per-cycle machine electrical energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.3 of Appendix C to this subpart; and

(C) The representative average unit cost in dollars per kilowatt-hours as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) * * *

(iii) When cold water (50°F) is used, the product of the following three factors:

(A) The representative average use cycle of 322 cycles per year,

(B) One-half the sum of

(*1*) The total per-cycle energy consumption for the normal cycle as defined in 1.3 of Appendix C to this subpart plus

(*2*) The truncated normal cycle as defined in 1.5 of Appendix C to this subpart, each in kilowatt-hours and determined according to 4.4 of Appendix C to this subpart, and

(C) the representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

* * * * *

2. Subpart B of Part 430 is amended by revising paragraphs 1.6 and 2.7 and adding paragraphs 2.2.1, 2.2.2, 2.3.3, 2.6.2, 3.2.3, and 4.3.3 to Appendix C as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

* * * * *

1.6 "Water Heating Dishwasher" means a dishwasher which is designed for heating cold inlet water (nominal 50°F) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120°F, and may operate at either of these inlet water temperatures by providing internal water heating in at least one wash phase of the normal cycle.

* * * * *

2.2.1 Dishwashers that operate with an electrical supply of 115 volts. Maintain the electrical supply to the dishwasher within two percent of 115 volts and within one percent of the nameplate frequency as specified by the manufacturer.

2.2.2 Dishwashers that operate with an electrical supply of 240 volts. Maintain the electrical supply to the dishwasher within two percent of 240 volts and within one percent of its nameplate frequency as specified by the manufacturer.

* * * * *

2.3.3 Dishwashers to be tested at a nominal 50°F inlet water temperature. Maintain the water supply temperature between 48°F and 52°F.

* * * * *

2.6.2 Dishwashers to be tested at a nominal inlet water temperature of 50°F or 120°F. The dishwasher shall be tested on normal cycle and the truncated normal cycle with a test load of eight place settings plus six serving pieces as specified in section 6.1.1 of AHAM Standard DW–1. If the capacity of the dishwasher, as stated by the manufacturer is less than eight place settings then the test load shall be that capacity.

2.7 Testing requirements. Provisions in this Appendix pertaining to dishwashers which operate with a nominal inlet temperature of 50°F or 120°F shall apply only to water heating dishwashers.

* * * * *

3.2.3 Dishwashers that operate with a nominal inlet water temperature of 50°F. Measure the machine electrical energy consumption, M, specified as the number of kilowatt-hours of electrical energy consumed during the entire test cycle using a water supply temperature as set forth in 2.3.3 of this Appendix. Use a kilowatt-hour meter having a resolution no larger than 0.001 kilowatt-hour and a maximum error no greater than one percent.

* * * * *

4.3.3 Dishwashers that operate with a nominal inlet water temperature of 50°F. Use the measured value recorded at 3.2.3 as the per-cycle machine electrical consumption, M, expressed in kilowatt-hours per-cycle.

* * * * *

[FR Doc. 87–8390 Filed 4–14–87; 8:45 am]

BILLING CODE 6450–01–M

federal register

Wednesday
April 15, 1987

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Trust Funds; Consultation Process To Procure Collection, Accounting, Advisory Investment Services and Custodial Services; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Trust Funds; Consultation Process To Procure Collection, Accounting, Advisory Investment Services and Custodial Services

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposal to procure collection, accounting, advisory investment services and custodial services for funds held in trust for Indian individuals, Indian tribes and others and to follow a prescribed consultation process with tribes in this regard.

SUMMARY: The Bureau of Indian Affairs, to strengthen its internal management and administration of trust funds, proposes to procure collection, accounting, investment services, and investment custodial services, and will follow a prescribed consultation process with Indian tribes to address their concerns and suggestions.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has broad responsibilities in managing trust funds, including collections, accounting, investments, and disbursements. The Bureau of Indian Affairs carries out these functions except for collection of royalties from Indian oil and gas production which are administered by the Minerals Management Service. Collections are deposited through the banking system into Department of Treasury accounts specified for such trust funds. Treasury is responsible for maintaining all trust fund cash accounts and for all disbursements of such funds upon request by the Bureau of Indian Affairs. The Bureau of Indian Affairs is responsible for investment of the funds in securities authorized by law. The Bureau of Indian Affairs maintains accounts to reflect tribal, individual Indian and other trust interests in funds invested and funds held in Treasury.

Background

The Bureau of Indian Affairs has obtained an independent evaluation of the trust fund operation and has considered numerous audits and reports concerning operational deficiencies in the management and administration of Indian trust funds. In response to a request for information published by the Bureau, a wide range of materials has been received on relevant private sector capabilities. It has been determined that the need for improvements in the management and administration of Indian trust funds requires immediate action, that the assistance required is readily available from the private sector, and that there is no likelihood that the government could effectively duplicate, in the time required, the needed assistance already available in the private sector.

Proposed Procurement Process

The proposed procurement is intended to streamline the collection process; permit faster concentration of funds for investment; assure accurate and current trust accounting and reporting; strengthen internal cash and investment management controls; improve the level of service to Indian beneficiaries, and strengthen the government's ability to comply with its fiduciary responsibility to Indian beneficiaries. The services to be procured will not restrict or negatively affect any existing tribal or individual Indian interest in the Trust funds. Rather, the services to be procured will be designed to enhance the services rendered to Indian beneficiaries by a modernized collection process, better accountability and current reporting, and improved investment management operations.

The procurement process generally consists of the following steps: developing the request for proposal (RFP); publishing a synopsis of the RFP in the Commerce Business Daily; issuing RFPs as requested, to parties who have an interest in contracting; receiving proposals from prospective contractors; evaluating the proposals from prospective contractors; selecting the successful contractor; negotiating the contract and awarding the contract.

The procurement process will include consultation with Indian tribes by the Bureau of Indian Affairs. However, it should be noted that "consultation is not the same as obeying those who are consulted," *The Hoopa Valley Tribe vs. Joe Christie, et al.*, No. 86–2861 DC# C 86–5557 MHP, United States Court of Appeals for the Ninth Circuit, and that the Bureau retains decision authority as the responsible fiduciary party.

Consultation Process

This consultation process is specific to this activity only; that is, the procurement of services to strengthen the Bureau's internal management and administration of Indian trust funds. The consultation process is to provide the opportunity for Indian tribes to be informed, share in relevant information, and, if they so choose, raise and receive responses to concerns and/or suggestions.

The consultation process to be followed by the Bureau of Indian Affairs includes the following principal actions:

(a) A copy of this **Federal Register** Notice with an accompanying letter of explanation from the Assistant Secretary—Indian Affairs will be sent to each tribe.

(b) A draft RFP and other relevant information will be provided through the applicable Bureau Agency Superintendent to each tribe.

(c) Within 30 days from receipt by the tribes of the information package, each Agency Superintendent will conduct a consultation meeting with the respective tribes which their Agency serves. At this meeting the Bureau will present the draft RFP and relevant information, address issues and concerns, and accept written suggestions, recommended alternatives, or other relevant comments. The Superintendent will document the attendance and results of the consultation by written minutes of the meeting as well as those written suggestions, recommendations and concerns presented by the tribes which were not fully addressed in the consultation to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs will provide a written response to the applicable tribes on all issues not fully addressed in the consultation meeting within 30 days of the date the issues are received by the Bureau of Indian Affairs.

(d) All written suggestions, recommendations, and comments received relating to the draft RFP will be considered and changes made as deemed appropriate at the discretion of the Assistant Secretary in preparation of the final RFP.

(e) The final RFP will be provided to each Agency Superintendent. Upon receipt the Agency Superintendent shall advise the tribe of its availability and a copy will be provided to each tribe which requests it.

(f) Pursuant to law, the proposals received from prospective contractors and the evaluation of said proposals will be held in confidence by the Bureau of Indian Affairs. The Assistant Secretary—Indian Affairs will appoint a tribal representative to serve as a consultant to the Evaluation Committee that will be established to review and judge the proposals from prospective contractors.

(g) After appropriate negotiations, a contract reflecting the requirements of the RFP will be awarded. The Assistant Secretary—Indian Affairs will advise each tribe by letter of the contract award and that the contract document is available for review in the Office of the agency Superintendent. The Bureau, through the Superintendent, will also be available for any further discussions on

contract content or implementation as may be requested by the tribes.

FOR FURTHER INFORMATION CONTACT: For information and to comment on the consultation process, contact Ms. Betty Wilkinson, Chief, Division of Accounting Management, Bureau of Indian Affairs, at 18th and C Streets, NW., Room 4071—Main Interior Building, Washington, DC 20240; telephone number (202) 343–2578.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87–8438 Filed 4–14–87; 8:45 am]

BILLING CODE 4310-02-M

federal register

Wednesday
April 15, 1987

Part V

Environmental Protection Agency

Dinoseb Pesticide Products; Procedures for Submission of Claims for Indemnification and Requests for Disposal; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-150003; FRL-3187-4]

Dinoseb Pesticide Products, Procedures for Submission of Claims for Indemnification and Requests for Disposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of procedures for requesting indemnification and disposal for pesticide products containing dinoseb.

SUMMARY: This Notice announces that EPA is accepting claims for indemnification and requests for disposal concerning dinoseb-containing pesticides under sections 15 and 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136m and q), for products which are now suspended and canceled. This Notice provides information to persons who may be entitled to Federal disposal of excess pesticide stocks and indemnification for losses suffered as a result of regulatory actions taken by EPA with respect to these products. It sets out who may be entitled to indemnification and how claims for Federal disposal and indemnification should be prepared and submitted to EPA. Finally, it requests all current holders of dinoseb stocks whether eligible now for indemnification or not, to provide EPA with information concerning the extent and location of those stocks.

DATE: All claims filed as a result of this Notice must be postmarked or received by July 14, 1987, in order to be considered.

ADDRESS: All claims filed as a result of this Notice should be mailed to: Special Review Branch (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Michael McDavit, Special Review Branch (TS-767C). Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1787).

SUPPLEMENTARY INFORMATION:

I. Background

Section 6 of FIFRA authorizes the Administrator to take certain actions to prohibit production, sale, and use of pesticide products that pose a significant risk to human health or the environment. If a pesticide poses a risk that outweighs the benefits of continued use, the pesticide's registration may be canceled and/or suspended.

The Administrator may cancel a pesticide registration if it is found that the pesticide's use generally causes unreasonable adverse effects on the environment. A Notice of Intent to Cancel a product's registration becomes effective within 30 days after the date the registrant receives notice or the date of its publication in the **Federal Register** (whichever is later), unless by that date an adversely affected person requests a hearing. If action is necessary to prevent an imminent hazard to human health or the environment the Administrator may suspend a pesticide registration immediately, and at the same time issue a Notice of Intent to Cancel the registration. A suspension order may immediately halt all use, sale, and distribution of the pesticide in both intrastate and interstate commerce.

Based on information on the adverse human health and environmental risks posed by all dinoseb-containing pesticide products, the Administrator recently utilized this authority. On October 7, 1986, the Administrator issued an emergency suspension of all registrations of pesticides containing the active ingredient dinoseb, as published in the **Federal Register** of October 14, 1986 (51 FR 36634). From the date of October 7, 1986, all persons were prohibited from using, selling, or distributing any pesticide products containing dinoseb.

On October 7, 1986, the Administrator also issued a Notice of Intent to Cancel and deny registrations of all dinoseb-containing pesticide products. In accordance with section 6 of FIFRA, the cancellations were to become effective 30 days after publication of the Notice unless the registrant or other adversely affected person requested a hearing to contest the cancellation of specific registrations. Upon the expiration of the 30-day period, many dinoseb registrations were cancelled by operation of law. However, in those instances where registrants requested hearings, registrations remained in effect (although still suspended) pending the outcome of the administrative hearing.

The Agency is now establishing procedures for filing requests for indemnification and/or disposal with regard to dinoseb products suspended and canceled under section 6 of FIFRA. At this time, the Agency does not have funds allocated to make indemnification payments or to provide Federal disposal; however, the Agency is vigorously pursuing resolution of these issues. Information submitted to the Agency in response to this notice will provide the basis for the Agency's total estimate of the funding required for indemnification and disposal.

Even if a holder of a dinoseb product possesses a product whose registration is not canceled, and therefore not yet eligible for indemnification and disposal, it is incumbent upon such holders to inform the Agency of certain information now. If the registration is eventually canceled, the Agency would be already aware of the quantity and location of all dinoseb stocks. Such key information provided voluntarily at this time would help expedite the processing of all potential disposal and indemnification claims. Failure to report this information will compromise the Agency's ability to secure the appropriate funding for disposal and indemnification.

II. Requirements for Indemnification and Disposal

Section 15 of FIFRA requires EPA to make indemnity payments to any person who suffers economic loss by reason of suspension and cancellation of a pesticide registration and who satisfies other statutory requirements. The statute provides that indemnification is payable if all of the following conditions are met:

1. The Administrator suspended the registration to prevent an imminent hazard.
2. The registration was canceled.
3. The person owned some quantity of the pesticide immediately before the suspension.
4. The person suffered losses by reason of the suspension or cancellation.

Under section 15(b), the amount of indemnity payment is to be determined on the basis of the cost of the pesticide owned by the person immediately before the suspension, but may not exceed the pesticide's fair market value at that time.

Section 19(a) of FIFRA requires the Administrator to accept at convenient locations for safe disposal those pesticides the registrations of which have been suspended and canceled as specified in section 6(c), if requested by the owner of the pesticide.

A. Who Is Eligible for Indemnification and Disposal?

The right of indemnification extends to "any person" who meets the requirements of section 15 of FIFRA. Section 15 of FIFRA requires the claimant to show that the registrations

of his/her products have been suspended and canceled, and that the claimant has suffered economic loss as a result of either the suspension or the cancellation. Unless a claimant can establish each of these elements, the claimant will not satisfy the statutory criteria.

Because the right of indemnification extends to "any person" who owned suspended and canceled dinoseb pesticide products and who may have suffered economic loss, indemnity payments may be made not only to registrants and producers, wholesale, and retail sellers, but also to individual users who owned the products at the time of suspension.

Similarly, disposal under section 19 of FIFRA may be requested by any owner of excess pesticide stocks, so long as the pesticide registration was suspended and canceled.

The Agency has received a number of petitions under Subpart D of 40 CFR Part 164 to modify the final suspension order to permit use of dinoseb on certain crops. On March 30, 1987, the Administrator issued a Decision and Final Order Modifying Final Suspension of Pesticide Products which Contain Dinoseb. This order and the FIFRA Section 18 emergency exemptions which implement it allow limited use of dinoseb. Holders of suspended and cancelled dinoseb products affected by the March 30 Order (or any additional orders that may be issued in response to the pending Subpart D petitions) should respond to this notice within the 90-day period in the same manner as other holders of dinoseb products, even though the amount of indemnification payable, or the amount of dinoseb for which disposal may be required, may ultimately change as a result of use permitted by such an order.

Holders of the following three categories of products should respond to this notice:

1. *Federally registered dinoseb products, including products with Special Local Need registrations (under section 24(c) of FIFRA), that were suspended and canceled.* On October 7, 1986, the Administrator issued an emergency suspension of all registrations of dinoseb-containing pesticides. The Order immediately stopped all use, sale, and distribution of dinoseb products. On October 7, 1986, the Administrator also issued a Notice of Intent to Cancel all registrations of these products.

Many dinoseb product registrations have been canceled; thus registrants, manufacturers, distributors, retailers, and users of these canceled dinoseb products qualify for indemnification and disposal. Their claims are not affected by the date on which the registration was canceled, provided that the cancellation occurred after the October 7, 1986, Emergency Suspension Order.

Furthermore, users of dinoseb who purchased dinoseb products for their own use may be eligible for indemnification and disposal of any stocks that were in their possession on October 7, 1986.

2. *Dinoseb products with intrastate registrations.* At the time of the October 7, 1986, Emergency Suspension Order, certain products containing dinoseb were being marketed under State pesticide registrations in accordance with EPA regulations in 40 CFR 162.17. On October 7, 1986, EPA issued a concurrent Notice of Intent to Deny application for Federal registration.

Such actions essentially revoked all intrastate registrations of dinoseb. A U.S. Claims Court decision in *Gro-Green Products* v. *United States* (1983) held that in similar circumstances an intrastate registrant of a silvex pesticide product was entitled to indemnification. Accordingly, persons with dinoseb products that had intrastate registrations may also be eligible for indemnification and disposal.

3. *Federally registered dinoseb products that were suspended but not canceled because they were referenced in at least one cancellation hearing request.* Certain pesticide products containing dinoseb have been referenced in one or more requests for a cancellation hearing. The regulatory status of these product registrations remains undecided. As long as the plaintiff(s) defending such product registrations do not withdraw their request during the cancellation hearing, the final regulatory status of these products will remain unknown until the conclusion of the cancellation hearing.

Consequently, these dinoseb products are not eligible for indemnification and disposal at this time. These products are listed separately in Unit III of this Notice. Appropriate amendments may be made to this Notice announcing any changes in eligibility as needed.

Only dinoseb products in categories 1 and 2 may be eligible for indemnification and disposal at this time. Indemnification claims for dinoseb products that fall within either of these two categories must be filed with EPA under the procedures outlined in this Unit of the Notice, no later than July 14, 1987.

Indemnification claims for dinoseb products that fall in category 3 should not be filed at this time. However, holders of category 3 products should notify EPA at this time, using the same idemnification and claim form utilized for category 1 and 2 products, of only the quantity and location of their stocks so that EPA can initiate efforts to arrange for the ultimate indemnification and disposal of these products should their registrations be canceled. See Unit III for instructions.

EPA needs to know what quantity of dinoseb products exist in order to be able to seek funds to cover the costs of indemnification payments and disposal and to make contractual arrangements for disposal. EPA will base its planning and its funding requests for these activities, on the responses to this Notice that it receives by July 14, 1987. EPA plans to deny all claims for indemnification and requests for disposal with respect to any quantities of category 1 or 2 products that have not been reported to EPA by that date. As for category 3 products that may in the future become eligible for indemnification or disposal, EPA plans to seek funds only for those quantities of category 3 products that are identified in responses to this Notice that it receives by July 14, 1987.

Category 3 products should be either returned to the place of purchase or stored safely under the procedures described in Unit V of this Notice. If any of the category 3 products are finally canceled during or at the conclusion of the cancellation hearing, then this Notice may be amended to reflect the eligibility of these products for indemnification and disposal.

B. Who May File Claims for Indemnification and Disposal?

Any person who owned some quantity of a Category 1 or 2 dinoseb pesticide product immediately before the registrations were suspended, or who subsequently received an assignment of the original owner's claim or a power of attorney from the original owner to file the claim, may claim indemnification for the product. The claimant or owner of the product may be a registrant, manufacturer, distributor, retailer, or user.

Claims may be filed by persons representing, in some legal capacity, the product owners at the time of suspension or cancellation. Some registrants and suppliers have recalled products from their customers who owned the product at the time of suspension or cancellation. EPA is interested in consolidating as many claims as possible and encourages submission of consolidated claims.

A "power of attorney" is a document which appoints someone other than the actual product owner (the registrant, for

example) as an agent of the product owner. In this instance, such a document merely gives an agent the authority to submit an indemnification claim and receive payment on the owner's behalf. The claim remains that of the pesticide owner.

If the pesticide owner assigns his/her claim to another person, the document of assignment transfers his/her right of indemnification to the other person. The pesticide owner thereafter has no legal interest in the claim. Although the Federal Anti-Assignment of Claims Act would ordinarily bar an assignment of a claim that occurred before the claim was allowed, the Government plans to waive this prohibition against "early" assignments with regard to otherwise valid claims for indemnification under section 15.

However, the Agency intends to waive this prohibition only with respect to an assignee who was either the registrant of the pesticide product in question or a seller of the registered product. The intent of the Government in this regard is to facilitate the recall of dinoseb products by suppliers.

EPA requires information on the current ownership and location of the product, as well as the ownership at the time of suspension or cancellation. For purposes of determining who owned the product at the time of suspension or cancellation, the operative date is October 7, 1986.

The following list gives the registration number and product names of Federally registered dinoseb products (including section 24(c) registrations) and intrastate products, that are currently eligible for indemnification and disposal:

Company Name/ Registration No.	R. Product Name
Union Carbide: 000264-363.	EZ Flo Vega-Kill.
FMC Corporation:	
000279-1841	Niagara Sinox-W Code 8.
000279-1854	Sinox G 100.
000279-1855	Niagara Sinox General.
000279-1859	Niagara Sinox PE Code 10.
000279-2836	Niagara Sinox Plus Code 31218.
000279-3898	Sinox Plus.
000279-4037	Sinox General.
SLN CA-780199	Sinox 0.5 E.C.
SLN OK-780053	Niagara Sinox Plus Code 31218.
SLN WA-77043	Niagara Sinox Plus Code 31218.
SLN WA-790079	Sinox General Contact Weed Killer.
Stauffer: 000476-1971	Dinitro P.E. Weed Killer.
Pacific Supply: 000483-142	Dinitro P.E.
Van Waters and Rogers: 000550-70.	Guardsman Premerge Dinitro.
Woods: 000682-5596	Crop King Dy-Alt.
Security Lawn: 000769-365.	Premerge Dinitro Weed Killer.
Southern Agric Ins.: 000829-197.	Dinitro General Weed Killer.
Valley Chemical: 001063-3299.	Beanweda.
The Cropmate Company: 001145-95.	Amoco Premerge Dinitro.
Puregro:	
001202-205	Puregro.
001202-244	Puregro Preharvest Desiccant.
SLN CA-780043	Puregro Contact Weed Killer.
SLN ID-84001	Puregro Preharvest Desiccant.
Staples CW Incorporated: 001345-4.	Premerge Dinitro.
Universal Cooperative:	
001386-478	Unico Dinitro PE Weed Killer.
001386-582	Unico Dinitro T.
Blue Spruce:	
001439-175	Chemox PEG.
001439-190	Chemox PE-R Pre-merge Type.
001439-231	Chemox PE- Pre-merge Type.
001439-235	Chemox 289.
Arizona Agro:	
001526-480	GWK.
001526-494	Dinitro Weed Killer.
Griffin: 001812-118	Premerge Dinitro Weed Killer.
Steven Industries: 002459-213.	Master Brand Premerge.
Wilbur Ellis:	
002935-353	Red Top Weed Killer.
002935-6592	Red Top Weed Killer.
002935-6593	Red Top Weed Killer.
002935-6594	Red Top Weed Killer.
002935-6636	Red Top Dinitro Weed Killer.
002935-6661	Red Top Dinitro Weed Killer.
SLN CA-760004	Red Top Dinitro Weed Killer.
SLN ID-770024	Red Top Contact Weed Killer.
SLN ID-820004	Red Top Contact Weed Killer.
SLN MT-810021	Red Top Contact Weed Killer.
SLN OR-760012	Red Top Contact Weed Killer.
SLN OR-780048	Red Top Contact Weed Killer.
SLN OR-810044	Red Top Contact Weed Killer.
SLN WA-760013	Red Top Contact Weed Killer.
SLN WA-770043	Red Top Contact Weed Killer.
SLN WA-800068	Red Top Contact Weed Killer.
SLN WA-830025	Red Top Contact Weed Killer.
Superior: 003122-7195	Superior Yellow Top.
Laroche Incorporated: 003442-669.	USS Premerge Dinitro.
Schall: 003468-10	Schall Contact Weed Killer.
DH Industries: 003797-4	Right-A-Way Weed Killer Semi-Concentrate.
White House: 003951-112	Eagle River DNBP Technical.
Micro Chem. Company: 004841-50.	Premerge Dinitro Weed Killer.
Royster Company: 004904-334.	Chem-Pest Dinitro Weed Killer.
Helena:	
005905-217	Helena Hel-Fire.
005905-7584	Spark.
005905-7585	Spark.
005905-7586	Spark.
005905-7587	Spark.
005905-7588	Spark.
005905-7593	Spark.
005905-7599	Spark.
005905-7600	Spark.
005905-7601	Spark.
005905-7602	Spark.
005905-6887	Spark.
005905-7888	Spark.
005905-7889	Spark.
005905-7890	Spark.
005905-7891	Spark.
005905-7892	Spark.
005905-7893	Spark.
005905-7894	Surge Growth Stimutant.
005905-7895	Spark.
SLN SC-820002	Helena Hel-Fire.
Ansul:	
006308-3010	Ancrack Herbicide.
006308-3011	Ancrack Herbicide.
006308-3012	Ancrack Herbicide.
006308-3013	Ancrack Herbicide.
006308-3014	Ancrack Herbicide.
Soil Service: 006973-3597	Super Contact Weed Killer.
J.R. Simplot:	
007001-77	Best Contact Weed Killer.
007001-327	Oxy Dinitro.
007001-4378	Contact Weed Killer.
007001-7746	Contact Weed Killer.
SLN CA-760034	Best Contact Weed Killer.
SLN CA-780137	Best Contact Weed Killer.
SLN OR-810072	Best Contact Weed Killer.
SLN OR-790023	Best Contact Weed Killer.
SLN WA-7909038	Best Contact Weed Killer.
Retzloff: 007472-7-	DNBP—3s Herbicide.
Agway: 008590-26	Agway Toxi-Film Premerge.
Cleveland Chemical: 008867-25.	Premerge Dinitro Weed Killer.
Wilson Lee and Company: 009220-1.	Dinitro (DNBP) Weed Killer.
Trans Chemic: 009618-13	TCI—DNBP.
Riverside/Terra:	
009779-1	Dinitrol.
009779-186	Brand Premerge.
Landia Chemical Company: 009859-5637.	Scathe Peanut Herbicide.
Gowan:	
010163-28	Prokil General WS Pre-merge.
010163-6122	Prokil General Weed Killer.
Rockwood: 010226-3751	Rockwood Brand Desiccant.
Feed Service:	
010914-9304	R-15 Deseccan.
010914-9305	R-15 Deseccan.
Britz Fertilizer: 010951-9810.	Britz Contact Weed Killer.
Russell Chemical: 011159-7329.	Dynitox 300.
Bakersfield AG:	
011369-8775	Bac Dinitro Weed Killer.
011369-8793	Bac Contact Weed Killer.
SLN CA-780171	Bac Weed Killer.
Brown & Bryant: 011373-6981.	Beebee Weed Killer-D.
Western Farm Service:	
011656-1	Contact Weed Killer.
011656-5767	Contact Weed Killer.
SLN CA-780094	Contact NCS.
SLN CA-780122	Western Farm Service Contact Weed Killer.
SLN CA-780137	Western Farm Service Contact Weed Killer.
Simplot J.R.:	
011682-11	Sim-Chem Dinitro Weed Killer.
011682-12	Sim-Chem Vine Killer.
Apollo Enterprises: 013166-13.	Dinitro 3.
Platte Chemical:	
034704-176	Clean Crop Dinitro—GS 3 Weed Killer.
034704-244	Clean Crop Dinitro 3-B Herbicide.
034704-245	Clean Crop Dinitro 5-B Herbicide.
034704-246	Clean Crop Crop Technical DNBP.
034704-253	Clean Crop Contact Weed Killer.
034704-3860	Clean Crop Top-Kill.
Hi-Plains: 035965-3007	Spirt 44 D.
Brea AG Service: 036998-4464.	Brea Contact Weed Killer.
AFC Company: 037177-8221.	AFC Contact Weed Killer.
AG-Chem: 037790-8343	Salvo.
Cornell University; 038655-10431.	NYS—Dewey—(DNBP) Premerge.
Vertac Chemical:	
039511-6817	Selective Weed Killer.
039511-6818	Selective Weed Killer.
039511-6819	Selective Weed Killer.
039511-6820	Selective Weed Killer.
039511-6821	Selective Weed Killer.
039511-6822	Selective Weed Killer.
039511-6823	Premerge.
039511-6824	Premerge.
039511-6825	Premerge.
039511-6826	Premerge.
039511-6827	Premerge.
039511-6828	Premerge.
039511-6829	Premerge.
039511-6830	Premerge.
039511-6831	Premerge.
039511-6832	Premerge.
039511-6833	Premerge.
039511-6834	Premerge.
039511-6835	Premerge.
039511-6836	Premerge.
039511-6837	Premerge.
039511-6838	Premerge.
039511-6839	Premerge.
039511-6849	General Weed Killer.
039511-6850	General Weed Killer.
039511-6851	General Weed Killer.
039511-6853	General Weed Killer.
SLN AL-820004	Premerge 3 Dinitro Amine Herbicide.

Company Name/ Registration No.	R. Product Name
SLN AR-820026	Premerge 3 Dinitro Amine Herbicide.
SLN CA-810014	Premerge 3 Dinitro Amine Herbicide.
SLN CA-820107	Premerge 3 Dinitro Amine Herbicide.
SLN IL-820019	Dow General Weed Killer.
SLN IL-820020	Premerge 3 Dinitro Amine Herbicide.
SLN IN-820005	Premerge 3 Dinitro Amine Herbicide.
SLN ME-820001	Dow General Weed Killer.
SLN MO-820007	Premerge 3 Dinitro Amine Herbicide.
SLN NC-820004	Premerge 3 Dinitro Amine Herbicide.
SLN NC-820017	Premerge 3 Dinitro Amine Herbicide.
SLN OR-820022	Dinitro Weed Killer 5.
SLN OR-820023	Dinitro Weed Killer 5.
SLN OR-820024	Dow General Weed Killer.
SLN OR-820025	Dow General Weed Killer.
SLN PA-820012	Dow General Weed Killer.
SLN VA-820007	Premerge 3 Dinitro Amine Herbicide.
SLN VA-820026	Premerge 3 Dinitro Amine Herbicide.
SLN WA-810075	Dinitro Weed Killer 5.
SLN WA-820006	Dow General Weed Killer.
SLN WA-820007	Dow General Weed Killer.
SLN WA-820008	Dinitro Weed Killer 5.
SLN WA-820009	Dinitro Weed Killer 5.
Santa Paula:	
043906-7330	Russell Chemical Contact WK.
SLN CA-760016	Santa Paula Chemical Contact.
Kaw Valley:	
044215-87	Miller Dinitro Weed Killer.
044215-88	Chemox General Weed Killer.
044215-89	Tide Weed Pre-merge Type.
044215-90	Baird's N-D Herbicide.
044215-125	AGSCO Skin-Set A Herbicide for Potato Vine Killing.
SLN CA-790013	Tide Weed-Aside Pre-Emerge Type.
Ida Incorporated:	
045115-28	Dinitro 2.5.
045115-47	Dinitro 3 Dinitro Weed Killer.
045115-52	IDA Inc. Dinitro 5.
BFC Chemicals: 045639-118.	Tunco Enide Dinitro E.C.
Micro-Flo:	
051036-54	Fasco Dinitro Weed Killer.
051036-68	Premerge Dinitro Weed Killer.
Crystal Chemical Company:	
SLN CA-770538	Dinitro General Herbicide.
SLN CA-780036	Dinitro General Herbicide.
SLN CA-780085	Dinitro NCS.
SLN CA-780200	Dinitro General Herbicide.
Thompson-Hayward Chemical Company: SLN CA-780177.	Contact Weed Killer.
Toxo Spray Dust, Inc.: SLN CA-790209.	Toxo Contact Weed Killer.
Mid America Chemical Company, Inc.:	
SLN CA-790227	Dinitro Contact Weed Killer.
SLN CA-790228	Fireball Dinitro Weed Killer.
Unroyal Chemical Company, Inc.:	
SLN AL-810028	Uniroyal Dinoseb 3.
SLN AR-800018	Uniroyal Dinoseb 3.
SLN AR-840004	Uniroyal Dinoseb 3.
SLN ID-830010	Uniroyal Dinoseb 3.
SLN ID-830013	Uniroyal Dinoseb 3.
SLN ID-830031	Uniroyal Dinoseb 5.
SLN ID-830032	Uniroyal Dinoseb 5.
SLN ID-830032	Uniroyal Dinoseb 3.
SLN ID-840003	Uniroyal Dinoseb 3.
SLN LA-800034	Uniroyal Dinoseb 3.
SLN MS-800045	Uniroyal Dinoseb 3.
SLN MO-810021	Uniroyal Dinoseb 3.
SLN OR-830002	Uniroyal Dinoseb 3.
SLN OR-830028	Uniroyal Dinoseb 5.
SLN OR-830029	Uniroyal Dinoseb 5.
SLN OR-830031	Uniroyal Dinoseb 3.
SLN OR-840003	Uniroyal Dinoseb 5.
SLN OR-840004	Uniroyal Dinoseb 3.
SLN TN-810014	Uniroyal Dinoseb 3.
SLN WA-790068	Uniroyal Dinoseb 5.
SLN WA-810102	Uniroyal Dinoseb 5.
SLN WA-820042	Uniroyal Dinoseb 5.
SLN WA-820066	Uniroyal Dinoseb 5.
SLN WA-830014	Uniroyal Dinoseb 3
SLN WA-830015	Uniroyal Dinoseb 3.
SLN WA-840021	Uniroyal Dinoseb 3.
SLN WA-840045	Uniroyal Dinoseb 3.
SLN WA-840046	Uniroyal Dinoseb 3.
Drexel Chemical Company:	
SLN AR-830013	Ancrack Herbicide.
SLN DE-830001	Ancrack Herbicide.
SLN ID-830012	Drexel Dynamyte 3.
SLN LA-840004	Ancrack Herbicide.
SLN NV-860008	Dynamyte 5.
SLN OK-830016	Ancrack Herbicide.
SLN TN-840001	Ancrack Herbicide.
SLN WA-830016	Drexel Dynamyte 3.
SLN WA-840062	Dynamyte 5 Dinitro Weed Killer.
Dow Chemical U.S.A.:	
SLN AZ-770033	Dow Selective Weed Killer.
SLN AZ-800032	Dow Selective Weed Killer.
SLN AR-800013	Premerge 3 Dinitro Amine Herbicide.
SLN CA-760132	Dow General Weed Killer.
SLN CA-780137	Dow General Weed Killer.
SLN CA-780160	Premerge 3 Dinitro Amine Herbicide.
SLN CA-790043	Dow General Weed Killer.
SLN FL-790016	Premerge 3 Dinitro Amine Herbicide.
SLN IN-770002	Premerge 3 Dinitro Amine Herbicide.
SLN ME-780004	Dow General Weed Killer.
SLN MD-790014	Premerge 3 Dinitro Amine Herbicide.
SLN NY-780026	Dow General Weed Killer.
SLN PA-790017	Dow General Weed Killer.
SLN WA-790071	Dow General Weed Killer.
Baird and McGuire, Inc.: SLN NV-810005.	Baird's Contact Weed Killer.

The person filing the claim should find the product(s) for which he/she is claiming indemnification and disposal assistance on the list, and complete the claim form (including the product registration number) as described in Unit II.C. below.

C. What Information Must Be Submitted?

1. *Claim form and supporting documentation.* EPA has prepared a form for filing claims and an instruction sheet to accompany it. This form can be obtained from EPA Regional offices listed in this notice.

It is the responsibility of the person submitting an indemnity claim to submit the required documentation to support the claim. The instructions accompanying the claim form indicate what type of supporting documentation would be accepted for each element of the claim. For example, all individuals filing claims must submit evidence of the cost to the claimant in either producing or acquiring the product. The cost is limited to the direct cost of the product and does not include such incidental items as transport or storage costs. For registrants/manufacturers holding inventories of a product that could not be sold, production records showing cost of production will be acceptable. Distributors, wholesalers, retailers, and users should submit purchase invoices, purchase receipts, or notarized affidavits. The product's location must be identified.

If disposal or reprocessing has already occurred, evidence of legal disposal is also required. Such evidence must include invoices or waste manisfests from facilities permitted to handle hazardous wastes. In such a case, indemnity payments may be granted for the cost of the product but not for the cost of disposal or reprocessing.

The form also provides a way to request disposal of a product, whether or not indeminification is requested. All information requested on the form regarding quantity, unit number and size, and other facts pertinent to disposing of excess product must be submitted in order for the product to be eligible for Federal disposal.

If a holder of a dinoseb product has resold any existing stocks (for example, for use for a non-pesticidal purpose, for use in another country, or other purposes), the holder should call the contact person listed in this Notice under "FOR FURTHER INFORMATION CONTACT" for additional instructions prior to submitting a claim. This is necessary because the indemnification claim must reflect any proceeds received from the resale of existing stocks.

Any person submitting a claim as a legal representative of another person must submit evidence which establishes his/her authority to file the claim and receive payment in satisfaction of the claim on behalf of the owner of the prodcut. A person submitting a claim as an assignee must submit evidence of assignment of the claim.

2. *Business records verification.* Manufacturers, registrants, distributors, and any other claimants that normally maintain business records are permitted to consolidate the supporting information required to accompany the claim form and to verify the contents of the claim by submitting an auditor's report or a schedule supported by an independent certified accountant's statement verifying the validity of the schedule. Each element of the claim, such as cost per unit of product or quantity of product owned at the time of suspension, must be reviewed and verified by the independent auditor if verification for the complete contents of the claim is being provided through the report or statement. If the independent review is being conducted for only one element of the claim, such as a manufacturer's cost of production per unit of product, supporting documentation must be submitted for all other elements of the claim. EPA retains the right to request submission of the information that formed the basis for the

audits or reports in order to verify the validity of the information submitted.

3. *Composite claim lists.* Registrants or suppliers who have recalled a product from their customers and who are assignees or representatives of those customers may submit composite lists for separate elements of the claim form identifying the product, product owner, quantities and units of pesticides, and other pertinent information indicated on the claim form. Documentation of the assignment, power of attorney, or other legal authorization from each original owner of the product listed in such composite list must be submitted. The legal documentation should identify the parties and product involved. If the pesticide is still owned by anyone other than the person completing the claim form, proof of each element of the claim must be submitted on behalf of the owner. For example, if a registrant has recalled material and is filing the claim by power of attorney for the owner, the registrant must submit verification of ownership at the time of suspension, the quantity of product returned to the registrant by the owner, and the cost of the product to the owner. If, on the other hand, the registrant is filing the claim under an assignment, the registrant should provide the information and verification required by the claims form, including the cost of repurchase of the product.

4. *Confidential business information.* As a general matter, businesses may assert claims of business confidentiality covering part or all of the information submitted through the claim form, in the manner described in 40 CFR 2.203(b). Any such assertions of confidentiality of business information must be supported by documentation of the reasons why disclosure of the information is likely to cause substantial harm to the competitive position of the business. The information covered by the assertion will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2. If no such assertion and supporting documentation accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the business. See 40 CFR 2.203(a)(2).

EPA has determined that it will not afford confidential treatment to certain information requested on the claim form because it must be disclosed to potential contractors in order to arrange for disposal of the dinoseb pesticides. Confidentiality claims should not be applied to the following: the type and quantity of pesticide product, the unit size of containers, and the product's location. If the Agency receives any confidentiality claims for this information, the claim for indemnification and disposal will not be considered and will be returned to the claimant.

5. *EPA investigations.* The Agency plans to conduct random investigations of claims submitted for the purpose of establishing their veracity. In verifying claims, the Agency may seek to enter premises to examine any dinoseb pesticide products being stored pending disposal to assure that they are being stored in conformance with the guidelines set forth herein, to examine records relevant to the claim, or to conduct whatever other examinations are necessary to audit the claim.

6. *Signing claim required.* The claimant or authorized representative must sign the claim form. Signature of the form constitutes agreement to the following:

a. That all statements made and information provided in the claim are true and correct to the best of the claimant's knowledge, and that the amount of the claim is an accurate statement of the cost of the product.

b. That the claimant had no knowledge of facts which in themselves, showed that the dinoseb pesticide did not meet Federal registration requirements.

c. That acceptance of any payment by EPA constitutes full satisfaction and final settlement of the claim.

d. That by submission of the claim, the claimant grants permission to authorized agents of the U.S. Government to enter premises where records or products are retained to conduct whatever inspections, audits, or examinations are necessary to verify the contents of the claim.

e. That by submission of the claim, the claimant waives any claim for confidential treatment of certain types of information.

f. That the claimant has received no other payment for the cost of the pesticides for which indemnification is claimed and that should claimant receive such other payment, claimant agrees to promptly reimburse EPA in such amount up to and including the full amount of the indemnification payment made under this program.

g. That ownership of and responsibility for pesticide products for which indemnification payments are made under this program remains with the claimants and/or holders of the material unless and until EPA accepts the material for disposal under section 19 of FIFRA.

h. That neither payment of indemnification under section 15 of FIFRA nor acceptance of pesticides for disposal under section 19 of FIFRA in any way constitutes a finding or warranty by the United States with respect to the proper or safe storage, packaging, handling, transport, or disposal of such products by the owners or holders of the products or by agents, employees, or other persons acting in their behalf.

i. If the claim is filed by an assignee, that the United States may assert against the assignee any defenses, or right of setoff or counterclaim, applicable against the person who assigned the claim.

D. Where Can a Claim Form Be Obtained?

Copies of the claim form can be obtained from EPA Regional Offices. The addresses, telephone numbers, and the States located within each EPA Region are as follows:

Regional Office Contact Person for Dinoseb Indemnification and Disposal Information/Claim Forms:

1. Gerald M. Levy, EPA—Region I, John F. Kennedy Building, Rm. 2203, Boston, MA 02203, (617–565–3744). (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)

3. Ernest Regna, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837, (201–321–6740). (New Jersey, New York, Puerto Rico, and Virgin Islands.)

3. Carole Dougherty, EPA—Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215–597–9870). (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia).

4. H. Kirk Lucius, EPA—Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (404–347–3621). (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)

5. Phyllis Reed, EPA—Region V, 230 Dearborn St., Chicago, IL 60604, (312–886–6006). (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.)

6. Norman E. Dyer, EPA—Region VI, 1201 Elm St., Dallas, TX 75270, (214–767–2734). (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)

7. Leo Alderman, EPA—Region VII, 324 East 11th St., Kansas City, MO 64106, (816–374–3036). (Iowa, Kansas, Missouri, and Nebraska.)

8. Dallas Miller, EPA—Region VIII, One Denver Place, 999 18th St., Suite 1300, Denver, CO 80202–2413, (303–293–1747). (Colorado, Montana, North

Dakota, South Dakota, Utah, and Wyoming.)

9. Laurie Perrot, EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, (415–974–8071). (Arizona, California, Hawaii, Nevada, American Samoa, and Guam.)

10. Lyn Frandsen, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, (206–442–4768). (Alaska, Idaho, Oregon, and Washington.)

E. Where and When Must the Claim be Filed?

All claims for indemnification for any Category 1 or 2 dinoseb product whose registration is listed in this Notice as having been suspended and canceled must be submitted to the address listed at the beginning of this Notice, and must be received within 90 days from publication of this Notice in the **Federal Register.** All claims received after that date will be denied.

EPA is imposing this time limitation on filing of claims because the information provided through the claim forms will enable the Agency to estimate the funds required for disposal and indemnification of the dinoseb products. Until the Agency is able to estimate with some certainty the total cost required for each activity, it cannot pursue obtaining the necessary funds for indemnification or disposal.

If a claim is filed within the prescribed time period, but the Agency requests supporting documentation not included with the original claim, an appropriate period will be allowed for submission of the additional information required for consideration of the claim. If the requested information is not submitted within the grace period provided, and a response is not received indicating why the information cannot be submitted within that period, the claim will be denied.

A claim may be amended at any time before final action by EPA. All amendments must be submitted in writing and signed by the claimant or his/her authorized agent or legal representative.

F. How Will Claims be Processed?

Upon receipt of a claim, EPA will assign it a claim number and all correspondence regarding the claim will reference that number. All claimants will be notified of receipt of the claim and, if necessary, of any additional information or verification required for consideration of the claim. If a claimant is unable to provide the documentation required for consideration of his/her claim within the prescribed time period, the claim will be disallowed and will be returned to him/her. EPA plans to conduct random audits of claims submitted, and may reject claims if investigators are not permitted to enter the claimant's premises or are otherwise impeded in conducting an audit.

EPA's determinations regarding eligibility of claims and amount of indemnity payable shall be administratively final.

III. Information to be Submitted by Registrants and List of Products Not Eligible for Indemnification and Disposal at This Time

The following list gives the Registration Number and product names of Federally registered dinoseb products that fall in category 3 as described in Unit II.A. of this Notice. These products are not eligible for indemnification and disposal at this time because such products have not been canceled.

Company name/ registration No.	Product name
Uniroyal Chemical Company, Inc.:	
000400–75	Dyanap.
000400–100	Dyanap (H.W.).
000400–138	Uniroyal Dinoseb–1.
000400–139	Uniroyal Dinoseb–3.
000400–140	Uniroyal Dinoseb–5.
000400–147	Ethyl DNBP.
000400–153	DNBP.
000400–158	Uniroyal Dinoseb–3.3.
000400–174	Dinitro Weed Killer #5.
000400–190	TH Dinitro Technical.
000400–235	DE Pester Dinitro Weed Killer.
000400–302	Klean Krop.
000400–327	Salvage Dinitro Weed Killer.
S.N.P.E.:	
035134–1	Dinoseb.
A.H. Marks and Company, Ltd.:	
015440–1	Technical DNBP.

Cedar Chemical Corporation:

New No./Old No.	Product Name
056077–3/039511–4	Dinoseb Technical.
056077–4/039511–10	Dinitro Weed Killer.
056077–5/039511–11	Dinitro Weed Killer 5.
056077–11/039511–85	Selective Weed Killer.
056077–12/039511–86	General Weed Killer.
056077–13/039511–87	Premerge 3.
056077–14/039511–88	Premerge.
056077–15/039511–89	Dinitro 3 Weed Killer.
056077–16/039511–90	Premerge Plus.
056077–17/039511–91	Dinitro General.
056077–21/039511–112	Technical DNBP.
056077–23/039511–114	General Weed Killer (Technical).
056077–24/039511–115	DN–289.
056077–25/039511–116	Dinoseb.
Drexel ChemicalCompany:	
019713–23/006308–73	Ancrack.
019713–26/006308–79	Dynamyte 300.
019713–29/006308–80	Dynamyte 5.
019713–33/006308–89	Dynamyte T.
019713–78/inapplicable	Dynamyte 2.5.
019713–82/inapplicable	Dynamyte 3.
019713–110/inapplicable	DNBP Technical.
019713–203/001022–442	Premerge Dinitro Weed Killer.

As noted in Unit II.A. of this Notice, EPA plans to seek funds for indemnification and disposal in an amount sufficient to cover only those stocks of dinoseb products identified by responses to this Notice received within 90 days from publication in the **Federal Register.**

Registrants, manufacturers, distributors, retailers, and users of dinoseb products listed in this Unit who may in the future wish to claim indemnification or request disposal should, therefore, complete specific parts of the form described earlier in this Notice (regarding quantity and location of existing stocks). Copies of the form can be obtained from EPA Regional Offices listed in Unit II.D. of this Notice.

IV Interim Storage and Disposal of Pesticide Stocks

Section 19(a) of FIFRA requires the Administrator to accept at convenient locations for safe disposal those pesticides the registrations of which have been suspended and canceled as specified in section 6(c) of FIFRA. However, before the owner of a pesticide request acceptance by the Administrator for disposal, he/she must make every reasonable effort to return the material to the manufacturer, distributor, or other agents capable of relabeling, recovering, recycling, or reprocessing the material. See 40 CFR 165.4.

EPA encourages registrants suppliers to take back suspended or canceled dinoseb products from their customers. Most registrants have already called much of the existing stock. One registrant has also informed EPA that his company markets dinoseb for a non-pesticidal use (as an antioxidant). EPA encourages all registrants and manufacturers that are capable of recalling or reprocessing their dinoseb pesticide products to do so. If the product is processed, the amount of indemnity entitled to that person may be affected.

In most cases, once a pesticide is suspended or canceled and can no longer be used as a pesticide, it must either be recycled for some other use or disposed of in accordance with the Resource Conservation and Recovery Act (RCRA) or other applicable State and Federal regulations. To the extent that registrants, sellers, or individuals are currently holding unused dinoseb pesticide stocks, certain storage practices must be followed. In particular, if the unused dinoseb pesticide stock is being accumulated for recycling, the registrant, seller, or individual holding the product should store the material in accordance with

recommended rocedures for storage described in 40 CFR 165.10. In short, these procedures for storage recommend that the material be stored on pallets or similar raised platforms in a dry, well-ventilated, and separate room, building, or covered area with a concrete floor, where fire protection is provided. Movement or handling should be kept to an absolute minimum. Details of these recommended procedures will be provided with the claim form as supplemental instructions.

Containers should be stored with the label plainly visible. If any of the containers are not in good condition, the contents should be placed in a suitable container and properly relabeled. All containers should be checked carefully to ensure that the lids and bungs are tight and the integrity is satisfactory. Containers should be checked regularly for corrosion and leaks. If such is found, the container should be transferred to a sound, suitable, larger container and be properly labeled.

The dinoseb storage area must be maintained to mitigate the threat or the potential threat of release. In the event of a release, the released product becomes a waste (unless it is cleaned up and restored for recycling) which is subject to regulation under Subtitle C of RCRA. In particular, the person storing the dinoseb product that has been spilled must either clean up the spill and properly store, treat, or dispose of it in accordance with the appropriate hazardous waste rules or obtain a hazardous waste disposal permit from EPA (or the State if the State is authorized to carry out the hazardous waste program) if the spill or release has not been cleaned up. Dry, absorbent materials such as absorptive clay, sand, sawdust, vermiculite, oil-dry, kitty litter, dry rags, or paper should be kept on hand for use as appropriate for the emergency cleanup of spills or leaks. Materials that are used for this purpose and become contaminated with dinoseb are themselves hazardous wastes and must be managed as such. If the holder of the product takes no action after a spill or release, EPA will take appropriate action, including any enforcement action. In addition, the holder of the product is also subject to liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Agency may perform inspection of materials in storage to determine if the above conditions have been met. Further technical advice may be obtained from the EPA Regional Office contacts listed in this Notice or from Judy Heckman or Steven Johnson at EPA Headquarters (703–557–7695).

As indicated above, disposal of certain unused pesticide products may be subject to regulation as hazardous wastes under RCRA. However, before materials can be hazardous wastes under RCRA, they must first be solid wastes. Remaining stocks of canceled pesticide products are considered solid wastes subject to RCRA if they have been "discarded" or are intended for discard. In this context, "discarded" means abandoned. See 40 CFR 261.2(a)(2)(i) and 261.33, 50 FR 637, January 24, 1985.

Accordingly, if a person is accumulating unused dinoseb product for disposal, he/she must comply with the requirements under Subtitle C of RCRA as specified in 40 CFR Parts 124, 261 through 266, and 270. (Details of the storage requirements are provided with the claim form.) Under the existing hazardous waste rules, unused dinoseb product is regulated when discarded in commercial grade, technical grade, or off-specification form or if dinoseb is the sole active ingredient in the formulation. Discarded formulations containing dinoseb as one of a number of active ingredients are not presently considered to be hazardous wastes unless they exhibit a characteristic of hazardous waste. A formulation is considered hazardous if it has one or more of the following characteristics: it is easily combustible; it dissolves metals or other materials, or burns the skin; or it is unstable or undergoes rapid or violent chemical reaction with water or other materials. Persons accumulating or possessing dinoseb in less than the quantities specified in these regulations (1 kilogram or about 2 pounds per month) may be excluded from RCRA regulation. For persons interested in disposing of their excess stocks of dinoseb pesticides, the Agency has identified a number of professional waste disposal firms. A list of these firms is available from EPA Regional Offices, for which addresses are listed in Unit II.E. It should also be noted that the Agency is in the process of obtaining contractor services to dispose of dinoseb products, and will announce the disposal operations as soon as possible.

Under the hazardous waste rules, empty containers (as defined in 40 CFR 261.7) with dinoseb residues are exempt from regulation. Specifically, containers that once contained dinoseb are considered to be empty if they are triple-rinsed with an appropriate solvent (or cleaned by a method of equivalent effectiveness) or the container's inner liner has been removed (40 CFR 261.7(b)(3)). However, the rinsate that is generated from this operation is considered a hazardous waste under RCRA and must be managed in accordance with the appropriate management standards unless the person conducting the operation is a farmer. Specifically, a farmer disposing of such rinsate from a dinoseb container that was used on his/her own farm is not subject to regulation under RCRA for those wastes provided he/she triple rinses each emptied dinoseb container and disposes of the dinoseb residues on his/her own farm in a manner consistent with the disposal instructions on the product label.

(7 U.S.C. 136m and q)

Dated: April 8, 1987.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 87–8421 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
April 15, 1987

Part VI

Department of Education

34 CFR Part 650

Jacob K. Javits Fellows Program; Proposed Rule and Invitation for Applications for Fiscal Year 1987; Notice

DEPARTMENT OF EDUCATION

34 CFR Part 650

Jacob K. Javits Fellows Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Jacob K. Javits Fellows Program (formerly the National Graduate Fellows Program). These regulations are needed to implement the provisions of the Higher Education Amendments of 1986.

DATES: Comments must be received on or before May 15, 1987. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Allen P. Cissell, Director of the Jacob K. Javits Fellows Program, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Mail Stop 3327, ROB–3) 400 Maryland Avenue, SW., Washington, DC 20202, telephone (202) 732–4415.

A copy of any comments that concerns information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Allen P. Cissell, Director of the Jacob K. Javits Fellows Program, telephone (202) 732–4415.

SUPPLEMENTARY INFORMATION:

Background

The Jacob K. Javits Fellows Program is authorized under Title IX, Part C, of the Higher Education Act of 1965, as amended. The statute provides for fellowships to be awarded to students to study at the doctoral level in selected fields of the humanities, arts and social sciences.

Many of the responsibilities under this program regarding procedures and criteria for selection of fellows and general policies for the program are vested in the Fellowship Board. The Fellowship Board, composed of individual representatives of both public and private institutions of higher education and formerly a Presidentially-appointed Fellowship Board, is now appointed by the Secretary of Education. The regulations do not establish rules on matters for which the Fellowship Board has responsibility.

Explanation of Changes

Several changes that were made in the program by the Higher Education Amendments of 1986 (Pub. L. 99–498):

- The 1986 legislation has changed the name of the National Graduate Fellows Program to the Jacob K. Javits Fellows Program.
- The 1986 legislation requires the Secretary to pay $6,000 to each institution for each individual awarded a fellowship and enrolled at such institution.
- The Secretary has determined that the financial need on which the stipend levels are based will be calculated under the provisions of Part F, Title IV of the Higher Education Act, with exceptions as noted for fellows selected in 1986.
- The 1986 legislation requires that stipends shall provide a level of support comparable to that provided by federally funded graduate fellowships in the science and engineering fields. The Secretary has determined that the stipends as calculated under § 650.42 of these proposed regulations are comparable to those provided by federally-funded graduate fellowships in science and engineering.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This program awards fellowships to students for study at the doctoral level in selected fields. Individuals are not considered to be small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 650.35 and 650.44 of these regulations will be sent to the Office of Management and Budget (OMB) for review, as required by section 3504(h) of the Paperwork Reduction Act of 1980, and will become effective after they have been approved by OMB.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention Joseph F. Lackey, Jr.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the office of the Jacob K. Javits Fellowship Program, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Mail Stop 3327, ROB–3), 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 650

Colleges and universities, Education, Grant program-education, Fellowships, Reporting and recordkeeping.

Dated: April 9, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 650 of Title 34 of the Code of Federal Regulations as follows:

PART 650—JACOB K. JAVITS FELLOWS PROGRAM

1. The authority citation for Part 650 is revised to read as follows:

Authority: 20 U.S.C. 1134h–1134k, unless otherwise noted.

2. All references to "National Graduate Fellows Program" throughout Part 650 are revised to read "Jacob K. Javits Fellows Program".

3. In § 650.1, the current text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 650.1 What is the Jacob K. Javits Fellows Program?

* * * * *

(b) Students awarded fellowships under this program are called Jacob K. Javits Fellows.

4. Section 650.2 is amended by revising paragraph (b)(4) to read as follows:

§ 650.2 Who is eligible to apply for a fellowship under this program?

* * * * *

(b) * * *

(4) Is a permanent resident of the Trust Territory of the Pacific Islands; and

* * * * *

5. In § 650.4, the definition of "Fellowship Board" is amended by revising the word "President" to read "Secretary", the reference to "1956" in the definition of "Act" is revised to read "1965", and the definition of "Fellow" is revised to read as follows:

§ 650.4 What definitions apply to the Jacob K. Javits Fellows Program?

* * * * *

"Fellow" means a recipient of a Jacob K. Javits fellowship under this part.

* * * * *

6. Section 650.5 is amended by revising paragraph (b) to read as follows:

§ 650.5 What does a fellowship award include?

* * * * *

(b) An annual allowance paid to the institution in which the fellow is enrolled of $6000.

§ 650.33 [Amended]

7. In § 650.33, paragraphs (a)(3) and (b) are removed; the designation "(a)" is removed from the introductory text; paragraph (a)(1) is amended by adding "and" at the end of the paragraph; paragraph (a)(2) is amended by removing "; and" and adding a period in its place, and paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a) and (b) respectively.

8. Section 650.42 is revised to read as follows:

§ 650.42 How are stipends to be administered?

(a) Except as provided in paragraph (c) of this section, an institution shall calculate the amount of a fellow's financial need annually in the same manner as that in which the institution calculates its students' financial need under Part F of Title IV of the Act. For this purpose the institution shall not treat—

(1) Any instructional costs covered by the institutional allowance under § 650.41, as costs of attendance; or

(2) Income derived from a fellow's teaching and research assistantship, that is a required part of the fellow's academic program, as income.

(b) The institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded in fiscal year 1986, the institution shall, in fiscal year 1987 and in each subsequent fiscal year for the duration of the fellowship, calculate the amount of a fellow's financial need under the procedure in paragraph (a) of this section, except that—

(1) Subject to the provisions of paragraphs (c)(2) and (3) of this section, a fellow qualifies as an independent student for an award year if the fellow—

(i) Does not, during any of the relevant years described in paragraph (c)(2) of this section, live for more than six weeks in the home of his or her parent(s) for whom income must be reported;

(ii) Is not, for any of the relevant years described in paragraph (c)(2) of this section, claimed as a dependent for Federal income tax purposes by those parent(s); and

(iii) Does not, during any of the relevant years described in paragraph (c)(2) of this section, receive financial assistance of more than $750 from those parent(s).

(2) Except as provided in paragraph (c)(3) of this section, to qualify as an independent student for any award year—

(i) An unmarried fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of an award year and the preceding calendar year; and

(ii) A married fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of the award year.

(3) The Secretary considers any fellow to be an independent student if, before the end of the award year—

(i) The fellow's parents die; or

(ii) The fellow is declared a ward of the court.

(4) As used in this paragraph—

(i) "Award year" means the period of time from July 1 through June 30 of the following year.

(ii) "Parent" means a fellow's natural or adoptive mother or father. A parent also includes a fellow's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the fellow.

(iii) "Parent(s) for whom income must be reported" means a parent for whom income must be reported under the Pell Grant Program regulations, 34 CFR 690.33, as in effect on July 1, 1986. For this purpose, the references in § 690.33 to the date of the fellow's application are considered references to the date the fellow applies for a determination of need under Part F of Title IV of the Act.

(d) If a fellow is enrolled for less than a full academic year, the institution shall pay the fellow a pro rata share of the stipend.

(Authority: 20 U.S.C. 1134j)

[FR Doc. 87-8463 Filed 4-14-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Invitation for Applications for New Awards Under the Jacob K. Javits Fellows Program for Fiscal Year 1987 (CFDA No. 84.170)

Purpose: Provide grants to eligible postsecondary students for graduate fellowships in the arts, humanities, and social sciences.

Deadline for transmittal of applications: June 1, 1987.

Applications available: April 24, 1987.

Available funds: Approximately $500,000 to $700,000 may be available for new fellowships in FY 1987 after funds for continuing fellowships have been allocated.

Estimated range of awards: Awards will range from zero to $10,000, depending on the fellow's financial need. Additionally, an institution attended by a fellow will receive a $6,000 cost of instruction payment, in lieu of tuition.

Estimated average size of awards: $15,000, including the cost of instruction payment.

Estimated number of awards: 40.

Project period: 12 months (with possibility of continuation).

Priorities: The Fellowship board has determined that eligible applicants for this competition will be limited to first-time graduate students only.

Applicable regulations: Regulations governing the Jacob K. Javits Fellows Program as proposed to be codified in 34 CFR Part 650. (Applications are being accepted based on the Notice of Proposed Rulemaking which is published in this issue of the **Federal Register.** If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

For applications or information contact: Allen P. Cissell, Director, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Mail Stop 3327, Washington, DC 20202, Telephone: (202) 732–4415.

Program authority: 20 U.S.C. 1134h–k.

Dated: April 9, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–8464 Filed 4–14–87; 8:45 am]

BILLING CODE 4000-01-M

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