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Contents

Federal Register

Vol. 52, No. 243

Friday, December 18, 1987

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 52, No. 243
Friday, December 18, 1987

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Allocations of Sugar Import Quotas; Other Specified Countries or Areas

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule modifies the allocation provisions governing sugar import quotas for those countries or areas which are designated as "Other Specified Countries or Areas" (more commonly known as the "basket category"). This rule modifies the maximum quota allocated to each basket country. Each country in the basket category will receive an annual quota equal to its pro rata share of the percentage quota for the basket, or 5,770 short tons, whichever is greater.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Room 6095-South, 14th and Independence Avenue SW., Washington, DC 20250. Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: This rule involves a foreign affairs function of the United States. Accordingly, the provisions of 5 U.S.C. 553 do not apply and no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule has been reviewed under Department of Agriculture procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since the rule does not have any of the effects specified in those documents.

Presidential Proclamation No. 4941 of May 5, 1982 (47 FR 19661) established a country-by-country quota system for the importation of sugar into the United States. Under the import quota allocation provisions established under the Proclamation, each country was allocated a specific percentage allocation of the quota if that allocation was .7 percent or greater. A specified percentage of the total quota amount was allocated to a group of countries specified in the Proclamation and designated as "Other Specified Countries or Areas" (more commonly known as the "basket category"). The percentage allocation of the quota to the basked category was pooled and each country competed on a first-come-first-serve basis for the entire allocation.

Proclamation No. 4941 further provided that notwithstanding the allocation provisions set forth in the Proclamation, the Secretary may, after consultation with the U.S. Trade Representative, the Department of State, and the Department of the Treasury, issue regulations modifying the allocation provisions governing "Other Specified Countries or Areas" if the Secretary determines that such modifications are appropriate to provide such countries and areas reasonable access to the United States sugar market.

These allocation provisions were modified in an interim rule published in the **Federal Register** on August 11, 1982 (47 FR 34769) to provide that each country in the basket category would have a specific annual quota. Under that interim rule, each country received a quota allocation equal to its pro rata share of the quota allocation for the basket category, or 16,500 short tons, whichever was greater.

The interim rule (47 FR 34769) was adopted as a final rule with a modification and was published in the **Federal Register** on December 6, 1985 (50 FR 49919). The final rule modified the maximum level allocated to individual countries in the basket category. Each country received a quota allocation equal to its pro rata share of the quota allocation for the basket category, or 12,500 short tons, whichever is greater.

The final rule (50 FR 49919) was further modified by an interim rule published in the **Federal Register** on December 18, 1986 (51 FR 45295) which reduced the maximum quota allocated to each basket country to a level equal to its pro rata share of the percentage allocation for the basket category, or 7,500 short tons, whichever is greater. No comments were received with respect to the interim rule.

This rule finalizes the interim rule (51 FR 45295) with a modification by revising the quota amount each basket country will receive to a level equal to its pro rata share of the percentage allocation for the basket category, or 5,770 short tons, whichever is greater.

After consultation with the United States Trade Representative, the Department of State, and the Department of the Treasury, the Secretary of Agriculture has determined that the modification of the allocation provisions covering the basket category is appropriate to provide countries or areas in the basket category with reasonable access to the U.S. sugar market. It has also been determined that these provisions are appropriate to carry out U.S. obligations under the General Agreement on Tariffs and Trade.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Foreign Trade, Imports, Quotas, Sugar.

Accordingly, 7 CFR Part 6 Subpart-Sugar Import Quotas is amended as follows:

PART 6—[AMENDED]

1. The authority citation for Subpart-Sugar Import Quotas (§§ 6.90–6.93) continues to read as follows:

Authority: Section 201, Trade Expansion Act of 1962 (19 U.S.C. 1821); Presidential Proclamation 4941, May 5, 1982 (47 FR 19661); Headnotes 2 and 3, Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202).

2. Section 6.91(a)(2) is revised to read as follows:

§ 6.91 Allocation of individual import quotas.

(a) * * *

(2) 5,770 short tons, raw value.

* * * * *

Signed at Washington, DC on December 15, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87–29077 Filed 12–15–87; 4:02 pm]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 664]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 664 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 18, 1987, through December 24, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 664 (§ 907.964) is effective for the period December 18, 1987, through December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456. telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. 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, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987-88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on December 15, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 10 to 1 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is improving.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.964 is added to read as follows:

§ 907.964 Navel Orange Regulation 664.

The quantity of navel oranges grown in California and Arizona which may be handled during the period December 18, 1987, through December 24, 1987, are established as follows:

(a) District 1: 744,000 cartons;
(b) District 2: 64,303 cartons;
(c) District 3: 40,000 cartons;
(d) District 4: 16,000 cartons.

Dated: December 16, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 87-29221 Filed 12-17-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 592]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 592 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 250,000 cartons during the period December 20 through December 26, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 592 (§ 910.892) is effective for the period December 20 through December 26, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on December 15, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 11 to 0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is easier, with lessened demand due to inclement weather in the eastern states.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.892 is added to read as follows:

§ 910.892 Lemon Regulation 592.

The quantity of lemons grown in California and Arizona which may be handled during the period December 20 through December 26, 1987, is established at 250,000 cartons.

Dated: December 16, 1987.

Robert C. Keeney,

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

[FR Doc. 87–29220 Filed 12–17–87; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1434

Honey Price Support Regulations Governing 1986–1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the interim rules published in the **Federal Register** on March 5, 1987 (52 FR 6775) and on April 10, 1987 (52 FR 11617). The interim rules amended the regulations to (1) extend the final date in which price support loans and purchase agreements are available to producers from January 31 to March 31 of the year following the year in which the honey is produced and extracted, (2) provide that the Secretary of Agriculture shall make price support available to producers through loans, purchases or other operations as determined and announced annually by the Secretary, (3) provide that the honey container requirements may be waived by the Community Credit Corporation (CCC) when producers agree to redeem, under the lower loan repayment option provision and within a period of time determined by CCC, honey pledged as collateral for price support loans, and (4) provide certain miscellaneous amendments.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Cotton Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447–8223.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1434) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35, and have been assigned OMB clearance numbers 0560–0040 and 0560–0087.

This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases 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.

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

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

It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

Interim Rules

On March 5, 1987, an interim rule was published in the **Federal Register** at 52 FR 6775 which amended the Honey Price Support Regulations governing 1986–1990 crops. The interim rule amended the regulations at 7 CFR 1434.4(a) and 1434.6(b) to extend the final date in which price support loans and purchase agreements are available to producers from January 31 to March 31 of the year following the year in which the honey is produced and extracted. The extension of the price support availability period will (1) permit producers and cooperatives to take full advantage of the recent amendment to the regulations which permits honey producers to repay their price support loans at the price support level or at a lower level as determined by the Secretary and (2) minimize the quantity of honey which CCC would acquire.

On April 10, 1987, an interim rule was published in the **Federal Register** at 52 FR 11617 which amended the Honey Price Support Regulations governing 1986–1990 crops. The interim rule amended the regulations at 7 CFR 1434.1, 1434.2, 1434.7, and 1434.34 to provide: (1) That the Secretary of Agriculture shall make price support available to producers through loans, purchases or other operations as determined and announced annually by the Secretary, (2) that the honey container requirements may be waived by Commodity Credit Corporation (CCC) when producers agree to redeem, under the lower loan repayment option provision and within a period of time determined by CCC, honey pledged as collateral for price support loans, and (3) for certain other miscellaneous amendments.

The annual determination of the method by which price support would be made available will permit the Secretary to maintain the competitive relationship of honey in domestic and export markets after taking into consideration the cost of producing honey, supply and demand conditions, and world prices of honey. The waiver of honey container requirements will permit producers who agree to redeem honey pledged as collateral, to use the type of containers suitable for their own purposes rather than use the type of containers required by the regulations. The miscellaneous amendments delete certain provisions and definitions which are confusing.

Comment periods were provided with respect to both interim rules but no comments were received. Accordingly it has been determined that both interim rules should be adopted as final rules without any changes.

List of Subjects in 7 CFR Part 1434

Honey, Loan programs—agriculture, Price support programs, Warehouse.

Final Rule

Accordingly, the interim rules published at 52 FR 6775 and 52 FR 11617, which amended 7 CFR Part 1434, are hereby adopted as final rules without any change.

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714(b); sec. 5, 62 Stat. 1072 (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421).

Signed at Washington, DC on December 14, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–29111 Filed 12–17–87; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 214, 238, 245, 248, and 299

[INS Number: 1054–87]

Guam Visa Waiver

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements the visa waiver provisions provided in section 14 of the Omnibus Territories Act, Pub. L. 99–396, whereby the nonimmigrant visa requirement is waived for certain aliens applying as nonimmigrant visitors for business or pleasure solely for admission into and stay on Guam for a period not to exceed fifteen days. It facilitates travel to Guam, while insuring through limitations on periods of authorized stay, hearing rights, adjustment of status eligibility, through a carrier contract requirement and sanctions for carrier violations, that Guam is protected from an influx of immigration law violators.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Dwight S. Faulkner, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW—Room 7123, Washington, DC 20536, Telephone: (202) 633–3995.

SUPPLEMENTARY INFORMATION: In pursuant of tourism and commercial expansion, the government of Guam has long sought relief from the requirement that all aliens entering Guam for business or pleasure be in possession of valid nonimmigrant visas. The visa requirement is applicable to Guam in that in a geographical sense, and pursuant to the terms of the Immigration and Nationality Act, Guam is a part of the United States.

The Guam visa waiver legislation stipulates that the waiver must not represent a threat to the welfare, safety, or security of the United States, its territories and commonwealths. Yet, as stated in the Senate and House Records, the Congressional intent supports an initially liberal application; in particular, countries with visa denial rates through 16% for the preceding year. Therefore, a country whose refusal rate exceeds the 16.9% limitation would only be given consideration if that country established a United States preinspection station within its territorial boundaries, as preinspection minimizes potential threats by stopping them at their source. The waiver then applies to visitors from countries within geographical proximity to Guam and who thus maintain a traditional cultural interchange. It also applies to visitors from countries which, although not geographically proximate to Guam, have a substantial volume of traffic into Guam and extend reciprocal privileges to citizens of the United States. In addition, as Congress did not intend for Guam to become an avenue for circumvention of normal refugee processing, countries deemed by the Department of State to be of special humanitarian concern are excluded from participation.

Entry under this section bars the alien from adjustment of status to temporary or permanent resident; change of nonimmigrant status; extension of stay; or the right to an exclusion or deportation hearing, other than on the basis of a request for asylum, thus paralleling the visa waiver pilot program.

The issue of carrier liability is addressed in the House Report of August 27, 1986, which states in pertinent part, "In addition to the obligations that this provision would impose on the Immigration and Naturalization Service, the program that it would establish necessarily imposes responsibilities on the airlines who must cooperate with its controls, especially with regard to preclearance."

Accordingly, the carrier must be

prepared to establish that each alien it transports without a visitor's visa was prima facie eligible for the visa waiver, because the carrier is subject to fine pursuant to section 273 of the Immigration and Nationality Act for transporting any alien not in possession of an unexpired visitor's visa, as required, unless the requirement is waived pursuant to this part. The carrier contract and ticket restrictions parallel the visa waiver pilot program, thereby substantiating the intent of Congress regarding carrier responsibility.

Implementation of the terms of the visa waiver is contingent upon the establishment on Guam of an adequate arrival/departure control system and a determination that such waiver does not represent a threat to the welfare, safety or security of the United States, any threat to be dealt with on a country by country basis, resulting in the Commissioner's immediate removal of that country from the list. The Attorney General, the Secretary of State, and the Secretary of the Interior, after consultation with the Governor of Guam, shall jointly detemine that these conditions have been met.

Compliance with 5 U.S.C. as to notice of proposed rulemaking and delayed effective date is impracticable and contrary to public interest as the revision has been mandated by an amendment to the Immigration and Nationality Act by Pub. L. 99-396.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291.

The information collection requirements contained in this document have been submitted to the Office of Management and Budget for review in accordance with the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas.

8 CFR Part 214

Administrative practice and procedure, Aliens.

8 CFR Part 238

Administrative practice and procedure, Aliens, Transportation lines.

8 CFR Part 245

Administrative practice and procedure, Aliens, Permanent resident status, Temporary resident status.

8 CFR Part 248

Adjustment of status, Administrative practice and procedure, Aliens.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 8 CFR Part 2.

2. In § 212.1, existing paragraphs (e) through (j) are redesignated (f) through (k), and a new paragraph (e) is added to read as follows:

§ 212.1 Documentary requirement for nonimmigrants.

* * * * *

(e) *Aliens entering Guam pursuant to section 14 of Pub. L. 99-396, "Omnibus Territories Act."* (1) A visa is not required of an alien who is a citizen of a country enumerated in paragraph (e)(3) of this section who:

(i) Is classifiable as a vistor for business or pleasure;

(ii) Is solely entering and staying on Guam for a period not to exceed fifteen days;

(iii) Is in possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam;

(iv) Is in possession of a completed and signed Visa Waiver Information Form (Form I-736);

(v) Waives any right to review or appeal the immigration officer's determination of admissibility at the port of entry at Guam; and

(vi) Waives any right to contest any action for deportation, other than on the basis of a request for asylum.

(2) An alien is eligible for the waiver provision if all of the eligibility criteria in paragraph (e)(1) of this section have been met prior to embarkation and the alien is a citizen of a country that:

(i) Has a visa refusal rate of 16.9% or less, or a country whose visa refusal rate exceeds 16.9% and has an established preinspection or preclearance program, pursuant to a bilateral agreement with the United States under which its citizens traveling to Guam without a valid United States visa are inspected by the Immigration and Naturalization Service prior to departure from that country;

(ii) Is within geographical proximity to Guam, unless the country has a substantial volume of nonimmigrant admissions to Guam as determined by the Commissioner and extends reciprocal privileges to citizens of the United States;

(iii) Is not designated by the Department of State as being of special humanitarian concern; and

(iv) Poses no threat to the welfare, safety or security of the United States, its territories, or commonwealths.

Any potential threats to the welfare, safety, or security of the United States, its territories, or commonwealths will be dealt with on a country by country basis, and a determination by the Commissioner of the Immigration and Naturalization Service that a threat exists will result in the immediate deletion of that country from the listing in paragraph (e)(3) of this section.

(3) The following countries now meet the eligibility criteria as stated in paragraph (e)(2) of this section: Australia, Brunei, Burma, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Singapore, Solomon Islands, the United Kingdom (including citizens of the colony of Hong Kong), Vanuatu, and Western Samoa.

(4) Admission under this section renders an alien ineligible for:

(i) Adjustment of status to temporary or permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

(5) A transportation line bringing any alien to Guam pursuant to this section shall:

(i) Enter into a contract on Form I-760, made by the Commissioner of the Immigration and Naturalization Service in behalf of the government;

(ii) Transport only an alien who is a citizen and in possession of a valid passport of a country enumerated in paragraph (e)(3) of this section;

(iii) Transport only an alien in possession of a round-trip, nontransferable transportation ticket:

(A) Bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam,

(B) Valid for a period of not less than one year,

(C) Nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

(D) Issued by a carrier which has entered into an agreement described in part (5)(i) of this section, and

(E) Which the carrier will unconditionally honor when presented for return passage; and

(iv) Transport only an alien in possession of a completed and signed Visa Waiver Information Form I-736.

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 8 CFR Part 2.

4. In § 214.2(b)(1) the following sentence is added at the end of the existing paragraph:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(1) * * * Those B-1 and B-2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this Chapter may be admitted to and stay on Guam for a period not to exceed fifteen days and are not eligible for extension of stay.

* * * * *

PART 238—CONTRACTS WITH TRANSPORTATION LINES

5. The authority citation for Part 238 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1228.

6. In § 238.3 paragraph (a) is revised to read as follows:

§ 238.3 Aliens in immediate and continuous transit.

(a) *Form I-246 agreements.* A transportation line bringing aliens to the United States pursuant to § 212.1(f)(1) of this chapter shall enter into an agreement on Form I-426. Such agreement shall be negotiated directly by the Central Office and the head offices of the transportation lines.

* * * * *

7. In Part 238 a new § 238.5 is added to read as follows:

§ 238.5 Aliens entering Guam pursuant to section 14 of Pub. L. 99-396, "Omnibus Territories Act".

(a) *Form I-760 agreements.* A transportation line bringing aliens to Guam under the visa waiver provisions of § 212.1(e) of this Chapter shall enter into an agreement on Form I-760. Such agreements shall be negotiated directly by the Central Office and head offices of the transportation lines.

(b) [Reserved]

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

8. The authority citation for Part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1159, 1182, 1255, 8 CFR Part 2.

9. In § 245.1(b) a new paragraph (b)(11) is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(11) Any alien admitted as a visitor under the visa waiver provisions of § 212.1(e) of this chapter.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

10. The authority citation for Part 248 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258, 8 CFR Part 2.

11. In § 248.2 a new paragraph (e) is added to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(e) Any alien admitted as a visitor under the visa waiver provisions of § 212.1(e) of this chapter.

PART 299—IMMIGRATION FORMS

12. The authority citation for Part 299 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR Part 2.

13. § 299.1 is amended by adding the following immediately before the entry "ICAO" in numerical sequence:

§ 299.1 Prescribed forms.

* * * * *

I-736 (7-23-87)—Guam Visa Waiver Information

I-760 (7-22-87)—Agreement Between Transportation Line, Operating Between Foreign Territory and Guam, and United States.

* * * * *

Dated: November 19, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization service.

Dated: November 4, 1987.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

Dated: November 10, 1987.

Kittie Baier,

Principal Deputy Assistant Secretary, Territorial and International Affairs, Department of the Interior.

Dated: November 19, 1987.

Joe Ada,

Governor of Guam.

[FR Doc. 87-28963 Filed 12-17-87; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 303 and 381

[Docket No. 87-002F]

Experimentation With Procedures for Determining Intensity of Inspection Coverage in Processing Establishments; Waivers of Provisions of Regulations

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Final rule.

SUMMARY: On March 30, 1987, the Administrator, FSIS, published an interim final rule with request for comments, thereby initiating a period of experimentation as the first step in changing the Federal inspection system in establishments conducting post-slaughter preparation of meat food products and/or post-slaughter and evisceration processing of poultry products to a "discretionary inspection" (DI) system; that is, one in which the frequency and the manner of government inspection are based on consideration relevant to effective regulation of such products and protection of the public health and welfare. Such a change is called for by 1986 amendments to the Federal Meat Inspection Act (FMIA) and is authorized by the Poultry Products Inspection Act (PPIA). The object of the experimentation is to determine whether and, if so, to what extent the intensity of Federal inspection of meat food and poultry products exceeds that which FSIS should consider or deem necessary under these statutes. During the period of experimentation, the frequency of government inspection at some official establishments is being reduced. To the extent that this or other conditions and methods of inspection coverage are identified as conflicting with current provisions of the regulations, such

provisions are to be waived for the period of experimentation.

FSIS has reviewed the information, views, and arguments submitted during the comment period and is now publishing a final rule. Except for a clarification in wording, the provisions of this final rule do not differ from those of the iterim rule.

FSIS now anticipates publication of a proposal to amend the Federal meat and the poultry products inspection regulations to include the new and revised provisions needed for full implementation of a DI system in the near future. The provisions for experimentation set forth herein will be rescinded upon completion of that rulemaking, unless the experimentation period has been terminated earlier.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Judith A. Segal, Director, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6525.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Effect on Small Entities

The Administrator, FSIS, has determined that this final rule is not a major rule under Executive Order 12291. It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator also has determined that this action will not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*).

The basis for these determinations includes the fact that waiver of certain provisions of the regulations and other aspects of this experimentation affect only a limited number of processing establishments subject to inspection under the FMIA and/or the PPIA for a limited period. Any economic benefits which might indirectly result from inclusion in pilot testing (e.g., reduction in payments for inspection program employees working overtime) are relatively small and affect only a portion of the establishments in which pilot tests are conducted, and selecting all establishments within a designated site that are found to satisfy the establishment performance criteria is further reducing the opportunity for any adverse effect on competition. Both the number of establishments selected and the length of time during which they are included in a pilot test of DI procedures is not being extended beyond that which is needed to test the program variables under consideration in establishments with different characteristics. FSIS selected only 14 establishments initially and plans to select not more than about 200 in all, or approximately 3 percent of the federally inspected establishments that will be subject to the fully implemented DI system. Moreover, the Agency is conducting pilot testing in most establishments for only 3 to 6 months, with termination of the experimentation period expected by the end of the spring of 1988. As particular pilot tests are ended, the Agency returns to pre-experimentation conditions and methods of inspection coverage until full implementation of the DI system; at that time, all establishments (including those previously selected for pilot testing) will be evaluated.

Background

The Secretary of Agriculture's duties include implementation of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to prevent the preparation or processing and distribution of meat, meat food products, and poultry products which are adulterated or misbranded or not properly marked, labeled, and packaged (21 U.S.C. 453 (g) and (h), 457, 458, 601 (m) and (n), 607, and 610). Responsibility for exercising the functions of the Secretary contained in the FMIA and PPIA has been delegated to the Administrator, FSIS (7 CFR 2.17(g) and 2.55(a)(2)). Among those functions are administration of the inspection requirements for meat food and poultry products and sanitation practices in establishments preparing or processing such products for commerce or otherwise subject to inspection under the FMIA or PPIA (21 U.S.C. 455, 456, 605, 606, and 608) and the issuance of rules and regulations executing provisions of these Acts (21 U.S.C. 463(b) and 621).

Late last year the Congress of the United States amended the inspection requirements for meat food products in section 6 of the FMIA (21 U.S.C. 606). Pursuant to the Processed Products Inspection Improvement Act of 1986, Title IV of the Futures Trading Act of 1986 (FTA) (Pub. L. 99–641), rather than requiring the Secretary to cause inspectors appointed for that purpose to make "an examination and inspection of all meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment," such examination and inspection is to be:

> conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate. . . [FTA, section 403(a)].

Three such factors are specified in the statute: the nature and frequency of processing operations at an establishment, the adequacy and reliability of the processing controls and sanitary procedures at an establishment, and the history of compliance with inspection requirements in effect under the FMIA by the operator of an establishment or anyone responsibly connected with the business (i.e., any partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity) that operates that establishment.

By so amending the FMIA, Congress authorized the Department, for a 6-year period,* to base the frequency with which and the manner in which meat food products are examined and inspected by program employees on considerations relevant to the effective regulation of meat food products and the protection of the public health and welfare. The legislation also reflects Congressional recognition that full implementation of a new system of government inspection of post-slaughter processing operations will take time: Title IV and the amendments made thereby became effective on the date of enactment (November 10, 1986), except that sections 6, 9, and 21 of the FMIA (21 U.S.C. 606, 609, and 621), as in effect immediately before that date, "apply with respect to establishments until the Secretary . . . first issues rules and regulations to implement the amendments made by section 403(a)" (FTA, section 408). This rulemaking has initiated implementation of those amendments; however, it is only the first step in a process intended to assure an orderly transition to the "discretionary inspection" (DI) system mandated by the recent amendments to the FMIA.

*Not later than 6 years after the date of enactment, Congress is to evaluate the operation and effects of the amendments made by section 403 of the FTA for the purpose of determining whether to extend or modify the operation of such amendments and enact such legislation as may be necessary to efficiently and effectively carry out the FMIA. (FTA section 407).

This rulemaking also has initiated changes that will result in the institution of a DI system for operations processing products from poultry carcasses that have passed post mortem inspection. The PPIA authorizes the Department to vary the frequency and the manner of government inspection in establishments conducting post-slaughter and evisceration processing of poultry products based on effective regulation and public protection considerations. In particular, section 6(b) (21 U.S.C. 455(b)) requires the Secretary to cause government inspectors to make "post mortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment processing such poultry or poultry products for commerce or otherwise subject to inspection. . ."

The Administrator of FSIS now believes that the frequency and manner of reinspection by program employees of poultry products made from poultry previously slaughtered and eviscerated and found to be not adulterated that is "deem[ed] necessary" should be varied, taking into account the same factors as those considered appropriate under the amended FMIA. To date, however, the rules and regulations and other aspects of inspection coverage have been basically comparable to those prescribed pursuant to the narrower pre-amendment authority in the FMIA. Therefore, exercising the authority to implement a DI system of inspection presents orderly transition concerns under the PPIA as well.

The Department supported the 1986 amendments to the FMIA, as well as administering the PPIA to institute the same approach to the inspection of comparable processing operations, because it believes that the efficiency and effectiveness of the meat and poultry inspection program in utilizing available resources to maximize the level of compliance with regulatory requirements, and thus achievement of the purposes of the FMIA and PPIA (see 21 U.S.C. 451 and 602 and FTA, section 402), can be improved by adjusting the frequency and the manner of government inspection. However, before modifying the inspection system as a whole and fully implementing a DI system, rules regarding the frequency and the manner of government inspection should be tested in order to assess their adequacy and appropriateness and thereby protect the integrity and effectiveness of the inspection program.

In particular, the Administrator of FSIS concluded that procedures for determining whether and, if so, to what extent the intensity of inspection coverage in some processing establishments exceeds that which should be considered or deemed necessary under the FMIA, as amended (21 U.S.C. 606), or the PPIA (21 U.S.C. 455) and for designing the conditions and methods of inspection coverage in such establishments should be tested in a small-scale, experimental setting in order to obtain sufficient information on which to base final amendments to varous portions of the Federal meat inspection and the poultry products inspection regulations. Therefore, the first rules and regulations issued in implementing the amendments made by section 403(a) of the FTA to section 6 of the FMIA (21 U.S.C. 606) and instituting a comparable DI system under the PPIA consisted of provisions for conducting pilot tests of such DI system in establishments subject to inspection under the FMIA (9 CFR 303.2) or the PPIA (9 CFR 381.3(c)–(e)).

The Administrator also concluded that the Federal meat inspection regulations should address the waiver for limited periods of provisions of those regulations to provide for situations in which alternative courses of action are appropriate and do not conflict with either the purposes or the provisions of the statute. In particular, the Administrator determined that, despite potential or actual conflicts with provisions of the regulations, such alternative courses of action should be pursued in administering the FMIA in order to permit (1) appropriate and necessary action in the event of a public health emergency and (2) experimentation so that new procedures, equipment, and/or processing techniques may be tested to facilitate definite improvements. In both of these classes of cases, the waiver decision reflects a judgment that certain provisions of the regulations as applied in specific situations should be temporarily suspended in order to achieve the purposes of the FMIA and that the alternative course of action pursued during such a limited period is not inconsistent with FMIA provisions.

The inclusion of such a rule in the Federal meat inspection regulations (9 CFR 303.1(g)) specified Agency policy for carrying out its statutory responsibilities and conducting the inspection program. The poultry products inspection regulations already included such a rule (9 CFR 381.3(b)). However, the emergency situations provided for in the poultry products inspection regulations were limited to those that are "national" in scope. Since such waivers also may better enable FSIS to take appropriate and necessary action in response to an emergency in a smaller geographic area and the focus of concern here is assuring adequate public health protection, the Administrator determined that the words "public health" should be substituted for "national" in § 381.3(b) of the regulations (9 CFR 381.3(b)).

Nineteen submissions (17 written comments and 2 oral presentations) were received during the 30 days following publication of the interim final rule. (Two additional persons subsequently submitted comments that include views already expressed by others referred to herein.) Comments were submitted by 9 individuals, 3 of whom further identified themselves (1 as a concerned citizen who formerly worked in a plant that manufactured processed meat products, 1 as a consumer, and 1 as a USDA food inspector who has worked in packing plants). Comments also were submitted on behalf of food inspectors by their union representative and by a United States Senator, a State department of agriculture, and 7 industry members (1 processing company, 4 trade associations of meat packers, processors, and/or purveyors, and 2 trade associations of food processing companies).

Comments from individuals, the food inspectors union, and the Senator expressed opposition to the interim final rule, to changing the inspection system, and/or to a DI system. Comments from the State department of agriculture and industry members expressed support for the discretionary inspection concept and/or for implementation of a DI system; 7 of these commenters addressed the interim final rule, and 5 of them expressed views or concerns about features of the anticipated DI system or the implementing regulations.

FSIS wishes to point out that the March 30 notice requested comments concerning the interim final rule and stated that interested members of the public will have an opportunity to comment on the design of the DI system and specific proposed regulatory changes when the Agency proposes the regulations needed for full implementation of a DI system (52 FR 10028). Nevertheless, a number of commenters addressed issues involved in changing to a DI system, including the types of regulatory provisions and Agency decisionmaking believed to be appropriate for full implementation of a DI system, rather than or in addition to the interim final rule. FSIS has reviewed all of the comments submitted, but its consideration of those that go beyond the question at hand—whether any changes should be made to the interim final rule (52 FR 10028)—has been limited. As indicated in the March 30 notice, FSIS is conducting pilot testing in order to obtain additional information before proposing final amendments to the Federal meat and the poultry products inspection regulations and to provide a meaningful opportunity to the public to participate in a rulemaking to consider the new and revised provisions needed for full implementation of a DI system (52 FR 10030, 10031). FSIS has not yet reached conclusions on issues such as whether or not various criteria for evaluating the performance of establishments should be further refined or supplemented before proposing their application to all establishments conducting post-slaughter preparation of meat food products and/or post-slaughter and evisceration processing of poultry products.

Of the commenters expressing opposition, only 3 addressed the interim final rule, and they also are against changing to a DI system. Two of these commenters contended that FSIS is proposing to lower the standards of inspection and will do so on a permanent basis, not just temporarily, and one of them feels the proposal to experiment with reducing the frequency of inspection of meat and poultry products will jeopardize the products' wholesomeness. Both basically view the inspection laws as addressing "Dollars versus public safety" concerns that have not changed. The third opposes suspension of the regulations because consumers will think that products bearing the inspection legend have been inspected when they have been only monitored. This commenter contended that the inspection program for poultry has become a disaster and DI will lead to the same in processing if not worse, questioned how food inspectors can insure that processing plants are using inspected meats and poultry products when they no longer get daily inspection, and called for a change of direction at the Washington level to make an effective inspection program the first priority.

Other commenters opposing changes in the system of government inspection expressed similar views and concerns. They believe that plants will not comply with sanitation or product requirements if inspectors are not present or the frequency of government inspection is reduced, that most plants cannot be trusted to take responsibility for some of their own inspection since the companies' objective is making a profit, that industry is going to be permitted to regulate itself, that FSIS is not or will not be adequately protecting consumers, and/or that an increase in foodborne illnesses may or will result from implementation of DI, with 1 predicting that DI will result in an annual economic effect of over $100 million due to increased food poisoning-related medical bills. In criticizing current FSIS enforcement and the 1986 law amending the FMIA or in questioning cutting back on inspection activities and asking that the DI system be reevaluated, two of these commenters cited figures on salmonella in poultry and annual rates of foodborne illness and deaths. One of them also referred to an assurance, given to him and another Senator by the Administrator, that passage of the bill to amend the FMIA would not result in involuntary reassignments of meat inspectors and requested information on inspector employment and steps intended to be taken under the DI system to ensure full and adequate inspection of all meat and poultry. In addition, 1 commenter took the position that DI should not interfere with inspector overtime: inspectors working over 8 hours should be compensated and plants working over 8 hours a shift should be charged.

Of the commenters favoring DI, 6 expressed support for FSIS experimentation under the interim final rule. FSIS's action was supported as a first step approach to implement a DI system, an initiative to test the procedures and protocol for implementing provisions of the 1986 law amending the FMIA, moving forward in a timely manner on the issue, or utilizing a trial period to gain some practical experience in DI so that final regulations will offer maximum protection of the food supply at a minimum burden to industry. One commenter stated general support for the interim final rule and another fully supported the procedures outlined therein, believing this to be a logical first step and information-gathering process in line with implementation of a DI program. Five of these commenters, all trade associations, indicated interest in assisting or working with FSIS during implementation of a DI system. One of them also commended FSIS for the recent finalization of comprehensive canning regulations, which it believed will serve as a very strong foundation in building a DI program for this industry segment, and encouraged the inclusion of canning establishment coverage in the current experimentation program. Another recommended including several State inspected processing operations in the pilot study and soliciting State officials' cooperation and support to make the pilot program more meaningful because of the anticipated ramifications and impact on inspection frequency determinations for such operations.

Commenters indicated that they favor DI in order to modernize the inspection program, because the processor bears the burden of complying with the Department's rules and regulations, or as permitting the utilization of inspection resources where they are most needed, more efficient and cost-decreasing usage of available inspection personnel nationwide, or Agency and industry realization of production efficiencies from sources such as expanded operating hours and a lessened need to incur overtime inspection costs. One commenter believes a DI program is feasible and cost effective for canning and freezing operations because processing operations and product safety requirements are the same whether or not products contain meat or poultry ingredients. Another believes that by reducing overtime costs a DI program should make small meat packers more cost competitive in the marketplace, thereby enabling them to modernize and improve product quality.

Aspects or provisions of the interim final rule were critiqued by 4 of the commenters favoring DI. As regards evaluation of the performance of establishments (9 CFR 303.2 (b)(1) and (c)(1) and 381.3 (d)(1) and (e)(1)), 1 commenter feels that for a corporation with multiple domestic processing establishments, the evaluation concerning compliance information and competency of those conducting the operation should be applied to the total corporation rather than to individual plant sites, and that such a change would be in direct cooperation with this company's approach to centralized Quality Assurance. This commenter also expressed the view that a company's ability to respond to and its manner of correcting noncompliance situations are more critical in evaluating an establishment's performance than the 10-year record of noncompliance criterion. Another commenter took the position that the Department seems to be placing undue emphasis on compliance history elements that may be outdated and may not necessarily portray a proper picture of existing conditions (which is what the Department should primarily evaluate) because management changes, application of tighter controls, or correction of improper FSIS inspection procedures erroneously pointing to noncompliance could negate the validity of past records. This commenter believes that decisions concerning the frequency, type, and intensity of inspection should be based primarily on the adequacy of processing controls in the establishment to assure production of safe, wholesome, and properly labeled products and that the application of proper controls demonstrates management commitment to assure regulatory compliance.

In addition, 2 commenters characterized criteria for evaluating an establishment's performance, particularly the management competence factor and the substantial and recent noncompliance criterion (9 CFR 303.2 (b)(1)(ii) and (c)(1)(i) and 381.3 (d)(1)(ii) and (e)(1)(i)), as subjective. One of them suggested that more objective criteria, including the health risk of the operation, be used in determining "eligibility" for DI and contended that the plant's processing controls should be the most important factor in such a determination and that the adequacy of such controls should outweigh the more subjective compliance and management attitudes factors. The other requested that FSIS develop an objective profile of its intended "disqualifiers" and consider whether an official warning letter for a minor or technical FMIA violation constitutes such documented noncompliance. One commenter also noted that their initial evaluations seem to indicate the "screening process" is more complex than necessary and cautioned the Department to avoid creating an overly restrictive, cumbersome, bureaucratic maze.

As regards determinations involving the characteristics of establishments (9 CFR 303.2 (b)(2) and (c)(2)(i) and 381.3 (d)(2) and (e)(2)(i)), 1 commenter took issue with FSIS Directive 1030.2, which ranks pizza assembly as "medium" complexity when meat components are bought from sources outside the plant. This commenter feels that such a classification is unjustified, and at odds with a 1983 staff report, and suggested that pizza assembly establishments be reclassified as "simple" processing because their handling of meat is limited to slicing already inspected meat and placing it on the product and this is analogous to operations FSIS classifies as "simple".

The submissions from 3 of these commenters and 2 others favoring DI also included views and concerns about full implementation of a DI system by the Department, some of which are similar to comments on the interim final rule. To 1 commenter, a crucial concern is that decisions be made in an objective manner and be based on plant performance criteria that evolve from considering critical public health risks, uninfluenced by unrelated matters. A second hopes and expects that the final DI regulation will be more detailed than the interim final rule and is especially interested in the type of inspection to be conducted under the DI system (e.g., the types and frequency of tests and the composition of inspection teams). One commenter foresees the likelihood that initial implementing rules will require modification, urges the Department to conduct another rulemaking before full implementation, and views industry input as necessary to assure adequate program testing and review. According to this commenter, demonstrated controls are in place in plants with approved total quality control systems and other plants should be required to demonstrate their in-house control programs to the Department, with an on-site assessment, in order to be considered for "periodic inspection". According to this commenter, demonstration of processing control should be limited to items directly related to product safety, adulteration, and misbranding. Another commenter hopes that FSIS will not make total quality programs a prerequisite for a lesser degree of inspectional presence because this would result in the possibility of other plants continually incurring overtime inspection costs, despite a compliance history warranting a lesser degree of physical inspector presence, which would tend to put the smaller packer at a disadvantage.

As regards establishment evaluations, one commenter favors addressing the nature and frequency of inspection as a function of processing controls, taking the position that such controls should be adequate to meet the complexity, volume, and size of the operations. According to this commenter, plant initiated actions to correct deficiencies are part of any praoperly designed control program and isolated observations of noncompliance may not adequately describe overall conditions; the Department should clearly identify the specific criteria necessary to disqualify a plant for periodic inspection and verifiable noncompliance instances should be carefully documentd before a plant is considered "ineligible". Another commenter took the position that those establishments considered and "rejected" for DI by the Agency should be provided with a notice, since rejection may have adverse economic and/or competitive consequences, and requested that the regulations include a notice which specifies the issues on which the firm did not meet the qualifying criteria and provides an opportunity for appeal.

FSIS's consideration of the comments received indicates that the scope and purpose of the experimentation period and the anticipated changes in the Federal inspection system are not clear to some members of the public. First, the only establishments affected by this rule are ones in which meat food products and/or poultry products are made from livestock previously slaughtered and/or poultry previously slaughtered and eviscerated in official establishments (9 CFR 303.2(a) and 381.3(c)). When fully implemented, the DI system will apply to all establishments preparing or processing such products, but not to livestock slaughter or poultry slaughter and evisceration operations in packing and other official establishments. The system of ante- and post-mortem inspection is not being changed (see 21 U.S.C. 455 and 603–605).

Second, issues that concern a number of commenters have already been considered by Congress during its deliberations on the 1986 amendments to the FMIA. Those deliberations resulted in amendments to the inspection requirements for meat food products and a recognition of the Department's authority under the PPIA to institute a comparable system for poultry products processed beyond slaughter and evisceration. Congress concluded (FTA, section 402), and FSIS agrees, that the 1986 amendments further effective government regulation of processed products and protection of the health and welfare of consumers (21 U.S.C. 602).

Third, the primary change called for under the anticipated system of inspection is the exercise of greater discretion by the Department in utilizing inspection program resources (21 U.S.C. 455(b) and 606(a)(2)). The responsibility of regulated industry members to prepare or process products only in compliance with statutory requirements and not to do business in adulterated or misbranded products or products required to be inspected unless they have been inspected and passed (21 U.S.C. 458(a) and 610) is unchanged. The standards for determining if product is adulterated or misbranded (21 U.S.C. 453((g) and (h) and 601 (m) and (n)), including the requirement that products bear an inspection legend (21 U.S.C. 453(h)(12) and 601(n)(12)), also are unchanged.

Thus, the fundamental task for FSIS in implementing a DI system is to decide how best to manage available program resources to maximize compliance with sanitation and product requirements under the FMIA or the PPIA in federally inspected establishments preparing meat food products and/or processing poultry products beyond slaughter and evisceration. To date, FSIS has focused on the procedures to be used by the Agency in determining the frequency and manner of government inspection under a DI system, particularly whether and, if so, to what extent the intensity of inspection coverage exceeds that which FSIS should consider or deem necessary. Inherent in such determinations is the exercise of judgment by FSIS. The factors appropriate for consideration in a DI system, including those specified by Congress (21 U.S.C. 602(a)(2)), are not precise measures to be applied in a rote manner. The FMIA and PPIA commit determinations about the frequency and manner of government inspection of meat food products and reinspection of poultry products to the Department's discretion.

The criteria specified in the interim final rule for use during the period of experimentation indicate the types of decisions that the Agency must make under a DI system. Among other things, the provisions call for establishment-by-establishment evaluations of performance and characteristics (9 CFR 303.2(b) and 381.3(d)) because Congress has directed that the situations in particular establishments preparing meat food products be taken into account (21 U.S.C. 602(a)(2)) and because FSIS believes that the conditions and methods of its inspection coverage should reflect the particular regulatory situation at an establishment. Similarly, while FSIS believes that the procedures used in an establishment to control the production process, environment, and resulting product are an important component of the performance evaluation (9 CFR 303.2(b)(1)(iii) and 381.3(d)(1)(iii)), their adequacy and reliability depend in part on the competence of establishment management (9 CFR 303.2(b)(1)(ii) and 381.3(d)(1)(ii)). Additionally, compliance history (9 CFR 303.2(b)(1)(i) and 381.3(d)(1)(i)) is a factor that should be considered in making a predictive judgment about the probability of future noncompliance (9 CFR 303.2(c)(1) and 381.3(e)(1)). (See 21 U.S.C. 606(a)(2) (B) and (C).) Moreover, the criteria in these provisions denote the Agency's intention to consider corrective actions and other responses to establishment deficiencies and noncompliance with applicable regulatory requirements (including, but not limited to, those involving critical public health risks) by taking into account the demonstrated ability and commitment of management (9 CFR 303.2(b)(1)(ii) (B) and (C) and 381.3(d)(1)(ii) (B) and (C)) and both the nature and frequency of any documented instances of noncompliance (9 CFR 303.2(c)(1)(i) and 381.3(e)(1)(i)).

Of the establishments initially selected for pilot testing, one prepares canned products. As testing proceeds, FSIS anticipates that additional establishments with canning operations will be identified for review and, if found by the Agency to satisfy its selection criteria, included in pilot tests. While institution of a DI system of Federal inspection may well have ramifications for State inspection programs, this period of experimentation is being conducted pursuant to the Federal meat and the poultry products inspection regulations to initiate implementation of amendments to the FMIA and to exercise existing authority under the PPIA. Therefore, only federally inspected establishments have been or will be identified for review.

During the period of experimentation, FSIS is using the assessment of establishment performance in selecting establishments for inclusion in pilot tests, and a focus of that testing is reducing the frequency of inspection by meat and poultry inspection program employees. However, as indicated above, when fully implemented, the DI system will apply to all establishments preparing meat food products and/or processing poultry products beyond slaughter and evisceration. At that time, FSIS will, in accordance with criteria developed after further rulemaking, evaluate all such establishments in order to make determinations about the frequency and the manner of government inspection. Those criteria will not be used to specify classes of establishments. (I.e., FSIS will not be "reject[ing]" establishments or classifying them as "ineligible".) Instead, the objective will be to determine the conditions and methods of inspection coverage that are appropriate in the circumstances presented, and at a given establishment, such conditions and methods might include various modifications of previous inspection coverage.

As information is obtained from pilot testing and existing regulations are reviewed, FSIS is considering the range of regulatory issues presented by full implementation of a DI system. These issues include concerns of some commenters, such as compliance with the requirement that products be prepared or processed only from livestock previously slaughtered and/or poultry previously slaughtered and eviscerated in official establishments and the appropriate categorization of processing operations by complexity. FSIS has concluded, however, that except for the clarification in wording discussed below, the provisions of the interim final rule should not be changed. The Agency encourages these commenters and other interested members of the public to participate in the upcoming rulemaking on the new and revised provisions needed for full implementation of DI system.

Provisions of the Final Rule

The provisions in this final rule include the factors that appear appropriate for consideration in assessing the performance of an establishment to determine whether the intensity of inspection coverage can be reduced while continuing to assure effective regulation of products and protection of the public health and welfare (9 CFR 303.2(b)(1) and 381.3(d)(1)), as well as the factors that appear appropriate for consideration in assessing the characteristics of an establishment on which to base the level of Federal inspection and other conditions and methods of government inspection during such experimentation (9 CFR 303.2(b)(2) and 381.3(d)(2)). For purposes of both meat food product and poultry product inspection, criteria are specified to take into account the factors included in section 6(a)(2) of the amended FMIA (21 U.S.C. 606(a)(2); section 403(a) of the FTA): Nature and frequency of processing operations (9 CFR 303.2(b)(2) and 381.3(d)(2)), adequacy and reliability of processing controls and sanitary procedures (9 CFR 303.2(b)(1) (ii) and (iii) and 381.3(d)(1) (ii) and (iii)), and history of compliance with inspection requirements (9 CFR 303.2(b)(1)(i) and 381.3(d)(1)(i)).

FSIS is using the information being obtained during the experimentation period to decide whether the criteria set forth in these provisions should be further refined or supplemented before their application to all establishments conducting post-slaughter preparation of meat food products and/or post-slaughter and evisceration processing of poultry products is proposed as part of the upcoming rulemaking on a proposal to amend the Federal meat inspection regulations and the poultry products inspection regulations to include the new and revised provisions needed for full implementation of a DI system. FSIS currently anticipates completion of that rulemaking by the end of the spring of 1988. The final rule so amending the regulations also will rescind the provisions for experimentation with DI procedures set forth herein, unless such experimentation period has been terminated earlier.

FSIS is selecting establishments for inclusion in a pilot test from those the Administrator identifies for review (9 CFR 303.2(a) and 381.3(c)). The Agency expects that the number of establishments selected for pilot tests may increase from the initial group of 14 to as many as 200 as groups of establishments in new, limited geographical sites are phased in over the course of the experimentation period. Such sites are being designated on the basis of their suitability for generating information to satisfy evaluation needs. The length of time during which establishments are included in a pilot test is being varied depending on the testing involved and is not expected to exceed 3 to 6 months in most establishments.

An establishment so identified may be selected for inclusion in the pilot testing of procedures for reducing the intensity of inspection coverage if, and only if, evaluation of the performance of the establishment (1) reveals, in records compiled no earlier than 10 years before, no documented instances of substantial and recent noncompliance with applicable regulatory requirements and (2) evidences the competence and control procedures needed to assure and monitor compliance with applicable regulatory requirements (9 CFR 303.2(c)(1) and 381.3(e)(1)). The "substantial and recent" criterion is intended to assure that in assessing compliance history (9 CFR 303.2(b)(1)(i) and 381.3(d)(1)(i)), both the nature and frequency of noncompliance with process, environment, and/or product requirements are taken into account for an appropriate length of time. Thus, noncompliance is regarded as substantial when, for example, it involves the preparation of adulterated product that could pose a serious public health threat if distributed to consumers or recurring failures that could be considered indicative of a lack of regard for the public health or welfare; and, within the 10-year time limit on record documentation, the more substantial the violation, the longer it is to be regarded as sufficiently recent for consideration. The second performance evaluation criterion reflects the assessment of both management's knowledge of appropriate manufacturing practices and applicable regulatory requirements, demonstrated ability to apply that knowledge in a timely and consistent manner, and commitment to correcting deficiencies noted by inspection program employees and otherwise assuring compliance with applicable regulatory requirements (9 CFR 303.2(b)(1)(ii) and 381.3(d)(1)(ii)) and the procedures used to control the production process, environment, and resulting product in order to assure and monitor compliance with requirements of the FMIA or PPIA and rules and regulations promulgated thereunder (9 CFR 303.2(b)(1)(iii) and 381.3(d)(1)(iii)). The objective is to include an establishment in pilot testing only if there are adequate indications that the probability of future noncompliance at such establishment is low.

In any establishment included in such a pilot test, during experimentation the conditions and methods of inspection coverage of operations other than the slaughter of livestock or the slaughter and evisceration of poultry, including the frequency of government inspection, are being determined by the inspection program based on (1) an evaluation of the characteristics of the particular establishment, (2) the significance of potential health consequences of noncompliance, and (3) the availability of meat and poultry inspection program employees (referred to as "Program" and "Inspection Service" employees in the Federal meat inspection and the poultry products inspection regulations, respectively) (9 CFR 303.2(c)(2)(i) and 381.3(e)(2)(i)). Drawing upon its experience in regulating a broad range of establishments with differing characteristics and allocating inspection program resources, FSIS developed tentative guidelines for use in making these determinations during pilot testing. Thus, for example, in assessing processing operation complexity (9 CFR 303.2(b)(2)(i) and 381.3(d)(2)(i)), FSIS is categorizing operations as involving product preparation or processing that is "simple", "medium", or "complex" by applying Directive 1030.2 (Documentation of Processing and Combination Assignments, 4/22/85, which is available for public inspection and copying in the Policy Office). FSIS also is utilizing a three category approach in assessing certain other establishment characteristics (9 CFR 303.2(b)(2) (iii), (iv), and (vi) and 381.3(d)(2) (iii), (iv), and (vi)): production volume (highest total product volume during any quarter within the preceding year as less than 60,000; 60,000 to 1,000,000; or more than 1,000,000 pounds), establishment size (less than 12,000; 12,000 to 80,000; or more than 80,000 square feet), and the scope of any livestock slaughter or poultry slaughter and evisceration operations (none, part time, or full time) also being conducted (but to which the DI system will not apply) at an establishment which makes meat food products and/or makes poultry products that are processed further (i.e., a "combination" establishment).

The Federal meat inspection regulations (9 CFR Chapter III, Subchapter A) and the poultry products inspection regulations (9 CFR Part 381) will continue to apply to establishments in which FSIS is pilot testing except to the extent that the frequency of Federal inspection or other conditions and methods of inspection coverage determined to be appropriate for the period of experimentation are identified as conflicting with provisions of the regulations (9 CFR 303.2(c)(2)(ii) and 381.3(e)(2)(ii)). To that extent, the Administrator will waive such provisions for the period of experimentation, in accordance with §§ 303.1(g) and 381.3(b) of the regulations (9 CFR 303.1(g) and 381.3(b)), which set forth Agency policy as to when the temporary suspension of provisions of the regulations comports with its responsibilities in administering the FMIA and the PPIA. Consistent with that policy, any such waivers permit the testing of new procedures that are expected to facilitate definite improvements and do not conflict with statutory purposes or provisions.

Finally, FSIS is repeating the words "frequency of" before the second reference to "Federal inspection" in §§ 303.2(c)(2)(i) and 381.3(e)(2)(i) of the regulations (9 CFR 303.2(c)(2)(i) and 381.3(e)(2)(i)), consistent with the opening phrase of these provisions. FSIS has concluded that this minor clarification should be made to avoid an inadvertent and potentially confusing shorthand.

As already discussed, this final rule has been in effect for several months on an interim basis. The Agency has determined that it should continue in effect, with the minor change in wording now included for clarification. Therefore, the action taken today is effective upon publication.

List of Subjects

9 CFR Part 303

Meat inspection.

9 CFR Part 381

Poultry products inspection.

On the basis of the foregoing, the Federal meat inspection regulations (Part 303) and the poultry products inspection regulations (Part 381) are amended as follows:

PART 303—[AMENDED]

1. The authority citation for Part 303 is added to read as follows and the authority citation following § 303.1 is removed:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438 (21 U.S.C. 71 *et seq.*, 601 *et seq.*, Pub. L. 99–641, Title IV, 100 Stat. 3556, 3567–72, 33 U.S.C. 466–466k); Pub. L. 96–511; 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*).

2. Section 303.1(g) is revised to read as follows:

§ 303.1 Exemptions.

* * * * *

(g) The Administrator may in specific classes of cases waive for limited periods any provisions of the regulations in this subchapter in order to permit appropriate and necessary action in the event of a public health emergency or to permit experimentation so that new procedures, equipment, and/or processing techniques may be tested to facilitate definite improvements: *Provided*, That such waivers of the provisions of such regulations are not in conflict with the purposes or provisions of the Act.

3. Part 303 is further amended by adding a new § 303.2 to read as follows:

§ 303.2 Experimentation: Intensity of inspection coverage.

(a) Pursuant to the Processed Products Inspection Improvement Act of 1986, Title IV of the Futures Trading Act of 1986 (Pub. L. 99–641), in establishments preparing products at which inspection under the Act and regulations is required, the frequency with which and the manner in which meat food products made from livestock previously slaughtered in official establishments are examined and inspected by Program employees is to be based on considerations relevant to effective regulation of meat food products and protection of the health and welfare of consumers. In order to test procedures for use in making such determinations and, in particular, for determining whether and, is so, to what extent the intensity of inspection coverage exceeds that which should be considered necessary pursuant to section 6 of the Act, as amended by section 403(a) of the Futures Trading Act of 1986, the Administrator is initiating experimentation of a new system of inspection for reviewing the performance of establishments and for designing the supervision and other conditions and methods of inspection coverage. For the period of such experimentation, the Administrator shall identify establishments for review, and the frequency and the manner of inspection by Program employees shall be determined on the basis of the results of those reviews and be otherwise in accordance with this section.

(b) The determinations referred to in paragraph (a) of this section shall be made by the program and shall reflect evaluations of the performance and the characteristics and such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance with applicable regulatory requirements by the person conducting operations at such establishment or by anyone responsibly connected with the business conducting operations at such establishment, as "responsibly connected" is defined in section 401(g) of the Act,

(ii) the competence of the person conducting operations at such establishment, as indicated by:

(A) Knowledge of appropriate manufacturing practices and applicable regulatory requirements,

(B) Demonstrated ability to apply such knowlege in a timely and consistent manner, and

(C) Commitment to correcting deficiencies noted by Program employees and otherwise assuring compliance with applicable regulatory requirements, and

(iii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations promulgated thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration:

(i) The complexity of the processing operation(s) conducted at such establishment,

(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volume of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter operations also are conducted at such establishment,

(v) What, if any, food products not regulated under this Act or the Poultry Products Inspection Act also are prepared at such establishment, and

(vi) The size of such establishment.

(c)(1) For the period of experimentation described in paragraph (a) of this section, the frequency of inspection by Program employees of operations other than slaughter may be reduced in an establishment in which the procedures referred to therein are being tested if and only if the evaluation of the performance of such establishment described in paragraph (b)(1) indicates that there are:

(i) No instances, documented in records compiled no earlier than 10 years before, of substantial and recent noncompliance with applicable regulatory requirements (taking into account both the nature and frequency of any such noncompliance), and

(ii) The competence and control procedures needed to assure and monitor compliance with applicable regulatory requirements.

(2) (i) The frequency of Federal inspection and other conditions and methods of inspection coverage in any establishment in which the frequency of Federal inspection is reduced shall be based on:

(A) The evaluation of the characteristics of such establishment described in paragraph (b)(2) of this section,[1]

(B) The significance of potential public health consequences of noncompliance, and

(C) The availability of Program employees.

(ii) To the extent that such frequency of inspection or other conditions and methods of inspection coverage are identified as conflicting with provisions of the regulations in this subchapter, the Administrator will waive such provisions for the period of experimentation, in accordance with § 303.1(g) of this subchapter.

PART 381—[AMENDED]

4. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

5. Section 381.3(b) is amended by removing the word "national" and inserting, in its place, the words "public health".

6. Section 381.3 is further amended by adding new paragraphs (c) through (e) to read as follows:

[1] These evaluations will be based upon guidelines developed by FSIS and the complexity categorization in FSIS Directive 1030.2 (Documentation of Processing and Combination Assignments, 4/22/85). The guidelines and Directive will be available for public inspection and copying in the Policy Office, Room 3168, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

§ 381.3 Administration.

* * * * *

(c) Pursuant to section 6 of the Act, the Administrator believes that, in establishments processing poultry products at which inspection under the Act and regulations is required, the frequency with which and the manner in which poultry products made from poultry previously slaughtered and eviscerated in official establishments are reinspected by Inspection Service employees should be based on considerations relevant to effective regulation of poultry products and protection of the health and welfare of consumers. In order to test procedures for use in making such determinations and, in particular, for determining whether and, if so, to what extent the intensity of inspection coverage exceeds that which should be deemed necessary pursuant to section 6 of the Act, the Administrator is initiating experimentation of a new system of inspection for reviewing the performance of establishments and for designing the supervision and other conditions and methods of inspection coverage. For the period of such experimentation, the Administrator shall identify establishments for review, and the frequency and the manner of inspection by Inspection Service employees shall be determined on the basis of the results of those reviews and be otherwise in accordance with this section.

(d) The determinations referred to in paragraph (c) of this section shall be made by the Inspection Service and shall reflect evaluations of the performance and the characteristics of such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance with applicable regulatory requirements by the person operating such establishment or by anyone responsibly connected with the business operating such establishment, as "responsibly connected" is defined in section 18(a) of the Act,

(ii) The competence of the person operating such establishment, as indicated by:

(A) Knowledge of appropriate manufacturing practices and applicable regulatory requirements,

(B) Demonstrated ability to apply such knowledge in a timely and consistent manner, and

(C) Commitment to correcting deficiencies noted by Inspection Service employees and otherwise assuring compliance with applicable regulatory requirements, and

(iii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations promulgated thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration:

(i) The complexity of the processing operation(s) conducted at such establishment,

(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volume of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter and evisceration operations also are conducted at such establishment,

(v) What, if any, food products not regulated under this Act or the Federal Meat Inspection Act also are processed at such establishment, and

(vi) The size of such establishment.

(e)(1) For the period of experimentation described in paragraph (c) of this section, the frequency of inspection by Inspection Service employees of operations other than slaughter and evisceration may be reduced in an establishment in which the procedures referred to therein are being tested if and only if the evaluation of the performance of such establishment described in paragraph (d)(1) indicates that there are:

(i) No instances, documented in records compiled no earlier than 10 years before, of substantial and recent noncompliance with applicable regulatory requirements (taking into account both the nature and frequency of any such noncompliance), and

(ii) The competence and control procedures needed to assure and monitor compliance with applicable regulatory requirements.

(2)(i) The frequency of Federal inspection and other conditions and methods of inspection coverage in any establishment in which the frequency of Federal inspection is reduced shall be based on:

(A) The evaluation of the characteristics of such establishment described in paragraph (d)(2) of this section,[1]

(B) The significance of potential public health consequences of noncompliance, and

(C) The availability of Inspection Service employees.

(ii) To the extent that frequency of inspection or other conditions and methods of inspection coverage are identified as conflicting with provisions of the regulations in this part, the Administrator will waive such provisions for the period of experimentation, in accordance with paragraph (b) of this section.

Done at Washington, DC, on December 14, 1987.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-29007 Filed 12-17-87; 8:45 am]

BILLING CODE 3410-DM-M

[1] These evaluations will be based upon guidelines developed by FSIS and the complexity categorization in FSIS Directive 1030.2 (Documentation of Processing and Combination Assignments, 4/22/85). The guidelines and Directive will be available for public inspection and copying in the Policy Office, Room 3168, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40 and 70

Domestic Licensing of Byproduct, Source, and Special Nuclear Material; Revision of List of Non-Agreement States in Region III

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to non-Agreement States in Region III to reflect the removal of Illinois and Iowa from its list of non-Agreement States because they have become Agreement States. The amendments are being made to inform affected licensees and members of the public of the change in status of these two States.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7211.

SUPPLEMENTARY INFORMATION: In January 1986, Iowa became an Agreement State and in July 1987, Illinois became the NRC's most recent Agreement State. Inadvertently overlooked when the two States became Agreement States were several places in the NRC's regulations that continued to refer to Illinois and Iowa as non-

Agreement States in NRC's Region III. These amendments correct this oversight.

Because these amendments deal solely with the status of Agreement and non-Agreement States, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). These amendments are effective upon publication in the **Federal Register.** Good cause exists to dispense with the usual 30-day delay in the effective date, because the amendments are of a minor and administrative nature, dealing with the change in the status of these two States.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

10 CFR Part 30

Byproduct material, Governmental contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear materials.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 40, and 70.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 30.6, paragraph (b)(2)(iii) is revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) * * *

(2) * * *

(iii) *Region III.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region III non-Agreement States: Indiana, Michigan, Minnesota, Minnesota, Missouri, Ohio, and Wisconsin. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In § 40.5, paragraph (b)(2)(iii) is revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) * * *

(2) * * *

(iii) *Region III.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region III non-Agreement States: Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

6. In § 70.5, paragraph (b)(2)(iii) is revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) * * *

(2) * * *

(iii) *Region III.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region III non-Agreement States: Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

* * * * *

Dated at Bethesda, Maryland, this 8th day of December 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 87-29087 Filed 12-17-87; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Director Compensation; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting a typographical error in the authority citation for the final rule relating to the compensation of members of Farm Credit System district boards. The final rule implements Farm Credit Administration Order No. 866 and § 5.5 of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2226, as the statute authorizes the FCA to approve the compensation paid to district directors for undertaking certain functions or activities. The final rule appeared in the **Federal Register** on September 25, 1987 (52 FR 36012).

FOR FURTHER INFORMATION CONTACT: Joanne P. Ongman, Attorney, Office of

General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

PART 611—[CORRECTED]

A technical correction is made to amendatory instruction No. 1 (52 FR 36013, September 25, 1987) to reflect the correct authority citation for Part 611. The corrected amendatory instruction reads as follows:

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, 2252.

Dated: December 15, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-29116 Filed 12-17-87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by I. D. Russell Co. Laboratories. The NADA provides for the safe and effective use of oxytetracycline hydrochloride soluble powder in the drinking water of turkeys. The conditions of use are amended to reflect that they were found to be effective as a result of the National Academy of Sciences/National Research Council (NAS/NRC) evaluation of oxytetracycline.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: I. D. Russell Co. Laboratories, 2463 Harrison, Box 411268, Kansas City, MO 64141, has filed a supplement to NADA 130-435 to provide for the use of oxytetracycline hydrochloride soluble powder in the drinking water of turkeys. The drug is for the control of infectious synovitis caused by: (1) *Mycoplasma synoviae* susceptible to oxytetracycline, (2) the control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline, and (3) in growing turkeys, the control of complicating bacterial organisms associated with bluecomb (transmissible enteritis, coronaviral enteritis) susceptible to oxytetracycline. The supplemental NADA complies with the NAS/NRC evaluation of oxytetracycline hydrochloride soluble powder, which was concurred by FDA (35 FR 7089; May 5, 1970). The suplemental NADA is approved and the regulations are amended in 21 CFR 520.1660d by revising paragraph (e) to reflect the approval and to state those conditions of use which were classified as effective by NAS/NRC.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

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

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

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

2. Section 520.1660d is amended by revising paragraph (e) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

* * * * *

(e) *Conditions of use.* (1) It is used in drinking water as follows:

(i) *Chickens*—(A)(*1*) *Amount per gallon.* 200 to 400 milligrams.

(*2*) *Indications for use.* Control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to oxytetracycline.

(*3*) *Limitations.* Prepare a fresh solution daily. Administer 7 to 14 days. Not to be used for more than 14 consecutive days. Use as sole source of drinking water. Do not use in birds producing eggs for human consumption.

(B)(*1*) *Amount per gallon.* 400 to 800 milligrams.

(*2*) *Indications for use.* Control of chronic respiratory disease (CRD) and air sac infections caused by *Mycoplasma gallisepticum* and *E. coli* susceptible to oxytetracycline; control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline.

(*3*) *Limitations.* Prepare a fresh solution daily. Administer 7 to 14 days. Not to be used for more than 14 consecutive days. Use as sole source of drinking water. Do not use in birds producing eggs for human consumption.

(ii) *Turkeys*—(A)(*1*) *Amount per gallon.* 200 to 400 milligrams.

(*2*) *Indications for use.* Control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline.

(*3*) *Limitations.* Prepare a fresh solution daily. Administer 7 to 14 days. Not to be used for more than 14 consecutive days. Use as sole source of drinking water. Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter.

(B)(*1*) *Amount per gallon.* 400 milligrams.

(*2*) *Indications for use.* Control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to oxytetracycline.

(*3*) *Limitations.* Prepare a fresh solution daily. Administer 7 to 14 days. Not to be used for more than 14 consecutive days. Use as sole source of drinking water. Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter.

(C)(*1*) *Amount.* 25 milligrams per pound of body weight.

(*2*) *Indications for use.* Growing turkeys. Control of complicating bacterial organisms associated with bluecomb (transmissible enteritis, coronaviral enteritis) susceptible to oxytetracycline.

(3) *Limitations.* Prepare a fresh solution daily. Administer 7 to 14 days. Not to be used for more than 14 consecutive days. Use as sole source of drinking water. Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter.

(2) [Reserved]

Dated: December 9, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-29037 Filed 12-17-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Oxytetracycline.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for safe and effective use of a Type C cattle feed manufactured from separately approved lasalocid sodium and oxytetracycline (monoalkyl trimethyl ammonium salt) Type A articles. The feed is used for improved feed efficiency, increased rate of weight gain, and reduction of incidence and severity of liver abscesses in beef cattle fed in confinement for slaughter.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, filed NADA 140-579 providing for use of lasalocid sodium to 10 to 30 grams per ton or 25 to 30 grams per ton in combination with oxytetracycline at 7.5 grams per ton in Type C cattle feeds. Currently approved 15, 20, 33.1, or 50 percent lasalocid Type A articles are combined with 10- or 50-gram-per-pound oxytetracycline(monoalkyl trimethyl ammonium salt) Type A articles to make a Type C cattle feed used for improved feed efficiency, increased rate of weight gain, and reduction of incidence and severity of liver abscesses in beef cattle fed in confinement for slaughter. The NADA is approved and § 558.311(e)(1) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.311 is amended by adding to paragraph (e)(1) in the table a second entry in item (vi) and a second entry in item (vii), to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
		* * * * *		
(vi) * * *	Oxytetracycline 7.5	Cattle: for improved feed efficiency and reduction of incidence and severity of liver abscesses.	In complete feeds, for beef cattle fed in confinement for slaughter; feed continuously at 100 to 360 mg/head/day lasalocid and 75 mg/head/day oxytetracycline. As monoalkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline.	000004
(vii) * * *	Oxytetracycline 7.5	Cattle: for improved feed efficiency, increased rate of weight gain, and reduction of incidence and severity of liver abscesses.	In complete feeds, for beef cattle fed in confinement for slaughter; feed continuously at 250 to 360 mg/head/day lasalocid and 75 mg/head/day oxytetracycline. As monoalkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline.	000004
		* * * * *		

3. § 558.450 *Oxytetracycline* is amended by adding new paragraph (d)(2)(ii), to read as follows:

§ 558.450 Oxytetracycline.

* * * * *

(d) * * *

(2) * * *

(ii) Lasalocid as in § 558.311.

Dated: December 8, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-29036 Filed 12-17-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-265]

Importation of Articles on United States Munitions Import List

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

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR Part 47 to allow the importation of United States (U.S.) manufactured firearm parts into the United States without providing certification and documentation that the parts were not furnished to foreign governments under any foreign assistance or sales program of the United States.

The principal purpose of this change is to conform the definition to the U.S. Munitions Import List which covered firearms as well as all component parts for firearms.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Carmen L. Alston, Bureau of Alcohol, Tobacco and Firearms, Telephone No. (202) 566-7151.

SUPPLEMENTARY INFORMATION:

Background

The Arms Export Control Act (22 U.S.C. 2778(b)(1)) provides that regulations shall be issued to prohibit the return of U.S. manufactured firearms furnished to foreign governments by the United States under the Act or any other foreign assistance or sales program of the United States.

On April 21, 1985, ATF published a final rule (50 FR 14380 (1985)) implementing section 233 of the Trade and Tariff Act of 1984 which amended the Gun Control Act of 1968. The Trade and Tariff Act added a new subsection (e) to 18 U.S.C. 925 allowing federally licensed importers to import certain surplus military firearms, either foreign or U.S. manufactured, classified as curios or relics. In order to implement the addition to the law, ATF required that all importers provide additional documentary evidence, under penalties of perjury, certifying that U.S. manufactured firearms classified as curios or relics had not been furnished to foreign governments under any foreign assistance or sales program of the United States.

Additionally, on October 18, 1985 (50 FR 42157 (1980)), ATF published a final rule revising the definition of the term "Firearms" in 27 CFR Part 47 which implements the importation provisions of the Arms Export Control Act. The principal purpose of this change is to conform the definition to the U.S. Munitions Import List which covered firearms as well as all component parts for firearms. However, this amendment also had the effect of precluding the importation of component parts for firearms of U.S. manufacture prohibited from importation by section 2778(b)(1).

ATF recognized that this amendment posed a needless burden on firearms importers and manufacturers by requiring the additional documentary evidence on U.S. manufactured firearm parts being returned to the United States. In addition, ATF received a petition from the Springfield Armory in Geneseo, Illinois, requesting ATF to exclude component parts of firearms from the additional documentary requirement by removing firearm parts from § 47.57.

Accordingly, this final rule defines "military firearms and ammunition" in 27 CFR 47.57 to exclude component parts for such firearms and ammunition.

Because component parts for firearms and ammunition will continue to be covered by the U.S. Munitions Import List, ATF will continue to control the importation of firearm parts by requiring the submission of an ATF Form 6 Part I (5330.3A), Application and Permit for Importation of Firearms, Ammunition and Implements of War.

Furthermore, applications by licensed importers to import frames or receivers alone of surplus military curio or relic firearms, whether of U.S. or foreign manufacture, will not be approved under 18 U.S.C. 925(e). Surplus military firearms are not classified as curios or relics unless they are assembled in their original military configuration and applications to import such firearms will continue not to be approved.

Administrative Procedure Act

Under § 47.54, the functions conferred under section 38 of the Arms Export Control Act of 1976 are excluded from the operation of Chapter 5 (Administrative Procedure) of Title 5, United States Code, with respect to Rule Making and Adjudicating. Such functions are concerned with "a military or foreign affairs function of the United States." Accordingly, this regulation may be adopted without prior publication of a notice of proposed rulemaking or opportunity for hearing.

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 et seq.) relating to the preparation of a regulatory flexibility analysis are not applicable to this final rule.

Executive Order 12291

This document is not subject to Executive Order 12291 of February 17, 1981 (46 FR 13193 (1981)) because it concerns a military or foreign affairs function of the United States.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget pursuant to 3507 of the Paperwork Reduction Act of 1980 (OMB Control No. 1512-0017).

Drafting Information

The principal author of this final rule is Teri H. Byers, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7602.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

PART 47—[AMENDED]

Paragraph 1. The authority citation for Part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

§ 47.57 [Amended]

Par. 2. Section 47.57 is amended by adding a new paragraph (d) and an OMB Control number to read as follows:

§ 47.57 U.S. military firearms or ammunition.

* * * * *

(d) For the purpose of this section, the term "military firearms and ammunition" includes all firearms and ammunition furnished to foreign governments under a foreign assistance or sales program of the United States as set forth in paragraph (a) of this section. The term does not include component parts of firearms and ammunition.

(Approved by the Office of Management and Budget under OMB Control No. 1512-0017)

Signed: November 18, 1987.

W.T. Drake,

Acting Director.

Approved: December 3, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 87-29040 Filed 12-17-87; 8:45 am]

BILLING CODE 4810-31-M

OFFICE OF INDEPENDENT COUNSEL

28 CFR Ch. VII

Production or Disclosure of Material or Information of the Office of Independent Counsel

AGENCY: Office of Independent Counsel.

ACTION: Final rule.

SUMMARY: On October 29, 1987, the Office of Independent Counsel issued a proposed regulation to amend Title 28 of the Code of Federal Regulations by adding Chapter VII, consisting of Part 700, Subpart A (Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974) and Subpart B (Exemption of the Office of Independent Counsel's Systems of Records Under the Privacy Act.) Subpart A relates to individual access to records pursuant to the Privacy Act and the obligations of the Office of Independent Counsel to assure the security, accuracy and completeness of the records. Subpart B exempts the Office of Independent Counsel's systems of records entitled "General Files System of the Office of Independent Counsel (OIC/001)" and "Freedom of Information Act/Privacy Act Files (OIC/002)." The records contained in these systems relate to official investigations and to internal policy decisions. The exemption is necessary to prevent delay or interference with the Office's ongoing criminal investigation and to protect that investigation. It is also necessary to protect the privacy of third parties and the identities of confidential sources involved in the investigation. The exemption will help the Office's investigation to proceed more expeditiously and effectively.

EFFECTIVE DATE: December 18, 1987.

ADDRESS: Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Pamela Krems, 202-383-8989.

SUPPLEMENTARY INFORMATION: The Office of Independent Counsel operates pursuant to two distinct and separate sources of authority. On December 4, 1986, Attorney General Edwin Meese III filed and application for appointment of an Independent Counsel with the Division for the Purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit. On December 19, 1986, the Special Division of the Court of of Appeals filed an order appointing Lawrence E. Walsh as Independent Counsel in the Iran/Contra matter. Order Appointing Independent Counsel, *In re Oliver L. North, et al.*, Div. No. 86-6 (Dec. 19, 1986).

On March 5, 1987, Attorney General Meese issued a regulation that created an "Office of Independent Counsel: Iran/Contra" and provided that office with the same jurisdiction and powers that it already possessed under the Ethics in Government Act, 28 U.S.C. 591-598, and the December 19, 1986 court order appointing Independent Counsel Walsh. 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987) (to be codified at 28 CFR Parts 600 and 601. The "Office of Independent Counsel" and the "Office of Independent Counsel: Iran/Contra" are in actuality one and the same office. This proposed regulation is issued by Independent Counsel under both grants of authority.

The proposed regulation was published on November 4, 1987 (52 FR 42314) and the public was invited to comment on it. No public comments were received. The final regulation is identical to the proposed regulation.

This order relates primarily to individuals rather than to small business entities. However, as required by the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Office hereby states that this regulation will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 28 CFR Part 700

Privacy.

Dated: December 14, 1987.

Lawrence E. Walsh,

Independent Counsel.

For the reasons set forth in the preamble, and pursuant to the authority vested in me by the Ethics in Government Act, 28 U.S.C. 591-598, the December 19, 1986 Court order, and the authority delegated to me by the Attorney General pursuant to the Attorney General's regulation issued on March 5, 1987, 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987), and 5 U.S.C. 552a, Title 28 of the Code of Federal Regulations is amended by adding Chapter VII—Office of Independent Counsel, consisting of Part 700, to read as follows:

CHAPTER VII—OFFICE OF INDEPENDENT COUNSEL

PART 700—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION OF THE OFFICE OF INDEPENDENT COUNSEL

Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Sec.

Subpart B—Exemption of the Office of Independent Counsel's Systems of Records—Limited Access

Authority Citation: 5 U.S.C. 552a.

Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

§ 700.10 General provisions.

(a) *Purpose and scope.* The subpart contains the regulations of the Office of Independent Counsel implementing the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records that are contained in systems of records maintained by the Office of Independent Counsel and that are retrieved by an individual's name or personal identifier. These regulations set forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him, may request correction of such records, or may seek an accounting of disclosures of such records by the office.

(b) *Transfer of law-enforcement records.* The head of the Office, or his designee, is authorized to make written requests under 5 U.S.C. 552a(b)(7) for transfer of records maintained by other agencies that are necessary to carry out an authorized law-enforcement activity of the Office.

(c) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) "Agency" has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552a(a)(1).

(2) "Record" has the same meaning given in 5 U.S.C. 552(a)(4).

(3) "Request for access" means a request made pursuant to 5 U.S.C. 552a(d)(1).

(4) "Request for correction" means a request made pursuant to 5 U.S.C. 552a(d)(2).

(5) "Request for an accounting" means a request made pursuant to 5 U.S.C. 552a(c)(3).

(6) "Requester" means an individual who makes either a request for access, a request for correction, or a request for an accounting.

(7) "System of records" means a group of any group of any records under the control of the Office from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 700.11 Request for access to records.

(a) *Procedure for making requests for access to records.* An individual may request access to a record about him by appearing in person or by writing the Office. A requester in need of guidance in defining his request may write to the FOIA/PA Officer, Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW, Washington, DC. 20004. Both the envelope and the request itself should be marked: "Privacy Act Request."

(b) *Description of records sought.* A request for access to records must describe the records sought in sufficient detail to enable Office personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the records sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept.

(c) *Agreement to pay fees.* The filing of a request for access to a record under this subpart shall be deemed to constitute an agreement to pay all applicable fees charged under § 700.17 up to $25.00. The Office shall confirm this agreement in its letter of acknowledgment to the requesters. When filing a request, a requester may specifiy a willingness to pay a greater amount, if applicable.

(d) *Verification of identity.* Any individual who submits a request for access to records must verify his identity in one of the following ways, unless the notice published in the **Federal Register** describing the relevant system of records provides otherwise.

(1) Any requester making a request in writing must state in his request his full name, current address, and date and place of birth. In addition, a requester must provide with his request an example of his signature, which shall be notarized. In order to facilitate the identification and location of the requested records, a requester may also, at his option, include in his request his Social Security number.

(2) Any requester submitting a request in person may provide to the Office a form of Official photographic identification, such as a passport or an identification badge. If a requester is unable to produce a form of photographic identification, he may provide to the Office two or more acceptable forms of identification (such as a driver's license or credit card) bearing his name and address.

(e) *Verification of guardianship.* The parent or guardian of a minor (or the guardian of a person judicially determined to be incompetent) who submits a request for access to the records of the minor or incompetent must establish:

(1) His own identity and the identity of the subject of the record, as required in paragraph (d) of this section,

(2) That he is the parent or guardian of the subject of the record, which may be proved by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing the guardianship, and

(3) That he seeks to act on behalf of the subject of the record.

§ 700.12 Responses to requests for access to records.

(a) *Authority to grant or deny requests.* The head of the Office, or his designee, is authorized to grant or deny any request for access to a record.

(b) *Initial action by the Office.* When the Office receives a request for access to a record in its possession, the Office shall promptly determine whether another Government agency is better able to determine whether the record is exempt, to any extent, from access. If the Office determines that it is the agency best able to determine whether the record is exempt, to any extent, from access, then the Office shall respond to the request. If the Office determines that it is not the agency best able to determine whether the record is exempt from access, the Office shall respond to the request, after consulting with the agency best able to determine whether the record is exempt from access. Under ordinary circumstances, the agency that generated or originated a requested record shall be presumed to be the agency best able to determine whether the record is exempt from access. However, nothing in this section shall prohibit the agency that generated or originated a requested record from consulting with the Office, if the agency that generated or originated the requested record determines that the Office has an interest in the requested record or the information contained therein.

(c) *Law-enforcement information.* Whenever a request for access is made for a record containing information that relates to an investigation of a possible violation of criminal law or to a criminal law-enforcement proceeding and that was generated or originated by another agency, the Office shall consult with that other agency, as appropriate.

(d) *Classified information.* Whenever a request for access is made for a record containing information that has been classified, or that may be eligible for classification, by another agency under the provision of Executive Order 12356 or any other Executive order concerning the classification of records, the Office shall refer the responsibilities for responding to the request to the agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by the Office because it contains information classified by another agency, the Office shall refer the responsibility for responding to the request to the agency that classified the underlying information; however, such referral shall extend only to the information classified by the other agency.

(e) *Agreements regarding consultations.* No provision of this section shall preclude formal or informal agreements between the Office and another agency, to eliminate the need for consultations concerning requests or classes of requests.

(f) *Date for determining responsive records.* In determining records responsive to a request for access, the Office ordinarily will include only those records within the Office's possession and control as of the date of its receipt of the request.

§ 700.13 Form and content of Office responses.

(a) *Form of notice granting request for access.* After the Office has made a determination to grant a request for access in whole or in part, the Office shall so notify the requester in writing. The notice shall describe the manner in which access to the record will be granted and shall inform the requester of any fees to be charged in accordance with § 700.17.

(b) *Form of notice denying request for access.* When the Office denies a request for access in whole or in part it shall so notify the requester in writing. The notice shall be signed by the head of the Office, or his designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the Privacy Act exemption or exemptions that the Office has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 700.18(a) and a description of the requirements of that subsection.

(c) *Record cannot be located or has been destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Office shall so notify the requester in writing.

(d) *Medical records.* When an individual requests medical records pertaining to himself that are not otherwise exempt from individual access, the Office may advise the individual that the records will be provided only to a physician, designated by the individual, who requests the records and establishes his identity in writing. The designated physician shall determine which records should be provided to the individual and which records should not be disclosed to the individual because of possible harm to the individual or another person.

§ 700.14 Classified information.

In processing a request for access to a record containing information that is classified or classifiable under Executive Order 12356 or any other Executive order concerning the classification of records, the Office shall review the information to determine whether it warrants classification. Information that does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552a(k)(1). The Office shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure compliance with the provisions of Executive Order 12356.

§ 700.15 Records in exempt systems of records.

(a) *Law-enforcement records exempted under subsections (j)(2) and (k)(2).* Before denying a request by an individual for access to a law-enforcement record that has been exempted from access pursuant to 5 U.S.C. 552a(k)(2), the Office must review the requested record to determine whether information in the record has been used or is being used to deny the individual any right, privilege, or benefit for which he would otherwise be eligible or to which he would otherwise be entitled under federal law. If so, the Office shall notify the requester of the existence of the record and disclose such information to the requester, except to the extent that the information would identify a confidential source. In cases when disclosure of information in a law-enforcement record could reasonably be expected to identify a confidential source, the record shall not be disclosed to the requester unless the Office is able to delete from such information all material that would identify the confidential source.

(b) *Employee background investigations.* When a requester requests access to a record pertaining to a background investigation and the record has been exempted from access pursuant to 5 U.S.C. 552a(k)(5), the record shall not be disclosed to the requester unless the Office is able to delete from such record all information that would identify a confidential source.

§ 700.16 Access to records.

(a) *Manner of access.* The Office, once it has made a determination to grant a request for access, shall grant the requester access to the requested record by—

(1) Providing the requester with a copy of the record or

(2) Making the record available for inspection by the requester at a reasonable time and place.

The Office shall in either case charge the requester applicable fees in accordance with the provisions of § 700.17. If the Office provides access to a record by making the record available for inspection by the requester, the manner of such inspection shall not unreasonably disrupt the operations of the Office.

(b) *Accompanying person.* A requester appearing in person to review his records may be accompanied by another individual of his own choosing. Both the requester and the accompanying person shall be required to sign a form stating that the Office of Independent Counsel is authorized to disclose the record in the presence of both individuals.

§ 700.17 Fees for access to records.

(a) *When charged.* The Office shall charge fees pursuant to 5 U.S.C. 552a(f)(5) for the copying of records to afford access to individuals unless the Office, in its discretion, waives or reduces the fees for good cause shown. The Office shall charge fees only at the rate of $0.10 per page. For materials other than paper copies, the Office may charge the direct costs of reproduction, but only if the requester has been notified of such costs before they are incurred. Fees shall not be charged when they would amount, in the aggregate, for one request or for a series of related requests, to less than $3.00. However, the Office may, in its discretion, increase the amount of this minimum fee.

(b) *Notice of estimated fees in excess of $25.* When the Office determines or estimates that the fees to be charged under this section may amount to more than $25, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fee, unless the requester has indicated in advance his willingness to pay a fee as high as that anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) When the estimated fee exceeds $25 and the Office has so notified the requester, the Office will be deemed not to have received the request for access to records until the requester has agreed to pay the anticipated fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Office personnel with the object of reformulating his request to meet his needs at a lower cost.

(c) *Form of payment.* Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(d) *Advance deposits.* (1) When the estimated fee chargeable under this section exceeds $25, the Office may require a requester to make an advance deposit of 25 percent of the estimated fee or an advance payment of $25, whichever is greater.

(2) When a requester has previously failed to pay a fee charged under this part, the requester must pay the Office the full amount owed and make an advance deposit of the full amount of any estimated fee before the Office shall

be required to process a new or pending request for access from that requester.

§ 700.18 Appeals from denials of access.

(a) *Appeals to Independent Counsel.* When the Office denies in whole or part a request for access to records, the requester may appeal the denial to Independent Counsel within 30 days of his receipt of the notice denying his request. An appeal to Independent Counsel shall be made in writing, addressed to the Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW., Washington, DC 20004. Both the envelope and the letter of appeal itself must be clearly marked: "Privacy Act Appeal."

(b) *Action on appeals.* Unless Independent Counsel otherwise directs, he or his designee shall act on all appeals under this section, except that: A denial of a request for access by Independent Counsel, or his designee, shall constitute the final action of the Office on that request.

(c) *Form of action on appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request for access shall include a brief statement of the reason or reasons for the affirmance, including each Privacy Act exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request for access is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 700.19 Preservation of records.

The Office shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request for access, appeal, or lawsuit under the Act.

§ 700.20 Requests for correction of records.

(a) *How made.* Unless a record is exempted from correction and amendment, an individual may submit a request for correction of a record pertaining to him. A request for correction must be made in writing. The request must identify the particular record in question, state the correction sought, and set forth the justification for the correction. Both the envelope and the request for correction itself must be clearly marked: "Privacy Act Correction Request."

(b) *Initial determination.* Within 10 working days of receiving a request for correction, the Office shall notify the requester whether his request will be granted or denied, in whole or in part. If the Office grants the request for correction in whole or in part, it shall advise the requester of his right to obtain a copy of the corrected record, in releasable form, upon request. If the Office denies the request for correction in whole or in part, it shall notify the requester in writing of the denial. The notice of denial shall state the reason or reasons for the denial and advise the requester of his right to appeal.

(c) *Appeals.* When a request for correction is denied in whole or in part, the requester may appeal the denial to Independent Counsel within 30 days of his receipt of the notice denying his request. An appeal to Independent Counsel shall be made in writing, shall set forth the specific item of information sought to be corrected, and shall include any documentation said to justify the correction. An appeal shall be addressed to the Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW., Washington, DC 20004. Both the envelope and the letter of appeal itself must be clearly marked: "Privacy Act Correction Appeal."

(d) *Determination on appeal.* Independent Counsel, or his designee, shall decide all appeals from denials or requests to correct records. All such appeals shall be decided within 30 working days of receipt of the appeal, unless there is good cause to extend this period. If the denial of a request is affirmed on appeal, the requester shall be so notified in writing and advised of—

(1) The reason or reasons the denial has been affirmed,

(2) The requester's right to file a Statement of Disagreement, as provided in paragraph (e) of this section, and

(3) The requester's right to obtain judicial review of the denial in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the record is located, or the District of Columbia.

If the denial is reversed on appeal, the requester shall be so notified and the request for correction shall be remanded to the Office for processing in accordance with the decision on appeal.

(e) *Statements of disagreement.* A requester whose appeal under this section is denied shall have the right to file a Statement of Disagreement with the Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street, NW., Washington, DC 20004, within 30 days of receiving notice of denial of his appeal. Statements of disagreement may not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for condensation. Upon receipt of a statement of disagreement under this section, Independent Counsel, or his designee, shall have the statement included in the system of records in which the disputed record is maintained and shall have the disputed record marked so as to indicate—

(1) That a statement of disagreement has been filed, and

(2) Where in the system of records the statement of disagreement may be found.

(f) *Notices of correction or disagreement.* Within 30 working days of the correction of a record, the Office shall advise all agencies to which it previously disclosed the record that the record has been corrected. Whenever an individual has filed a statement of disagreement, the Office shall append a copy of the statement to the disputed record whenever the record is disclosed. The Office may also append to the disputed record any written statement it has made giving the Office's reasons for denying the request to correct the record.

§ 700.21 Records not subject to correction.

The following records are not subject to correction or amendment as provided in § 700.20:

(a) Transcripts of testimony given under oath or written statements made under oath;

(b) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings that constitute the official record of such proceedings;

(c) Presentence records that are the property of the courts, but may be maintained by the Office in a system of records; and

(d) Records duly exempted from correction pursuant to 5 U.S.C. 552a(j) or 552a(k) by notice published in the **Federal Register.**

§ 700.22 Request for accounting of record disclosures.

(a) An individual may request the Office to provide him with an accounting of those other agencies to which the Office has disclosed the record, and the date, nature, and purpose of each disclosure. A request for an accounting must be made in writing and must identify the particular record for which the accounting is requested. The request also must be addressed to the Office and both the envelope and the request itself must clearly be marked: "Privacy Act Accounting Request."

(b) The Office shall not be required to provide an accounting to an individual to the extent that the accounting relates to—

(1) Records for which no accounting must be kept pursuant to 5 U.S.C. 552a(c)(1),

(2) Disclosures of records to law-enforcement agencies for lawful law-enforcement activities, pursuant to written requests from such law-enforcement agencies specifying records sought and the law-enforcement activities for which the records are sought, under 5 U.S.C. 552a (c)(3) and (b)(7), or

(3) Records for which an accounting need not be disclosed pursuant to 5 U.S.C. 552a (j) or (k).

(c) A denial of a request for an accounting may be appealed to Independent Counsel in the same manner as a denial of a request for access, with both the envelope and the letter of appeal itself clearly marked: "Privacy Act Accounting Appeal."

§ 700.23 Notice of subpoenas and emergency disclosures.

(a) *Subpoenas.* When records pertaining to an individual are subpoenaed by a grand jury, court, or quasi-judicial authority, the official served with the subpoena shall be responsible for ensuring that written notice of its service is forwarded to the individual. Notice shall be provided within 10 working days of the service of the subpoena or, in the case of a grand jury subpoena, within 10 working days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date the subpoena is returnable, the court or quasi-judicial authority to which it is returnable, the name and number of the case of proceeding, and the nature of the records sought. Notice of the service of a subpoena is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8), pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the Federal Register.

(b) *Emergency disclosures.* If the record of an individual has been disclosed to any person under compelling circumstances affecting the health or safety of any person, as described in 5 U.S.C. 552a(b)(8), the individual to whom the record pertains shall be notified of the disclosure at his last known address within 10 working days. The notice of such disclosure shall be in writing and shall state the nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. The officer who made or authorized the disclosure shall be responsible for providing such notification.

§ 700.24 Security of systems of records.

(a) The Office Administrator or Security Officer shall be responsible for issuing regulations governing the security of systems of records. To the extent that such regulations govern the security of automated systems of records, the regulations shall be consistent with the guidelines developed by the National Bureau of Standards.

(b) The Office shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent the unauthorized disclosure of records, and to prevent the unauthorized disclosure of records, and to prevent the physical damage or destruction of records. The stringency of such controls shall reflect the sensitivity of the records the controls protect. At a minimum, however, the Office's administrative and physical controls shall ensure that—

(1) Records are protected from public view,

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to the records, and

(3) Records are inaccessible to unauthorized persons outside of business hours.

(c) The Office shall establish rules restricting access to records to only those individuals within the Office who must have access to such records in order to perform their duties. The Office also shall adopt procedures to prevent the accidental disclosure of records or the accidental granting of access to records.

§ 700.25 Use and collection of social security numbers.

(a) Each system manager of a system of records that utilizes Social Security numbers as a method of identification without statutory authorization, or authorization by regulation adopted prior to January 1, 1975, shall take steps to revise the system to avoid future collection and use of the Social Security numbers.

(b) The Office shall take such measures as are necessary to ensure that employees authorized to collect information from individuals are advised that individuals may not be required to furnish Social Security numbers without statutory or regulatory authorization and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 700.26 Employee standards of conduct.

(a) The Office shall inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. The Office also shall notify its employees that they have a duty to—

(1) Protect the security of records,

(2) Assure the accuracy, relevance, timeliness, and completeness of records,

(3) Avoid the unauthorized disclosure, either verbal or written, of records, and

(4) Ensure that the Office maintains no system of records without public notice.

(b) Except to the extent that the Privacy Act permits such activities, an employee of the Office of Independent Counsel shall:

(1) Not collect information of a personal nature from individuals unless the employee is authorized to collect such information to perform a function or discharge a responsibility of the Office;

(2) Collect from individuals only that information that is necessary to the performance of the functions or to the discharge of the responsibilities of the Office;

(3) Collect information about an individual directly from that individual, whenever practicable;

(4) Inform each individual from whom information is collected of—

(i) The legal authority that authorizes the Office to collect such information,

(ii) The principal purposes for which the Office intends to use the information,

(iii) The routine uses the Office may make of the information, and

(iv) The effects upon the individual of not furnishing the information;

(5) Maintain all records that are used by the agency in making any determination about any individual with

such accuracy, relevance, timeliness, and completeness as to assure fairness to the individual in the determination;

(6) Except as to disclosures to an agency or pursuant to 5 U.S.C. 552a(b)(2), make reasonable efforts, prior to disseminating any record about an individual, to assure that such records are accurate, relevant, timely, and complete;

(7) Maintain no record concerning an individual's religious or political beliefs or activities, or his membership in associations or organizations, unless—

(i) The individual has volunteered such information for his own benefit,

(ii) A statute expressly authorizes the Office to collect, maintain, use or disseminate the information, or

(iii) The individual's beliefs, activities, or membership are pertinent to and within the scope of an authorized law-enforcement or correctional activity;

(8) Notify the head of the Office of the existence or development of any system of records that has not been disclosed to the public;

(9) When required by the Act, maintain an accounting in the prescribed form of all disclosures of records by the Office to agencies or individuals whether verbally or in writing;

(10) Disclose no record to anyone, except within the Office, for any use, unless authorized by the Act;

(11) Maintain and use records with care to prevent the inadvertent disclosure of a record to anyone; and

(12) Notify the head of the Office of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit the Office to maintain.

(c) Not less than once a year, the head of each Office shall review the systems of records maintained by that Office to ensure that the Office is in compliance with the provisions of the Privacy Act.

§ 700.27 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552a.

Subpart B—Exemption of the Office of Independent Counsel's Systems of Records Under the Privacy Act

§ 700.31 Exemption of the Office of Independent Counsel's Systems of Records—Limited Access.

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

(1) General Files System of the Office of Independent Counsel (OIC/001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5).

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

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Office of Independent Counsel as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law-enforcement personnel. Moreover, the release of the accounting of disclosures made under subsection (b) of the Act, including those disclosures permitted under the routine uses published for these systems would permit the subject of an investigation of an actual or potential criminal, civil or regulatory violation to determine whether he is the subject of an investigation or to obtain valuable information concerning the nature of the investigation, material compiled during the investigation, and the identity of witnesses and informants. Disclosure of the accounting would, therefore, present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) of the Act is specifically exempted for this system of records.

(2) From subsection (c)(4) because an exemption is being claimed under subsection (d) of the Act. This system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act. Subsection (c)(4), therefore, is inapplicable to this system of records.

(3) From subsection (d) because the records contained in this system relate to official federal investigations. Individual access to these records contained in this system would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identities of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, reveal confidential informants, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. Individual access also could constitute an unwarranted invasion of the personal privacy of third parties who are involved in an investigation. Amendment of the records would interfere with ongoing criminal-law enforcement proceedings and impose an impossible administrative burden.

(4) From subsections (e) (1) and (5) because, in the course of criminal or other law-enforcement investigation, cases and matters, the Office of Independent Counsel may occasionally obtain information concerning actual or potential violations of law that are not strictly within its authority or jurisdiction, or may compile information, the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate and necessary to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to ensure the relevance, accuracy, timeliness and completeness of all information obtained. In particular, this would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in reporting on information and investigations.

(5) From subsection (e)(2) because, in a criminal or other law-enforcement investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement. In such circumstances, the subject of the investigation or prosecution would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties, as well as to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because compliance with the requirements of this subsection during the course of an investigation could impede the information-gathering process, thus hampering the investigation. Furthermore, such requirements could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

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

(8) From subsection (e)(4)(I) because the categories of sources of records in this system have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law-enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9) From subsection (e)(8) because the individual-notice requirements of subsection (e)(8) could present a serious impediment to law enforcement through interference with the Office of Independent Counsel's ability to issue subpoenas and the disclosure of its investigative techniques and procedures.

(10) From subsection (f) because this system is exempt from the individual-access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act. Furthermore, such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future.

(11) From subsection (g) because this system is exempt from the individual-access and amendment provisions of subsection (d) and the provisions of subsection (f) pursuant to subsections (j) and (k) of the Privacy Act.

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

(1) Freedom of Information Act/Privacy Act Files (OIC/002). These exemptions apply to the extent that information in this system is subject to exemption pursuant ot 5 U.S.C. 552a(j)(2), (k)(1), (k)(2,) and (k)(5).

(d) Because this system contains Office of Independent Counsel criminal law-enforcement investigatory records, exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject(s) of criminal investigations under investigation or in litigation to obtain valuable information concerning the nature of that investigation, matter or case and present a serious impediment to law-enforcement activities.

(2) From subsection (c)(4) because an exemption is being claimed for subsection (d) of the Act, rendering this subsection inapplicable to the extent that this system of records is exempted from subsection (d).

(3) From subsection (d) because access to the records contained in this system would inform the subject of criminal investigation or case of the existence of such, and provide the subject with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies. Amendment of the records would interfere with ongoing criminal law-enforement proceedings and impose an impossible administrative burden.

(4) From subsection (e)(1) because in the courses of criminal investigations, matters or cases, the Office of Independent Counsel often obtains information concerning the violation of laws other than those relating to an active case, matter, or investigation. In the interests of effective law enforcement and criminal litigation, it is necessary that the Office of Independent Counsel retain this information since it can aid in establishing patterns of activity and provide valuable leads for future cases that may be brought within the Office of Independent Counsel.

(5) From subsection (e)(2) because collecting information to the greatest extent possible from the subject individual of a criminal investigation or prosecution would present a serious impediment to law enforcement. In such circumstances, the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because providing individuals supplying information with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement. In those circumstances, it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information, and endanger the life and physical safety of confidential informants.

(7) From subsection (e)(4) (G), (H) and (I) because this system of records is exempt from the individual-access and amendment provisions of subsection (d) and the rules provisions of subsection (f).

(8) From subsection (e)(5) because, in the collection of information for law-enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual-notice requirements of subsection (e)(8) could present a serious impediment to law enforcement, i.e., this could interfere with the Office of Independent Counsel's ability to issue subpoenas and could reveal investigative techniques and procedures.

(10) From subsection (f) because this system has been exempted from the individual-access and amendment provisions of subsection (d).

(11) From subsection (g) because the records in this system are generally compiled for law-enforcement purposes and are exempt from the individual-access and amendment provisions of subsections (d) and (f), this rendering subsection (g) inapplicable.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-022]

South Carolina State Plan; Final Approval Determination

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

ACTION: Final State Plan Approval.

SUMMARY: This document amends Subpart C of 29 CFR Part 1952 to reflect the Assistant Secretary's decision granting final approval to the South Carolina State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the South Carolina plan, and authority for Federal concurrent jurisdiction is relinquished.

Federal enforcement jurisdiction is retained over private sector maritime and employment on military bases. Federal jurisdiction remains in effect with respect to Federal Government employers and employees.

EFFECTIVE DATE: December 15, 1987.

FOR FURTHER INFORMATION CONTACT: 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. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR Parts 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e). To enable OSHA to evaluate State performance in relation to the foregoing criteria, State participation in OSHA's computerized Integrated Management Information System is required.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO* v. *Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan state the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the South Carolina Plan and Its Compliance Staffing Benchmarks

South Carolina Plan

On May 8, 1972, South Carolina submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C. On May 24, 1972, a notice was published in the **Federal Register** (37 FR 10535) concerning submission of the plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. Because of the wide interest anticipated in the first State plan proposals, notice was also given that an informal public hearing on the plan would be held on July 10, 1972, in Columbia, South Carolina.

In response to comments on South Carolina's initial submission notice and testimony received at the informal hearing, the State submitted modifications to the plan on September 13, 1972. Notice of receipt of the modifications and an invitation for public comments on the plan as modified, as well as an opportunity to request an informal hearing, was published in the **Federal Register** on September 28, 1972 (37 FR 20289). Comments on the amended plan were received from the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). In response to these comments as well as OSHA's review of the plan modifications, South Carolina made additional changes in its plan. Since there were no objections which were outstanding on the plan, as amended, no further public hearing was held.

On December 6, 1972, the Assistant Secretary published a notice granting initial approval of the South Carolina plan as a developmental plan under section 18(b) of the Act (37 FR 25932). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The South Carolina State plan covers all occupational safety and health issues except private sector maritime employment, and employment on military bases. The South Carolina Department of Labor is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the South Carolina Division of Occupational Safety and Health.

The plan provides for the initial adoption by South Carolina of all Federal occupational safety and health standards, contained in 29 CFR Parts 1910, 1926, and 1928, and for the adoption of future Federal standards after public hearings. The plan requires employers to furnish employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations, penalties and abatement periods are heard by the South Carolina Occupational Health and Safety Review Board. Decisions of the Review Board may be appealed to the Court of Common Pleas.

The notice of initial approval noted a few distinctions between the Federal and South Carolina Programs. The State plan does not cover safety and health in private sector maritime employment or employment on military bases.

The Assistant Secretary's initial approval of the South Carolina developmental plan, a general description of the plan, a schedule of required developmental steps and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart C; 37 FR 25932 (December 6, 1972)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the three-year period ending December 31, 1975. These "developmental steps" included: amendments to the South Carolina Occupational Safety and Health Act; promulgation of State occupational safety and health standards and program regulations; and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, legislative amendments, management information system, merit staffing system, regulations for inspections, citations and proposed penalties, recordkeeping and reporting regulations, and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The South Carolina subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.94).

On May 9, 1975, OSHA entered into an operational status agreement with the State of South Carolina. A **Federal Register** notice was published on June 26, 1975 (40 FR 27024), announcing the signing of the agreement. (The agreement was subsequently amended, 49 FR 30173, July 27, 1984.) Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the South Carolina plan.

On August 3, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that South Carolina had satisfactorily completed all developmental steps (41 FR 32424). In certifying the plan, the Assistant Secretary found the structural features of the program—the statue, standards, regulations, and written procedures for administering the plan—to be at least as effective as corresponding Federal provisions. Certification does not entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On January 31, 1978 OSHA published notice in the **Federal Register** (43 FR 4073) requesting public comment on a petition requesting withdrawal of OSHA approval of the South Carolina plan. The petition was submitted by the President of the Carolina Brown Lung Association. A second petition was subsequently filed by the national American Federation of Labor-Congress of Industrial Organizations (AFL–CIO). On April 21, 1978 notice was published in the **Federal Register** (43 FR 17003) requesting public comments on the AFL–CIO petition to withdraw approval of the South Carolina State Plan and providing an additional time period for public comment on the Carolina Brown Lung Association petition, which was requested by the South Carolina General Assembly's Textile Studies Subcommittee. Both petitions alleged specific performance deficiencies in enforcement of the cotton dust standard and prosecution of contested cotton dust cases and in such other areas as hazard recognition, review procedures, inspection scheduling, health referrals, and response to major Federal Program changes. In addition, the Carolina Brown Lung Association petition alleged deficiencies in employee training and education, and the AFL–CIO petition alleged legislative and regulatory deficiencies.

OSHA's investigation of all allegations contained in the petitions revealed that charges of legislative and regulatory deficiencies were unfounded. Although the South Carolina Act does not mirror the Federal Act, the South Carolina Plan, along with its implementing regulations, provide coverage and employee rights comparable to that of the Federal Act. In addition, OSHA's investigation revealed that where performance deficiencies existed, they had been corrected or considerable improvement had been demonstrated by South Carolina, especially since the filing of the petitions. Based on the findings of OSHA's investigation, a **Federal Register** notice (44 FR 13013) was published on March 9, 1979, which denied both petitions to withdraw approval of the South Carolina State Plan.

South Carolina Benchmarks

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, to calculate for each State plan State the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring South Carolina to allocate 39 safety compliance officers and 60 industrial hygienists to conduct inspections under the plan.

In September 1984 the South Carolina State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for South Carolina. Pursuant to an initiative begun in August 1983 by the State plan designees as a group with OSHA, and in accord with the formulas and general principles established by that group for individual State revision of the benchmarks, South Carolina reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised staffing benchmarks of 17 safety and 12 health compliance officers. After the opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On September 25, 1987, OSHA published notice (52 FR 36048) of the eligibility of the South Carolina State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted. The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Integrated Management Information System, and staffing which meets the revised State staffing benchmarks.

The September 25 **Federal Register** notice set forth a general description of the South Carolina plan and summarized the results of Federal OSHA monitoring of State operations during the period from December 1, 1985 through January 31, 1987. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which South Carolina operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the December 1985–January 1987 Evaluation Report of the South Carolina plan ("18(e) Evaluation Report"), which was extensively summarized in the September 25 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the record. Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record.

To assist and encourage public participation in the 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, DC, in the OSHA Region IV Office in Atlanta, Georgia, and the South Carolina Department of Labor in Columbia. Summaries of the September 25 proposal, with an invitation for public comments were published in South Carolina on October 2, 1987.

The September 25 proposal invited interested persons to submit, by October 30 written comments and views regarding the South Carolina plan, and whether final approval should be granted.

An opportunity to request an informal public hearing also was provided. One hundred and twenty-seven (127) comments were received in response to this notice. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the South Carolina plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration.

In response to the September 25 **Federal Register** notice, OSHA received comments from 109 private employers, 12 State and local government entities, 1 consulting firm (2 comments), 2 safety associations, 1 attorney on behalf of one of the above-referenced safety associations, and 1 university.

All of the one-hundred and twenty-seven (127) comments expressed support for final approval on the grounds of State competence, responsiveness, and specific knowledge of local conditions. Several of these comments indicated that the State has established an outstanding safety and health program without adversarial relations with local industries, and that a climate of working together has gone far to stop costly accidents and to protect workers in South Carolina. Comments further express preference for State enforcement rather than Federal, because State inspectors are better able to deal with State-specific concerns. The comments also praise the State's effectiveness in reducing workplace injuries and illnesses, and praise the competency of South Carolina officials.

One initial comment (which was later updated) received from the consulting firm found fault with the State's response to asbestos hazards. The updated letter recommended final approval of the plan and indicated that the previous comments were only constructive suggestions for improvement of the South Carolina program.

Edgar L. McGowan, Commissioner of the South Carolina Department of Labor, responded to the initial comment made by the consulting firm regarding South Carolina's performance in the area of protection of workers and the public in asbestos removal. The response indicated that during fiscal years 1985, 1986 and 1987 (ending June 30) the State inspected 68 asbestos removal sites. The response also indicated that the State cooperates closely with the Department of Health and Environmental Control (DHEC), which has the responsibility of training removers, receiving notification of contracts, and inspecting the sites to assure public protection.

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the South Carolina State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of December 1, 1985 through January 31, 1987 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)((vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved South Carolina State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the September 25 notice, the South Carolina plan provides for the adoption of standards and amendments thereto which are in most cases identical to Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the "18(e) Evaluation Report" and summarized in the September 25, 1987 **Federal Register** notice, South Carolina has generally adopted standards in a timely manner which are identical to Federal standards.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. South Carolina has generally adopted standards interpretations, which are at least as effective as the Federal. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to standards have occurred in South Carolina.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the South Carolina program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The South Carolina State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the September 25 notice, four permanent variances were granted during the reporting period.

Action on these requests was in accordance with the State's procedures and the granted variances provided protection equivalent to that provided under the standard. No temporary variances were requested during the evaluation period.

Accordingly, OSHA finds that the South Carolina program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The South Carolina Occupational Safety and Health Act and implementing regulations previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The "18(e) Evaluation Report" data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the September 25, 1987 **Federal Register** notice South Carolina recently adopted a procedure similar to OSHA's for handling non-formal complaints by a letter to the employer. Data contained in the 18(e) Evaluation Report indicate the State responded to 34.6% of safety complaints and 20.2% of health complaints with an inspection. Complaints responded to by letter was comparable to OSHA. (Evaluation Report, pages 41 and 42).

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Data contained in the 18(e) Evaluation Report indicate that 100% of both, State programmed safety and programmed health inspections were conducted in high-hazard industries. (Evaluation report, page 38).

(b) *Employee notice and participation in inspections.* In conducting inspections the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. During the evaluation period, 95.4% of initial inspections included either employee representatives on the walkaround or interviews with employees. OSHA has concluded that employee representation is properly provided in State inspections. (Evaluation Report, pages 47 and 48).

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices, (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, South Carolina requires that a poster, which was previously approved by OSHA (41 FR 9547) be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard and the Hazard Communication standard. Both of these standards were amended to make the definition of the "Designated Representative" identical to OSHA's. Federal OSHA's evaluation concluded that the State's performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The South Carolina Act and regulations provide for discrimination protection equivalent to that provided by Federal OSHA. The State investigated 21 discrimination complaints during the evaluation period. Of the investigated complaints, (5) 23.8% were found to have merit and (4) 80.0% of the meritorious cases were settled or litigated. One case is still pending. This compared very favorably with Federal experience. (Evaluation Report pp. 64–65.)

(d) *Restraint of imminent danger; protection of trade secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations, (29 CFR 1902.4(c)(2)(vii) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal. The 18(e) Evaluation Report indicates that there were no imminent danger situations identified. (Evaluation Report, p. 53.) There were no Complaints About State Program Administration (CASPA's) filed concerning the protection of trade secrets during the reporting period. (Evaluation Report, p. 71.)

(e) *Right of entry; advance notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than the Federal program (29 CFR 1902.3(f)). The South Carolina Occupational Safety and Health Act authorizes the Commissioner to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. In addition, South Carolina law allows the Commissioner to apply for a warrant from the State courts to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The South Carolina law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. South Carolina had 15 denials of entry during this evaluation period, was successful in obtaining warrants for 11 of them, and gained entry voluntarily for the other 4. The 18(e) Evaluation Report indicates that 17 instances of advance notice procedures were used and in all cases the State's use of its procedures were proper.

(f) *Citations, penalties, and abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspections, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The South Carolina plan through its law, regulations and field operations manual, which have all been previously approved by OSHA, has established a system similar to the Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to proposed penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Procedures for the South Carolina Occupational Safety and Health Compliance Program are set out in the South Carolina Field Operations Manual, which is patterned after the Federal manual, and thus the State follows inspection procedures, including documentation procedures, which are similar to the Federal. The evaluation report notes overall adherence by South Carolina to these procedures. South Carolina cites an average of 3.0 violations per programmed safety inspection with citations and 2.3 violations per programmed health inspection with citations; and 20.5% of safety and 21.2% of health violations cited as serious by the State was comparable to Federal performance during the evaluation period. (Evaluation Report, p. 51.)

South Carolina's lapse time from last day of inspection to issuance of citation averaged 12.8 days for safety and 11.3 days for health, both of which compare favorably with Federal performance during the period. (Evaluation Report, p. 68).

South Carolina's procedures for calculation of penalties are similar to Federal OSHA. However, there are some differences between the two programs, for example, the minimum penalty that can be proposed, number of penalty levels, multi-instance penalty, etc. The evaluation report indicates that the average proposed penalties for serious violations were $292 for safety and $400 for health. (Evaluation Report, pp. 56–58).

South Carolina conducts a lower percent of follow-up inspections to assure abatement of cited violations (1.8% of not-in-compliance inspections) than does Federal OSHA. In the past the State required a follow-up inspection on all cited violations except other-than-serious. However, the State reduced the number of follow-up inspections because over the past two years the State issued only one or two failure-to-abate notices. State abatement periods averaged 8.2 days for serious safety and 17.6 days for serious health violations. (Evaluation Report, pp. 54–55.)

(g) *Contested cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). South Carolina's procedures for employer contest of citations, penalties and abatement requirements and for ensuring employees rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding and are similar to the Federal procedures which the exception of the expanded employee right to contest terms and conditions of citations as well as abatement dates. Appeals of citations, penalties and abatement periods are heard by the South Carolina's Occupational Health and Safety Review Board and may be further appealed to the Court of Common Pleas.

During the evaluation period, 6.9% of safety inspections with citation, and 12.2% of health inspections with citation, resulted in contests. This level is higher than the precentage of contests federally. The report indicates that the higher rate of contested cases is attributed to fewer settlements reached at the pre-contest level and concludes that the State's performance in this area is as effective as Federal OSHA. (Evaluation Report, pp. 60 and 63.)

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The State had no adverse decisions which would require review or corrective action. Accordingly, OSHA finds that the South Carolina plan effectively reviews contested cases.

(h) *Enforcement conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the South Carolina plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public employee program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

South Carolina's plan provides a program in the public sector which is very similar to that in the private sector, except that no penalties are proposed for other-than-serious violations. Additionally, employers in the public sector may be given a two-thirds credit on proposed penalties for serious violations if they certify that the funds saved will be utilized to correct the violations, provide safety and health training to employees, or improve other elements of their safety and health programs.

During the evaluation period, South Carolina conducted 70 public sector inspections, citing 122 violations of which 17.2% were classified as serious. The proportion of inspections dedicated to the public sector (3% of total inspections during the evaluation period) was appropriate to the needs of public employees. (Evaluation Report, pp. 23 and 26.)

Injury and illness rates for State and local government employment are lower than in the private sector (1985: all case rate—5.8; lost workday case rate—2.7.). The State and local government lost workday case rate did not change from 2.7 in 1984, while the private sector rate had a slight increase from 2.7 to 2.8.

Because South Carolina's performance in the public sector compares very favorably to that in the private sector, OSHA concludes that the South Carolina program meets the criterion in 29 CFR 1902.3(j).

(5) *Staffing and resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The South Carolina plan provides for 17 safety compliance officers and 12 industrial hygienists as set forth in the South Carolina FY 1987 grant. This staffing level meets the approved, revised, fully effective benchmarks for South Carolina for safety and health staffing, as discussed elsewhere in this notice.

The State provides a comprehensive training program for new compliance personnel and refresher and specialized training for experienced staff, which includes attendance at the OSHA Training Institute and in-house and field training exercises.

As noted in the **Federal Register** notice announcing certification of the completion of developmental steps for South Carolina (41 FR 32424) all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Office of Personnel Management.

Because South Carolina has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra,* are being met by the South Carolina plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The South Carolina plan was funded at $2,606,014 in FY 1987. (Fifty percent of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the 18(e) Evaluation Report, South Carolina's funding is judged sufficient in absolute terms; moreover, the State allocates its resources to the various aspects of the program in a manner similar to OSHA. On this basis, OSHA finds that South Carolina has provided sufficient funding for the various activities carried out under the plan.

(6) *Records and reports.* State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

South Carolina's employer recordkeeping requirements are equivalent to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted elsewhere in this notice, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that South Carolina has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary compliance program.* A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

South Carolina does not differentiate between employers and employees when conducting training sessions in the public sector. In the public sector, 5,754 public sector employers and employees participated in 128 training sessions.

For the private sector, 1,375 employers participated in 62 training sessions, while 13,254 employees participated in 598 training sessions.

South Carolina has established a Voluntary Protection Program (VPP) identical to the Federal program. The program recognizes exemplary safety and health programs as a means of expanding worker protection. Establishments which meet the program criteria will be removed from the general schedule inspection list for one year from the date of the establishment's approval. There is currently one establishment particiating on this program.

In the private sector, South Carolina provides on-site consultative services to employers under a cooperative agreement with OSHA made pursuant to section 7(c)(1) of the Act and 29 CFR Part 1908. On-site consultation for the public sector is provided under the South Carolina plan.

Accordingly, OSHA finds that South Carolina has established and is administering an effective voluntary compliance program.

(8) *Injury and illness statistics.* As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics Annual Occupational Safety and Health Survey and other available Federal and State measurements of

program impact on worker safety and health (29 CFR 1902.37(b)(15)). The 1984 and 1985 Bureau of Labor Statistics injury and illness rates for South Carolina (private sector all case rate for 1984 was 6.9% and for 1985 was 7.1%; lost workday case rate for 1984 was 2.7 and for 1985 was 2.8%) were lower than rates in the States where Federal OSHA provides enforcement coverage. In 1985, the all case incidence rates and the lost workday case rates for the private sector, manufacturing and construction experienced a mix of increases and decreases in South Carolina, the rates of increase were within the acceptable range established under OSHA's State Plan Activities Measures and the absolute rates in each case for 1985 were lower than corresponding rates in Federal States. In addition, the percent change in lost workday cases for the State's five most hazardous industries were all within the acceptable range when compared to the change in rates under Federal jurisdiction.

OSHA finds that the trends in injury and illness statistics in South Carolina compared favorably with those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that the South Carolina State plan for occupational safety and health, which has been monitored for at least one year subsequent to certification, is in actual operation at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the South Carolina State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective December 15, 1987.

Under this 18(e) determination, South Carolina will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State-initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, South Carolina must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the South Carolina plan terminates OSHA authority for Federal enforcement of its standards in South Carolina, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose carrying out subsection (f) of this section), 9, 10, 13, and 17, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section (18)(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination would remain under Federal jurisdiction. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the South Carolina plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in private sector maritime employment and employment on military bases. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has subsequently failed to comply with any provision or assurance contained in the plan. Additionaly, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompained by changes to Part 1952 reflecting the final approval decision. This notice makes

changes to Subpart C of Part 1952 to reflect the final approval of the South Carolina plan.

The table of contents for Part 1952, Subpart C, has been revised to reflect the following changes.

Section 1952.94, Final approval determinations, which formerly was reserved, has been completed to reflect the determination granting final approval of the plan. The section contains a more accurate description of the current scope of the plan than the one contained in the initial approval decision.

Section 1952.95, Level of Federal enforcement, has been changed to reflect the State's 18(e) stauts. This replaces the former description of the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on May 9, 1975 and amended May 23, 1984. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for South Carolina and the Operational Status Agreement is not longer in effect. Section 1952.95 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in South Carolina under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. Certification to this effect was previously forwarded to the Chief Counsel for Advoacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902 (Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 15th day of December 1987.

John A. Pendergrass,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart C of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Secs. 8, 18, Occupational Safety and Health Act 1970 (29 U.S.C. 657, 667); 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. Section 1952.94 is added and 1952.95 is revised to read as follows:

§ 1952.94 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL–CIO* v. *Marshall* (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the South Carolina State plan for a period of at least one year following certification of completion of developmental steps (41 FR 32424). Based on the 18(e) Evaluation Report for the period of December 1, 1985 through January 31, 1987, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of South Carolina's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the South Carolina plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective December 15, 1987.

(b) The plan which has received final approval covers all activities of employers and places of employment in South Carolina except for private sector maritime, and military bases.

(c) South Carolina is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

§ 1952.95 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the South Carolina plan under section 18(e) of the Act, effective December 15, 1987, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the South Carolina plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occuaptional safety and health issues covered by the South Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments, and employment on military bases. Federal jurisdiction is also retained with respect to Federal government employers and employees.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal OSHA and the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the South Carolina State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[FR Doc. 87-29078 Filed 12-17-87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 401, 405 and 408

[BERC-402-FC]

Medicare Program; Supplementary Medical Insurance Premiums

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

ACTION: Final rule with comment period.

SUMMARY: These rules amend the Medicare regulations that deal with supplementary medical insurance (SMI) premiums.

These changes are necessary to conform our rules to changes made in the Medicare laws since the rules were last published.

The purpose is to ensure that those who must apply our rules are not misled or confused by content that fails to reflect statutory changes and modified policy.

DATES: These regulations are effective January 19, 1988.

Consideration will be given to comments received or postmarked no later that March 17, 1988.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-402-FC, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BERC-402-FC. If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks from today, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Denis Garrison, (301) 594-9435.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

These amendments conform HCFA regulations on SMI premiums (Part 405, Subpart I) to statutory changes enacted since Subpart I was last published. Because most of Subpart I was last published in 1968, it also needed updating to reflect administrative and procedural changes. For example, group payments must now be sent to the HCFA Premium Collection Center, instead of to the SSA Payment Center. As part of our ongoing project to assign a separate part to each major aspect of the Medicare program, we redesignated the premium provisions under a new Part 408. When the existing rules contained confusing language or incorrect cross-references, we also revised to clarify and correct.

II. Background

The SMI program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare Part A).

The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens or are aliens lawfully admitted for permanent residence who have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums.

III. Changes in the Law and the Rules

The principal statutory and policy changes and the conforming changes to the regulations are discussed below.

A. Effect of Late Enrollment and Reenrollment

1. Statutory provisions

Before enactment of section 945 of Pub. L. 96-499, an individual could not enroll more than twice, and there was an annual general enrollment period that lasted from January 1 to March 31 of each calendar year. Section 945 amended sections 1837, 1838, 1839 of the Act to remove the two-enrollment limitation and establish an unlimited general enrollment period that began when the individual's initial enrollment period ended. (The initial enrollment period is a 7-month period beginning 3 months before the month the individual first meets the eligibility requirements for Medicare and ending with the third month after that first month of eligibility).

Section 945 was effective April 1, 1981. Section 2151 of Pub. L. 97-35 further amended sections 1837-1839 of the Act to eliminate continuous open enrollment, (that is, to restore the annual 3-month enrollment period) effective October 1, 1981, but retained the provision allowing an unlimited number of reenrollments. Since the law requires that the monthly premium be increased for individuals who enroll after expiration of their initial enrollment periods and for those who reenroll, the enrollment provisions of sections 945 and 2151 also affected the way the premium increase would be determined.

2. Conforming Changes

The effect of these changes in the law is reflected in §§ 408.24 through 408.26 of the regulations.

B. Determination and Promulgation of Premium Amounts

1. Statutory Provisions

Section 124 of Pub. L. 97-248, as amended by section 606 of Pub. L. 98-21 (the Social Security Amendments of 1983) amended section 1839(a) of the Act to change the method of determining premiums for 1984 and 1985:

• Beginning with 1984, the SMI premium must be calculated on the basis of 50 percent of the actuarial rate for the aged (roughly 25 percent of program costs).

• Beginning with 1983, the promulgation date is September instead of December and the new premium is effective in January rather than July (to correspond to the date for cost-of-living increases in social security benefits).

Section 2302 of Pub. L. 98-369 further amended section 1839 of the Act to require that the SMI premium continue to be based on 50 percent of the actuarial rate for two more years—1986 and 1987, and included a hold-harmless provision, applicable during these two years, to ensure that the increase in the standard monthly premium will not result in a decrease in social security cash benefits in certain circumstances. The hold-harmless provision was not applied in 1986 since there was no increase in the standard monthly premium for that year. Section 9313 of Pub. L. 99-272 extends the section 2302 provisions for one more year, through 1988.

Section 2338(a) of Pub. L. 98-369 provided that, in determining the premium for late enrollment in SMI, the months during which an employer group health plan was primary payer for individuals age 65 to 69 be excluded.

Section 9001(c) of Pub. L. 99-509 provided technical clarification of the hold-harmless provision noted above. That clarification affects the procedural instructions but does not require any change in the regulations.

Section 9201 (a) and (c) of Pub. L. 99-272 amended sections 1837 and 1862 of the Act to remove the age-70 upper limit so that the employer group health plan is primary to Medicare for individuals age 65 or older, as long as they are covered under the employer plan on the basis of current employment.

Section 9219(a) of that same law amended section 1839 of the Act to provide that, in determining the premium for late enrollment in SMI (or in hospital insurance for individuals who must pay premiums for that program), the months of coverage under an employer group health plan are to be excluded even if the employer has fewer than 20 employees and even if the individual is not entitled to, or eligible for, hospital insurance. (In neither of the two latter circumstances would the employer plan be primary to Medicare.) Since, as discussed above, the age 70 cap has been removed, these provisions apply to individuals age 65 or older.

Section 9319(c) of Pub. L. 99-509 provides that, for disabled Medicare beneficiaries, months of employer group health plan coverage be excluded in determining the premium for late enrollment. The disabled beneficiary must be covered under a large employer group health plan as an employee, employer, individual associated with the employer in a business relationship, or family member of any of the foregoing. This provision is effective for months of coverage under a large employer plan from January 1987 through December 1991, and affects premiums due for any month from January 1987 onward. (A "large" employer group health plan is a plan that covers employees of at least one employer that had 100 or more employees on the majority of business days during the preceding calendar year.)

2. Conforming Changes

The rules on special enrollment periods for the aged and disabled are set forth in a new § 405.216. The other amendments discussed above are reflected in §§ 405.216, 408.20 and 408.24 of the new Part 408.

C. Collection of Premiums That Exceed Social Security Cash Benefits

1. Statutory Provisions

Under previous law, there was a minimum Social Security primary insurance amount of $122. Section 2201 of Pub. L. 97-35 amended section 215 of the Act to eliminate that minimum for beneficiaries who first become eligible after October 1981, and for all other beneficiaries beginning March 1982. Section 2 of Pub. L. 97-123 restored the minimum benefits for all individuals who first became eligible before January 1, 1982 (and for some individuals who become eligible in 1982-1991).

This means that, for an individual who becomes eligible on or after January 1, 1982 and whose benefits are based on very low earnings, the monthly benefit may be less than the monthly SMI premium. The billing procedures used in this situation are the same procedures used in the past when other situations resulted in monthly benefits that were less than the amount of the premium. The monthly benefit serves to pay part of the premium and the insured individual is required to pay the difference through direct remittance.

2. Conforming Changes

The above described billing procedures are set forth in § 408.63 and conforming language appears in §§ 408.6, 408.8, and 408.43.

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to meet criteria for a "major rule". A major rule is one that would 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 any geographical 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.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities.

These regulations are technical and conforming changes necessary to implement certain statutory provisions. In themselves, they will have no effects requiring an analysis under E.O. 12291. Further, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, neither a regulatory impact analysis nor a regulatory flexibility analysis has been prepared.

V. Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping provisions requiring OMB clearance.

VI. Waiver of Notice of Proposed Rulemaking

These amendments make no substantive changes other than those that are discussed in this preamble and are required to conform our rules to changes in the law, or to reflect current practice and procedures.

With respect to the law, they conform to other regulations that implement those changes, or if other regulations have not been issued, merely reflect the language of the law without further interpretation or elaboration. With respect to administrative practice and procedures, they include nothing that is not already set forth in general instructions issued by HCFA.

We therefore find that notice and opportunity for public comment before final rules is unnecessary. However, we recognize that the process of redesignating and clarifying the rules carries the risk of unintentional alteration. For that reason, we will consider comments received within 60 days after publication of these rules. Although we cannot acknowledge individual comments, if we revise these rules, we will discuss all timely comments in the preamble to the revised rules.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 408

Administrative practice and procedure, Health insurance, Medicare, Premiums.

Redesignation Table

42 CFR Part 405, Subpart I

Old section	New section
405.901	408.2
405.902(a)	Removed as unnecessary.
405.902 (a)(1) and (a)(2)	408.20(b).
405.902(b)	408.22.
405.902(b)(1)	408.24.
Examples	408.26.
405.902(c)	408.27.
405.903(a)	408.4(a).
405.903(b), first sentence.	408.100.
405.903(b), rest of the paragraph.	408.4(b).
405.904, uncoded introduction.	408.6(a)(1) and 408.8(c).
405.904(a)	408.42 and 408.43.
405.904(b)	408.44.
405.904(c)	408.42.
405.904(d)	408.6(c).
405.904(e)	408.6(b)(3) and 408.60(a).
405.906	408.4(c).
405.908, uncoded introduction.	408.60(a).
405.908(a)-(c)	408.60(d).
405.911(a), first & third sentences.	408.40(a).
405.911(a), second sentence.	408.40(c).
405.911(b)	408.40(b).
405.911(c)	Deleted as duplicative and unnecessary.
405.912(a), except second parenthetical statement.	408.46(a).
405.912(a), parenthetical statement.	408.3.
405.912(b)	408.46(b).
405.913(a), first sentence.	408.46(a)(2).
405.913(a), second sentence.	408.47(a)(1).
405.941(f), rest of paragraph.	408.88(a).
Example	408.88(b).
405.942 (revised per changed practice).	408.84(b).
405.946(a)	408.84(a).
405.946(a), last sentence, and (b).	Deleted as duplicative of 405.841(d).
405.947(a)	408.92.
405.947(b)	408.92(b)(2).
405.948(a)	408.86(a).
405.948(b)	408.86(b).
405.948(c)	408.86(c).
405.949	408.90.
405.956(a)	408.50(a).
405.956(a), Examples	408.50(c).
405.956(b) (revised to reflect simplified practice).	408.68(b).
405.957(a)	408.68(b).
405.957(b)	408.100(b).
405.958(a)	Deleted as inconsistent with 405.958(b).
405.958(b)	408.68(a).
405.959(a)	408.102(a).
405.959(b)(1)	408.102(b).
405.959(b)(2)	408.102(c).
405.959(c)	408.104.
405.960(a)	408.71.
405.960(b)	408.52.
405.962	408.110.
405.964	408.112.
405.941(f), rest of paragraph.	408.88(a).
Example	408.88(b).
405.942 (revised per changed practice).	408.84(b).
405.946(a)	408.84(a).
405.946(a), last sentence, and (b).	Deleted as duplicative of 405.841(d).

Old section	New section
405.947(a)	408.92.
405.947(b)	408.92(b)(2).
405.948(a)	408.86(a).
405.948(b)	408.86(b).
405.948(c)	408.86(c).
405.979	408.90.
405.956(a)	408.50(a).
405.956(a), Examples	408.50(c).
405.956(b) (revised to reflect simplified practice).	408.68(b).
405.957(a)	408.68(b).
405.957(b)	408.100(b).
405.958(a)	Deleted as inconsistent with 405.958(b).
405.958(b)	408.68(a).
405.959(a)	408.102(a).
405.959(b)(1)	408.102(b).
405.959(b)(2)	408.102(c).
405.959(c)	408.104.
405.960(a)	408.71.
405.960(b)	408.52.
405.962	408.110.
405.964	408.112.

42 CFR Chapter IV is amended as set forth below:

A. Part 405, Subpart B is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Coverage, Exclusions, and Payment

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

Authority: Secs. 1102, 1836, 1837, 1838, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395a, 1395p, 1395q, and 1395hh).

2. A new § 405.216 is added and the table of contents is amended to reflect the addition.

§ 405.216 Special enrollment periods related to coverage under an employer group health plan.

(a) *General rules.* Special enrollment periods (SEPs) are 7-month periods available to individuals who meet the general requirements of this paragraph (a), and the special conditions set forth in paragraph (b) or (c) of this section, as appropriate.

(1) They are eligible to enroll in SMI on the basis of age or disability, but not on the basis of end-stage renal disease.

(2) When first eligible to enroll in SMI (4th month of their initial enrollment period),

(i) They were covered under an employer group health plan; or

(ii) They enrolled in SMI during their initial enrollment period.

(3) Except as provided in paragraph (a)(4) of this section, they maintained coverage under either an employer group health plan or SMI for all months after the initial enrollment period.

(4) *Exception:* If an individual failed to enroll during any SEP because employer group health plan coverage was restored before the end of that SEP, that failure to enroll in SMI is not considered a break in coverage that would preclude another SEP now or in the future.

(b) *Specific rules: Individual age 65 or over.* Individuals entitled on the basis of age must meet the following conditions:

(1) They have been covered, on the basis of current employment, under an employer group health plan as defined in section 162(i)(3) of the Internal Revenue Code of 1954; and

(2) They are no longer covered under such a plan on the basis of current employment.

(c) *Specific rules: Disabled individual.* Individuals entitled on the basis of disability (but not on the basis of end-stage renal disease), must meet the following conditions:

(1) They have been covered under a large employer group health plan that meets the definition in § 5000(b) of the Internal Revenue Code of 1954;

(2) They had this coverage as an employee, employer, individual associated with the employer in a business relationship, or as a family member of one of the foregoing; and

(3) They no longer have the coverage described in this paragraph (c).

(d) *Beginning of special enrollment period: Individual age 65 or over.* For an aged individual—

(1) Before May 1986, the SEP began with whichever of the following resulted in earlier SMI entitlement:

(i) The first day of the third month before the month in which the individual attained age 70, if employer group health plan coverage continued to age 70.

(ii) The first day of the first month in which the individual was no longer enrolled in an employer plan on the basis of current employment.

(2) In and after May 1986, the SEP begins on the first day of the first month in which the individual is no longer enrolled in an employer plan on the basis of current employment.

(e) *Beginning of special enrollment period: Disabled individual.* For a disabled individual under age 65, the SEP begins with the first day of the first month after December 1986 in which the individual is no longer covered under an employer plan as described in paragraph (c) of this section. Because the provisions applicable to disabled individuals expire on December 31, 1991, the last SEP available under those provisions will begin with January 1992.

(f) *Beginning of special enrollment period: Partial coverage month.* When employer plan coverage ends before the end of a month, the following rules apply—

(1) If the individual enrolls in SMI before the end of the partial coverage month, the SEP begins with that month.

(2) If the individual does not enroll in SMI before the end of the partial coverage month, the SEP begins with the following month.

(g) *Beginning of Entitlement*—(1) *Enrollment or reenrollment before May 1986.* (i) If an individual enrolled during the 3 months before attainment of age 70, entitlement began with the month of attainment of age 70; and

(ii) If an individual enrolled during the month of attainment of age 70, or during any of the 3 following months, entitlement began with the month after the month of enrollment.

(2) *Enrollment or reenrollment in and after May 1986.* (i) If an individual enrolls during the first month of nonenrollment in an employer group health plan, which is the first month of the SEP, entitlement begins with the first day of that month.

(ii) If an individual enrolls during the last 6 months of the SEP, entitlement begins with the month after the month of enrollment.

3. Subpart I, consisting of §§ 405.901 to 405.964, is redesignated and revised as a new Part 408.

B. The sections removed from Subpart I of Part 405 are redesignated as a new Part 408 and revised to read as follows:

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

Authority: Secs. 1102, 1818, 1837–1840, 1843, 1871 and 1881(d) of the Social Security Act (42 U.S.C. 1302, 1395i-2, 1395p, 1395q, 1395r, 1395s, 1395v, 1395hh, and 1395rr(d)), and the Federal Claims Collection Act (31 U.S.C. 3711).

Subpart A—General Provisions

§ 408.1 Statutory basis.

(a) This part implements certain provisions of sections 1837 through 1840 and 1881(d) of the Social Security Act (the Act) and conforms to other regulations that implement section 1843 of the Act. Section 1838(b) requires regulations to establish when an individual's coverage ends because of nonpayment of premiums. It also specifies that those regulations may provide a grace period for payment of overdue premiums without loss of coverage. Section 1839 sets forth the specific procedures for determining the amount of the monthly premium and section 1840 establishes the rules for payment of premiums. Section 1843 provides that a State may enter into a buy-in agreement to secure SMI coverage for certain individuals by enrolling them in the SMI program and paying the premiums on their behalf. Section 1881(d) provides entitlement to Medicare benefits related to the donation of a kidney without payment of premiums, deductibles, or coinsurance.

(b) The Federal Claims Collection Act (31 U.S.C. 3711), as implemented by 4 CFR Parts 101–105, provides the basic authority for recovery of debts owed the United States Government and specifies the conditions for the suspension or termination of collection action. Departmental regulations at 45 CFR Part 430, updated by a final rule published on January 5, 1987 (52 FR 260) set forth procedures for the exercise of the Department's authority to collect and dispose of debts and we intended to complement rules applicable to particular programs. HCFA rules are set forth at 42 CFR Part 401, Subpart F.

§ 408.2 Scope and purpose.

(a) This part sets forth the policies and procedures for determining the amount of monthly supplementary medical insurance (SMI) premiums, for the payment, collection, or refund of premiums, for termination of coverage because of nonpayment of premiums, and for reinstatement of coverage if certain conditions are met. It conforms to Subpart B of Part 405 of this chapter, which sets forth the requirements for State buy-in agreements. These policies are intended to protect enrollee coverage to the maximum degree compatible with maintaining the integrity of the SMI program.

(b) Policies that apply to premiums required from certain individuals in order to become entitled to Medicare Part A hospital insurance benefits, are set forth in Part 406 of this chapter.

§ 408.3 Definitions.

As used in this part, unless the context indicates otherwise—

Enrollee means an individual who is enrolled in the SMI program under Medicare Part B.

Taxable year means the 12-month period (calendar or fiscal year) for which the individual files his or her income tax return.

§ 408.4 Payment obligations.

(a) *Month for which payment is due.* (1) A payment is due for each month, beginning with the first month of SMI coverage and continuing through the month of death or, if earlier, the month in which coverage terminates.

(2) A premium is due for the month of death, if SMI coverage is still in effect, even though the individual dies on the first day of the month.

(b) *Overdue premiums.* (1) Overdue premiums constitute an obligation enforceable against the enrollee or the enrollee's state.

(2) Overdue premiums are collected—

(i) By deduction from social security or railroad retirement benefits or Federal civil service annuities;

(ii) Directly from the enrollee or the enrollee's estate; or

(iii) By offset against any SMI payments payable to the enrollee or the enrollee's estate.

(3) Interest is not charged on overdue premiums, except under a State buy-in agreement, as provided in § 408.6(c)(4).

(c) *Premiums not required for certain kidney donors.* (1) No premiums are required for SMI benefits related to the donation of a kidney if the donor is not an enrollee.

(2) A kidney donor who is an enrollee is not relieved of the obligation for premiums.

§ 408.6 Methods and priorities for payment.

(a) *Methods of payment.*—(1) *General rules.* Premiums are paid by one of the following four methods:

(i) Payment by a State under a buy-in agreement.

(ii) Deduction from monthly railroad retirement of social security cash benefits or Federal civil service annuities.

(iii) Direct remittance on an individual basis, by or on behalf of the enrollee.

(iv) Direct remittance on a group basis, by an employer, union, lodge or other organization, or by an entity of State or local government.

(2) *Special situations.* (i) If the monthly social security benefit or age 72 special benefit is less than the monthly premium, the benefit is withheld and the enrollee is required to pay the balance through direct remittance. (This situation may arise if the individual first becomes eligible for social security benefits after December 31, 1981, and is, therefore, not eligible for the fixed minimum, or receives age 72 special benefits that are reduced because the individual receives a Government pension.)

(ii) If the monthly railroad retirement benefit or civil service annuity payment is less than the premium, the monthly payment is not withheld and the enrollee is required to pay the total premium by direct remittance.

(b) *Priorities for payment.* (1) If an enrollee is enrolled under a State buy-in agreement—

(i) SMI premiums may not be deducted from monthly cash benefits or annuities; and

(ii) The enrollee may not be required to pay by direct remittance.

(2) If an enrollee is not covered under a State buy-in agreement, but is receiving a monthly benefit or an annuity specified in paragraph (a)(1)(ii) of this section—

(i) The premiums are deducted from that benefit or annuity; or

(ii) If the monthly benefit or payment is less than the monthly premium, the rules of paragraph (a)(2) of this section apply.

(3) If an enrollee is neither covered under a State buy-in agreement, nor receiving monthly benefits or annuity payments, the premiums must be paid totally by direct remittance.

(c) *Payment by a State under a buy-in agreement.* (1) A buy-in agreement is an agreement under which a State, through enrollment and payment of SMI premiums, secures SMI benefits for individuals who are eligible for that program and also eligible for certain other cash or medical benefits. (Policies on enrollment under State buy-in agreements are contained in Subpart B of Part 405 of this chapter.)

(2) The State pays the premiums for each month for which an individual is covered under the agreement.

(3) If an individual's coverage under a State buy-in agreement terminates, his coverage continues on an individual enrollment basis. The premiums are then deducted from benefits, as set forth in Subpart C of this part, or paid by direct remittance in accordance with Subpart D or Subpart E of this part.

(4) Policy on collection of premiums from buy-in States is set forth in a **Federal Register** notice published on September 30, 1985 at 50 FR 39784.

§ 408.8 Grace period and termination date.

(a) *Grace period.* (1) For all initial premium payments (monthly or quarterly), and subsequent monthly payments, the grace period ends with the last day of the third month after the billing month.

(2) For subsequent quarterly payments, the grace period ends with the last day of each 3-month period for which the enrollee is billed.

(3) For payments that are required because of suspension of monthly benefits, the grace period ends the last day of the fourth month after the end of the enrollee's taxable year.

(4) For payments required because the monthly benefit is less than the monthly premium, the grace period ends on April 30 of the year following the calendar year for which the premiums are due.

(b) *Extension of grace period: Last day is nonwork day.* If the last day of the grace period is a Saturday, Sunday, legal holiday, or a day that, by statute or executive order, is a nonwork day for Federal employees, the grace period is extended to the next succeeding work day.

(c) *Termination date.* The end of the grace period is the termination date for SMI coverage if overdue premiums have not been paid by that date in accordance with § 408.68.

(d) *Extension of grace period for good cause.* (1) HCFA may reinstate entitlement, without interruption of coverage, if the individual shows good cause for failure to pay within the initial grace period, and pays all overdue premiums within three calendar months after the termination date.

(2) Good cause will be found if the individual establishes, by a credible statement, that failure to pay premiums within the initial grace period was due to conditions over which he or she had no control, or which he or she could not reasonably have been expected to foresee.

§ 408.10 Claim for monthly benefits pending concurrently with request for SMI enrollment.

(a) If it is clear that an individual who applies for social security or railroad retirement benefits and for SMI will be entitled to monthly benefits, the application for monthly benefits is processed simultaneously with the request for SMI enrollment.

(1) If monthly benefits are paid, the SMI premiums are deducted from those benefits.

(2) If monthly benefits are suspended (for instance, because the individual's earnings exceed the maximum allowed by law), the enrollee is billed for direct remittance.

(b) If it is clear that an individual will be entitled to SMI, but there is substantial question as to eligibility for monthly benefits, the request for SMI enrollment is processed separately.

(1) When SMI enrollment is approved, the enrollee is billed for direct remittance.

(2) When the application for monthly benefits is adjudicated, the following rules apply:

(i) If monthly benefits are paid, the SMI premiums are deducted from those benefits, with appropriate adjustments for any premiums already paid by direct remittance.

(ii) If the application for monthly benefits is approved but the benefits are suspended, the grace period is as set forth in § 408.8(a)(3).

(iii) If the application for monthly benefits is denied, the grace period is as set forth in § 408.8(a)(1).

Subpart B—Amount of Monthly Premiums

§ 408.20 Standard monthly premium.

(a) *Basic provisions.* (1) The law established a monthly premium of $3 for the initial period of the program. It also set forth criteria and procedures for the Secretary to follow each December, beginning with December 1968, to determine and promulgate the standard monthly premium for the 12-month period beginning with July of the following year.

(2) The law was amended in 1983 to require that the Secretary promulgate the standard monthly premium in September of that year, and each year thereafter, to be effective for the 12 months beginning with the following January.

(3) The standard monthly premium applies to individuals who enroll during their initial enrollment periods. In other situations, that premium may be increased or decreased as specified in this subpart.

(b) *Criteria and procedures for the period from July 1976 through December 1983, and for periods after December 1988.* (1) For periods from July 1976 through December 1983, the Secretary determined and promulgated as the standard monthly premium (for disabled as well as aged enrollees) the lower of the following:

(i) The actuarial rate for the aged.

(ii) The monthly premium promulgated the previous December for the year beginning July 1, increased by a percentage that is the same as the latest cost-of-living increase in old age insurance benefits that occurred before the current promulgation. (Because of the change in the effective dates of the premium amount (under paragraph (a)(2) of this section), there was no increase in the standard monthly premium for the period July 1983 through December 1983.)

(2) For periods after December 1988, the Secretary will determine the standard monthly premium in the manner specified in paragraph (b)(1) of this section, but promulgate it in September, for the following calendar year.

(c) *Premiums for calendar years 1984 through 1988.* For calendar years 1984 through 1988, the standard monthly premium for all enrollees—

(1) Is equal to 50 percent of the actuarial rate for enrollees age 65 or over, that is, is calculated on the basis of 25 percent of program costs without regard to any cost-of-living increase in old age insurance benefits; and

(2) Is promulgated in the preceding September.

(d) *Special provisions for calendar years 1987 and 1988*—(1) *Limitation on increase of standard premium.* If there is no cost-of-living increase in old age insurance benefits or disability insurance benefits effective for December 1986, or December 1987, the standard monthly premium for the succeeding year is not increased.

(2) *Nonstandard premiums for certain cases.* (i) A nonstandard premium may be established in individual cases if the following conditions are met:

(A) The individual is entitled to old age or disability benefits for the months of November and December, and actually receives the coresponding benefit checks in December and January.

(B) There is a cost-of-living increase in old age or disability benefits but, wholly or partly because of an increase in the standard monthly premium, the beneficiary would receive a lower cash benefit in January than he or she received in December.[1] (To the extent that a benefit reduction is the result of any factor other than the premium increase, the nonstandard premium provision does not apply.)

(ii) The nonstandard premium is the greater of the following:

(A) The premium paid for December.

(B) The standard premium promulgated for January, reduced as necessary to compensate for the fact that the cost of living increase was less than the increase in the standard premium.

(iii) A nonstandard premium established under paragraph (d)(2)(ii) of this section continues in effect for the rest of the calendar year even if later

[1] Cost-of-living increases are effective in December, and premium increases are effective in January. However, since premiums for each month are collected in the preceding month, both increases affect the amount of the check for December, which is mailed in January.

there are retroactive adjustments in benefit payments. (The only thing that could affect the nonstandard premium is a determination that the individual had not established, or had lost, entitlement to monthly benefits for November or December.)

(iv) A nonstandard premium is subject to increase for late enrollment or reenrollment as required under other sections of this subpart. The increase is based on the amount of the standard premium and added to the nonstandard premium.

§ 408.22 Increased premiums for late enrollment and for reenrollment.

For an individual who enrolls after expiration of his or her initial enrollment period or reenrolls after termination of a coverage period, the standard monthly premium determined under § 408.20 is increased by ten percent for each full twelve months in the periods specified in §§ 408.24 and 408.25.

§ 408.24 Individuals who enrolled or reenrolled before April 1, 1981 or after September 30, 1981.

(a) *Enrollment.* For an individual who first enrolled before April 1, 1981 or after September 30, 1981, the period *includes* the number of months elapsed between the close of the individual's initial enrollment period and the close of the enrollment period in which he or she first enrolled, and *excludes* the following:

(1) The three months of January through March 1968, if the individual first enrolled before April 1968.

(2) Any months before January 1973 during which the individual was precluded from enrolling or reenrolling by the 3-year limitation on enrollment or reenrollment that was in effect before October 30, 1972.

(3) Any months in or before a period of coverage under a State buy-in agreement.

(4) For an individual under age 65, any month before his or her current continuous period of entitlement to hospital insurance.

(5) For an individual age 65 or older, any month before the month he or she attained age 65.

(6) For premiums due for months beginning with September 1984 and ending with May 1986, the following:

(i) Any months after December 1982 during which the individual was—

(A) Age 65 to 69;

(B) Entitled to hospital insurance (Medicare Part A); and

(C) Covered under an employer group health plan by reason of current employment in accordance with § 405.340 of this chapter.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in section 9319(c) of Pub. L. 99-509 and § 405.216 of this chapter.

(7) For premiums due for months beginning with June 1986, the following:

(i) Any months after December 1982 during which the individual was:

(A) Age 65 or over; and

(B) Covered, by reason of current employment, under an employer group health plan that meets the definition of § 162(i)(3) of the Internal Revenue Code of 1954.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in section 9319(c) of Pub. L. 99-509 and § 405.216 of this chapter.

(8) For premiums due for months beginning with January 1987, the following:

(i) Any months after December 1986 and before January 1992 during which the individual was:

(A) A disabled Medicare beneficiary under age 65;

(B) Not eligible for Medicare on the basis of end stage renal disease, under § 406.13 of this chapter; and

(C) Covered, as an employee, employer, individual associated in a business relationship with an employer, or family member of any of the foregoing, under an employer group health plan meeting the definition in § 5000(b) of the Internal Revenue Code of 1954.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in section 9319(c) of Pub. L. 99-509 and § 405.216 of this chapter.

(b) *Reenrollment.* For an individual who reenrolled before April 1, 1981 or after September 30, 1981, the period:

(1) *Includes* the following: (i) The number of months elapsed between the close of the individual's initial enrollment period and the close of the enrollment period in which he or she first enrolled; plus

(ii) The number of months elapsed between the individual's initial period of coverage and the close of the enrollment period in which he or she reenrolled; plus

(iii) The number of months elapsed between each subsequent period of coverage and the close of the enrollment period in which he or she reenrolled.

(2) *Excludes* the following:

(i) The periods specified in paragraphs (a)(1) through (a)(8) of this section; and

(ii) Any month before April 1981 during which the individual was precluded from reenrolling by the two-enrollment limitation in effect before that date.

§ 408.25 Individual who enrolled or reenrolled between April 1 and September 30, 1981.

(a) *Basic rules.* Except as specified in paragraph (b) of this section, the rules set forth in § 408.24 apply to an individual who enrolled or reenrolled between April 1 and September 30, 1981.

(b) *Exception.* For an individual who enrolled or reenrolled between April 1 and September 30, 1981, the months to be counted ran through the month in which he or she reenrolled. (During those 6 months, continuous open enrollment was in effect and there was no 3-month "general enrollment period".)

§ 408.26 Examples.

Example 1. Mr. J, who became age 65 and otherwise eligible for enrollment in November 1965, first enrolls in March 1968. The months to be included in determining the amount of the increase in Mr. J's premiums begin with June 1966 (the first month after the close of his initial enrollment period and extend through December 1967 (the period January through March of 1968 is excluded in determining the total months) for a total of 19 months. Since there is only one full 12-month period in 19 months, Mr. J's premiums will be 10 percent greater than if he had enrolled in his initial enrollment period.

Example 2. Mr. V, who enrolled in December 1965, voluntarily terminates his enrollment effective midnight December 31, 1967. He enrolls for a second time in January 1969. The months to be included in determining the amount of the increase in Mr. V's premiums are January 1968 through March 1969, a total of 15 months. Since this totals one full 12-month period. Mr. V's monthly premium, will be increased by 10 percent.

Example 3. Ms. N becomes age 65 in July 1965 and first enrolls in December 1967. She pays premiums increased by 10 percent above the regular rate, beginning July 1968, the first month of her SMI coverage. Ms. N fails to pay the premiums for the calendar quarter ending June 30, 1970, and her coverage is terminated on that date, the end of her grace period. Ms. N enrolls for a second time in January 1971. The months to be included in determining the amount of the increase in Ms. N's premiums are June 1966 through December 1967, a total of 19 months, and July 1970 through March 1971, a total of 9 months, for a grand total of 28 months. Since this totals two full 12-month periods, Ms. N's monthly premium will be increased by 20 percent.

Example 4. Mr. X attained age 65 in August 1966 and enrolled during his initial enrollment period. His coverage was terminated effective June 30, 1968, for nonpayment of premiums. He reenrolls in March 1973. For purposes of computing any applicable premium increase, he will not be charged any months between March 1971 (the end of the last general enrollment period during which he was eligible to reenroll under the law in effect before October 30, 1972) and January 1973. Therefore, he will be charged 36 months (July 1968–March 1971 plus January 1973–March 1973) and his premiums for his second period of coverage will be increased 30 percent.

Example 5. Ms. C, who attained age 65 in August 1973, had two periods of supplementary medical insurance coverage, both of which were terminated because of nonpayment of premiums: August 1973 through April 1975 and July 1977 through August 1978. She reenrolls in July 1981. The months to be included in determining the amount of premium increase are May 1975 through March 1977 (23 months) and April 1981 through July 1981 (4 months) for a total of 27 months. The 31 months from September 1978 through March 1981 may not be counted because Ms. C was prevented from reenrolling by the two-enrollment limitation in effect before April 1, 1981. For Ms. C, the standard monthly premium would be increased by 20 percent.

§ 408.27 Rounding the monthly premium.

Any monthly premium that is not multiple of 10 cents is rounded to the nearest multiple of 10 cents, and any odd mulitple of 5 cents is rounded to the next higher multiple of 10 cents.

Subpart C—Deduction from Monthly Benefits

§ 408.40 Deduction from monthly benefits: Basic rules.

(a) *Deduction from monthly benefits.* (1) Enrollees who are receiving monthly benefits do not have the option of paying by direct remittance to avoid deduction.

(2) If the enrollee is entitled to more than one type of monthly benefit, the order of priority for deduction is as follow:

(i) Railraod retirement benefits.

(ii) Social security benefits.

(iii) Civil service annuities.

(b) *Deduction from initial or reinstated benefits.* When an enrollee receives a monthly benefit check after an initial award or after a period of suspension, that check is, if administratively feasible, reduced or increased to deduct unpaid premiums or refund premiums paid in advance by direct remittance.

(c) *Ongoing deductions.* The premium for each month is deducted from the cash benefit for the preceding month, e.g., the premium for March is deducted from the benefit for February, which is paid at the beginning of March.

§ 408.42 Deduction from railroad retirement benefits.

(a) *Responsibility for deductions.* If an enrollee is entitled to railroad retirement benefits, his or her SMI premiums are deducted from those benefits by the Railroad Retirement Board (RRB) even though he or she is also entitled to social security benefits or a civil service annuity, or both.

(b) *Action when benefits are suspended.* If the railroad retirement benefits are suspended, the RRB sends premium notices requesting direct remittance, to be made in accordance with the rules set forth in Subpart D of this part.

§ 408.43 Deduction from social security benefits.

SSA, acting as HCFA's agent, deducts the premiums from the monthly social security benefits if the enrollee is not entitled to railroad retirement benefits. (If the benefit is less than the monthly premium, the benefit is withheld and the enrollee is required to pay the balance through direct remittance.)

§ 408.44 Deduction from civil service annuities.

(a) *Responsibility for deductions.* If an enrollee is not entitled to railroad retirement benefits or social security benefits, and is receiving a civil service annuity, the premiums are deducted from that annuity by the Office of Personnel Management (OPM) on the basis of a notice from SSA indicating that the annuitant is entitled to SMI.

(b) *Deduction of spouse's premiums.* If the annuitant's spouse is also enrolled for SMI and is not entitled to a civil service annuity or to social security or railroad retirement benefits, and the annuitant gives written consent, OPM also deducts the spouse's premium from the annuitant's monthly check.

(c) *Withdrawal of annuitant's consent.* (1) If an annuitant wishes to withdraw consent for deduction of the spouse's premium, he or she must send written notice of withdrawal to OPM.

(2) The withdrawal notice is effective with the third month after the month in which it is received, or with the month specified in the notice, whichever is later.

§ 408.45 Deduction from age 72 special payments.

(a) *Deduction of premiums.* SMI premiums are deducted from age 72 special payments made under section 228 of the Act or the payments are withheld under procedures that correspond to the rules set forth in §§ 408.40 and 408.43.

(b) *Collection of premiums while age 72 special payments are suspended.* If the age 72 special payments are suspended, HCFA or its agent notifies the enrollee to pay premiums by direct remittance, in accordance with the rules set forth in § 408.60.

(c) *Grace period.* The grace period ends with the last day of the third month after the billing month.

(d) *Resumption of age 72 special payments.* (1) If age 72 special payments are resumed before the end of the grace period and all premium arrears can be deducted from those special payments, SMI coverage continues and the enrollee need not pay by direct remittance.

(2) Subsequent special payments are reduced by the amount of the premium for as long as the enrollee receives special payments.

§ 408.46 Effect of suspension of social security benefits.

(a) *Benefit payments to be resumed during the taxable year.* (1) If social security benefit payments are scheduled to be resumed during the enrollee's current taxable year, the enrollee is not billed.

(2) The enrollee may, if he or she wishes, pay the premiums during suspension of benefits.

(b) *Benefit payments not to be resumed during the enrollee's current taxable year.* (1) If social security benefits are suspended for a period that will not permit collection of all premiums due from monthly benefits payable in the enrollee's current taxable year, HCFA or its agents bill the enrollee and require direct remittance in accordance with Subpart D of this part.

(2) The first billing is for whatever premiums are necessary to place the enrollee in a quarterly cycle.

(3) Thereafter, the billing is on a quarterly basis. (Quarters for different enrollees are staggered throughout the year.)

(4) The enrollee has the option of paying premiums for more than one quarter at the same time.

§ 408.47 Overdue premiums for months in a closed taxable year.

(a) *Reasons for overdue premiums.* An enrollee may have overdue premiums for a closed taxable year for either of the following reasons:

(1) The monthly social security benefits were suspended.

(2) The request for SMI enrollment was adjudicated with coverage retroactive to the enrollee's previous taxable year.

(b) *Payment of overdue premiums for a closed taxable year.* (1) If the premiums are overdue because of suspension of social security benefits—

(i) The enrollee is billed at the end of his or her taxable year; and

(ii) The grace period ends with the last day of the fourth month after the close of the enrollee's taxable year.

(2) If the premiums are overdue because SMI enrollment was adjudicated with retroactive coverage and cannot be collected from past due or current monthly benefits—

(i) The enrollee is billed immediately after adjudication; and

(ii) The grace period ends with the last day of the third month after the billing month.

(3) The bill indicates that, unless the arrears are paid by the last day of the grace period, coverage will end on that day.

(c) *Example.* Mr. H became entitled to supplementary medical insurance effective July 1980. He was entitled to monthly benefits, but reported work and earnings which precluded payment of those monthly benefits. Although billed, he paid no premium by direct remittance. Mr. H's taxable year ends May 31 because he reports his earnings for fiscal years ending on that date. Early in May 1981, Mr. H is notified of his unpaid premiums ($105.60) for the fiscal year ending May 31, 1981, and advised that those premiums are overdue and should be paid promptly. Without good cause, Mr. H fails to pay by September 30, 1981, despite the May notice advising him that the termination date is September 30. Mr. H's supplementary medical insurance coverage is terminated effective midnight September 30, 1981.

§ 408.50 When premiums are considered paid.

(a) *Actual deduction.* A premium is considered paid if it is actually deducted from a monthly benefit check. Therefore—

(1) The premium is "paid" even if SSA later finds that the benefit was paid in error; but

(2) A finding that a monthly benefit was erroneously withheld does not constitute payment of the premium for that month. Since there was no payment, there was no deduction. The enrollee is billed and continuance of coverage depends on payment of premiums before the end of the grace period or extended grace period.

(b) *Payment within the grace period.* Overdue premiums are considered paid within the grace period in the following situations:

(1) *Benefits are resumed during the grace period.* (i) Monthly cash benefit payments are payable for the last month of the initial grace period or for earlier months on the basis of a notice filed by the enrollee before the initial grace period ends; and

(ii) Those payments are sufficient to permit deduction of all overdue premiums.

(2) *Annual accounting report or other report submitted during the grace period shows a benefit is due.* (i) Before the end of the grace period, the enrollee submits a report clearly showing that monthly cash benefits, previously withheld, are payable for one or more months of a closed taxable year; and

(ii) Those benefits are sufficient to permit deduction of the full amount of the overdue premiums.

(3) Premium arrears are paid by direct remittance. The enrollee makes a direct remittance payment of all overdue premiums before the end of the grace period.

(c) *Examples.* (1) Mr. C, who became entitled to SMI in July 1978, was entitled to monthly social security benefits of $300. His premium rate was $8.20. He was paid $291.80 for each month from July to December 1978. In 1979, SSA determined that Mr. C's work and earnings in *1978* precluded any benefit payments for that year. Mr. C would not be found to owe any premiums for July through December 1978. He would, of course, have to refund the full $300 a month overpayment to SSA.

(2) (i) Ms. M also become entitled in July 1978. On the basis of Ms. M's report of work and earnings, her monthly benefits for July through December 1978 were withheld and SMI premiums could not be deducted. She was billed but made no premium payments during 1978. In January 1979, Ms. M is notified of the overdue premiums for her closed taxable year and of the fact that her SMI coverage will terminate April 30, 1979 unless the overdue premiums are paid by then. Ms. M's monthly benefits continue suspended and she fails to pay the premiums. Consequently, her SMI coverage is terminated as of April 30, 1979. In March 1980, Ms. M submits an annual report that she did not work in December 1978. A benefit for that month is paid subsequently.

(ii) If Ms. M had submitted the report of the benefit due before the end of the grace period (April 30, 1979), it would have permitted deduction of all her overdue premiums and continuation of SMI coverage. Because the report was not submitted before April 30, 1979, Ms. M's coverage cannot be reinstated.

§ 408.52 Change from direct remittance to deduction.

If a direct remittance enrollee becomes entitled to monthly benefits—

(a) The SMI premiums are deducted from those benefits; and

(b) The enrollee is notified of the deduction and of any adjustment of the initial benefit check that is required to collect overdue premiums or refund premiums paid in advance.

§ 408.53 Change from partial direct remittance to full deduction.

If a benefit that was less than the premium (and therefore required direct remittance of the difference) is increased to an amount equal to, or greater than, the premium—

(a) The full premium is paid from the benefit; and

(b) Any amounts the enrollee had paid toward premiums not yet due are refunded.

Subpart D—Direct Remittance: Individual Payment

§ 408.60 Direct remittance: Basic rules.

(a) Premiums not deducted from monthly benefits under Subpart C of this part or paid by a State buy-in agreement must be paid by direct remittance to HCFA or its agents, by or on behalf of the enrollee.

(b) Quarterly payment is preferred as more cost-effective, but monthly payment is accepted if the enrollee is unwilling or unable to make quarterly payments or is also paying hospital insurance premiums, which must be paid every month.

(c) HCFA, directly or through its agents, sends quarterly or monthly premium bills and includes an addressed return envelope with the bill.

(d) The individual must—

(1) Send a check or money order that is drawn payable to "HCFA Medicare Insurance" and show the enrollee's name and claim number as it appears on the Medicare card; and

(2) Return the bill with the check or money order in the preaddressed envelope.

§ 408.62 Initial and subsequent billings.

(a) *Monthly billing.* (1) The first premium bill is for the period from the first month of coverage (or the first month of change from deduction or State buy-in payment) through the end of the first month after the month of billing.

(2) Subsequent billings are for periods of one month.

(b) *Quarterly billing.* (1) The first premium bill is for the period from the first month of coverage (or of change from deduction or State buy-in payment) through the third month after the month of billing.

(2) Subsequent billings are for periods of three months.

§ 408.63 Billing procedures when monthly benefits are less than monthly premiums.

If monthly benefits are less than monthly premiums, the following procedures apply:

(a) *Notice of amount due.* At the beginning of SMI entitlement, and at the beginning of each succeeding calendar year, SSA—

(1) Notifies the enrollee of the amount of benefits payable for the rest of the year and the total premiums due for those same months; and

(2) Bills the enrollee for the difference.

(b) *Notice of amount overdue.* At the beginning of each succeeding calendar year, SSA—

(1) Notifies the enrollee of any amounts overdue for premiums for the preceding calendar year; and

(2) Indicates that if the amount still overdue on April 30 is equal to or greater than the premium for 3 months, SMI coverage will terminate on that date.

§ 408.65 Payment options.

(a) The enrollee is not asked to pay premiums at the time of enrollment but is instructed to pay them upon receipt of a premium bill from HCFA or its agents.

(b) However, if the enrollee wishes, he or she may pay from one to 12 months or from one to four quarters at the time of enrollment.

§ 408.68 When premiums are considered paid.

(a) *Payment by check.* The premium is considered paid if the check is paid by the bank the first or second time it is presented for payment.

(b) *Payment within the grace period.* (1) A premium is considered paid within the grace period if it is delivered personally, or mailed on or before the last day of that period.

(2) A premium payment is considered to have been mailed 7 days before it is received by HCFA.

§ 408.70 Change from quarterly to monthly payments.

If an enrollee requests change from quarterly to monthly payment—

(a) If the enrollee is paid up under the quarterly cycle, the first monthly bill is for one month.

(b) If the enrollee is not paid up under the quarter system, the first bill includes all premiums due.

§ 408.71 Change from deduction or State payment to direct remittance.

(a) *Basis for change.* An SMI enrollee is required to pay by direct remittance in any of the following circumstances:

(1) The enrollee's entitlement to social security or railroad retirement benefits ends for any reason other than death.

(2) The premiums can no longer be deducted from the civil service annuity of the enrollee or the enrollee's spouse.

(3) The enrollee no longer qualifies for coverage under a State buy-in agreement, and is not entitled to social security or railroad retirement monthly benefits.

(b) *Billing.* When any of the events specified in paragraph (a) of this section occurs (or as soon thereafter as possible), HCFA or its agents bill the enrollee for direct remittance, in accordance with this subpart.

Subpart E—Direct Remittance: Group Payment

§ 408.80 Basic rules.

(a) *Sources of group payment.* An employer, a lodge, union, or other organization may pay SMI premiums on behalf of one or more enrollees.

(b) *Informal arrangement.* Enrollees may turn over their premium notices to their employer, union, lodge, or other organization and that organization may send a single payment (with the premium notices attached so that the payments can readily be identified with the appropriate enrollees) to the HCFA Premium Collection Center. Prompt payment is essential since SMI coverage terminates if premiums are not paid by the end of the grace period.

(c) *Group billing arrangement.* HCFA may send a single notice for the premiums due from a group of enrollees if the following conditions are met:

(1) The group payer—

(i) Uses funds other than the enrollees' to pay all or a substantial part of the premiums; or

(ii) Deducts the premiums from periodic payments it makes to the enrollees in the group.

(2) The enrollee's rights are protected and enrollees are not required to pay the costs of having their premiums paid on a group basis.

§ 408.82 Conditions for group billing.

HCFA agrees to a group billing arrangement only if the following conditions are met:

(a) Conditions the group payer must meet. The group payer submits a written request for group billing—

(1) Showing that all or part of the payments are made from the payer's funds or from funds due the enrollees and in the payer's possession; and

(2) Agreeing not to charge the enrollees for the service of paying the premiums or for the administrative costs such as recordkeeping and postage.

(b) *Enrollees eligible for group payment.* (1) Group payment may be made only on behalf of individuals who are already enrolled and are being billed for direct remittance.

(2) Group payment may not be made for enrollees whose premiums are being deducted from monthly benefits in accordance with Subpart C of this part or being paid by the State under a buy-in agreement.

(c) *Protection of enrollee's rights.* The use of group billing must not jeopardize the enrollees' right—

(1) To confidentiality of personal information;

(2) To terminate enrollment;

(3) To resume individual payment of premiums if he or she wishes; and

(4) To receive notice of any action that affects the SMI benefits.

(d) *Authorization by the enrollee.* (1) To ensure maximum feasible protection of the rights specified in paragraph (c) of this section, each enrollee must give written authorization as specified in § 408.84(a)(2).

(2) A group payer that is not an entity of State or local government must submit all enrollee authorizations to HCFA.

(3) A group payer that is an entity of State or local government may retain the authorizations and certify to HCFA that it has on file an authorization for each enrollee included in the group.

(4) It is on the basis of the enrollee's authorization that HCFA sends the group payer information about each enrollee, as necessary to carry out the group payment function.

(e) *Size of group.* The number of enrollees must be at least 20, which is the minimum size sufficient to make group billing efficient. (Smaller groups may use the informal procedure described in § 408.80(b).)

§ 408.84 Billing and payment procedures.

(a) *Initial premium notice.* (1) HCFA or its agent always sends the initial premium notice to the enrollee.

(2) An enrollee who wishes to have the premiums paid on a group basis must give the notice to the group payer, along with written authorization for sending subsequent notices to the group payer and for release of the information required for the group payment process.

(b) *Monthly billings.* Group premiums are billed on a monthly basis. However, the group payer may pay up to 12 months in advance.

(c) Group payers must make their payments within 30 days after billing, to avoid infringing on the 90-day grace period during which the premiums may be paid by the enrollee if he or she is dropped from the group.

(d) *Effect of group payment.* Payment by a group payer is considered payment by the enrollee.

§ 408.86 Responsibilities under group billing arrangement.

(a) *Enrollee responsibilities.* (1) The enrollee is still responsible for premium payments; the group payer simply acts as his agent. If the agent fails to pay, or identifies the payment incorrectly, SSA notifies both the agent and the enrollee that the enrollee's account is delinquent. If an enrollee fails to take action on that notice, entitlement is terminated for nonpayment of premiums.

(2) The enrollee must promptly notify both SSA and the group payer of any change of address.

(b) *Group payer's responsibilities.* The group payer must—

(1) Make premium payments promptly upon receipt of notices;

(2) Promptly notify both HCFA and the enrollee when it drops an enrollee from the group;

(3) Make payments in a way that facilitates efficient and economical processing; and

(4) Maintain the confidentiality of the personal information obtained from HCFA for the group payment process.

(c) *HCFA responsibilities.* HCFA—

(1) Sends the bill to the group payer upon authorization from the enrollee;

(2) Notifies both the payer and the enrollee if the payer fails to make timely payments; and

(3) Refunds excess premiums in accordance with § 408.88.

§ 408.88 Refund of group payments.

(a) *Basis for refund.* Group payments are refunded only in the following circumstances:

(1) The premium was for a month after the month in which the enrollee's SMI coverage terminated or the enrollee died.

(2) The premium was for a month after the month in which the group payer gave notice (before the 26th day of that month) that the enrollee was no longer eligible for group payment and was being dropped from the group.

(b) *Example.* F is the wife of J who is a retiree of Corporation X. That corporation pays premiums on behalf of all of its retirees and their dependents. F obtains a divorce from J on October 20 and thus disqualifies herself for further premium payments by the corporation. The corporation gives notice on November 10 that a refund is due because F has been dropped from the list of persons for whom it has agreed to pay premiums. The premium paid for December would be refunded to the group payer.

(c) *To whom refund is made.* (1) HCFA ordinarily refunds to the group payer the premiums specified in paragraph (a) of this section.

(2) However, if HCFA has information that clearly shows those premiums were paid from the enrollee's funds, it sends the refund to the enrollee.

§ 408.90 Termination of group billing arrangement.

(a) A group billing arrangement may be terminated either by the group payer or by HCFA upon 30 days' notice.

(b) HCFA may terminate the arrangement if it finds that the group payer is not acting in the best interest of the enrollees or that, for any other reason, the arrangement has proved inconvenient for HCFA.

§ 408.92 Change from group payment to deduction or individual payment.

(a) *Enrollee excluded from group payment arrangement because of entitlement to monthly benefits.* (1) When an enrollee becomes entitled to monthly benefits from which premiums can be deducted as specified in Subpart C of this part. HCFA notifies the group payer to discontinue payment for that enrollee.

(2) In order to maintain confidentiality, HCFA does not explain to the group payer the reason for excluding the enrollee from the group payment arrangement.

(3) the enrollee's premiums are thereafter deducted from the monthly benefits, in accordance with Subpart C of this part.

(b) *Enrollee no longer eligible for the group.* (1) When an enrollee is no longer eligible to be included in the group (for instance because he or she is no longer employed by the group payer or has terminated union or lodge membership), the group payer must promptly notify HCFA and the enrollee.

(2) HCFA or its agents resume sending individual bills to the enrollee, for direct remittance subject to the grace period and termination dates specified in § 408.8.

Subpart F—Termination and Reinstatement of Coverage

§ 408.100 Termination of coverage for nonpayment of premiums.

(a) *Effective date of termination.* Termination is effective on the last day of the grace period. The determination is not made until 15 days after that day to allow for processing of remittances mailed late in the grace period, as provided in § 408.68.

(b) *Notice of termination.* (1) SSA sends the enrollee notice of termination between 15 and 30 days after the end of the grace period and includes information regarding the enrollee's right of appeal.

(2) HCFA notifies any intermediary or carrier that had previously been informed that the enrollee had met the SMI deductible for the year in which the termination is effective.

§ 408.102 Reconsideration of termination.

(a) *Basic rules.* Coverage may be reinstated without interruption of benefits if the following conditions are met:

(1) the enrollee appeals the termination by the end of the month following the month in which SSA sent the notice of termination.

(2) The enrollee alleges and it is found that the enrollee did not receive timely and adequate notice that the premiums were overdue.

(3) The enrollee pays, within 30 days after SSA's subsequent request for payment, all premiums due through the month in which he or she appealed the termination.

(b) *Basis for reinstating coverage.* coverage may be reinstated if the evidence establishes one of the following:

(1) The enrollee acted diligently to pay the premiums or to request relief upon receiving a premium notice very late in the grace period or shortly after its end, and the delayed notice was not the enrollee's fault. (For example, if the billing notice was misaddressed or lost in the mail, it would not be the enrollee's fault; if the enrollee had moved and not notified SSA of the new address, he or she would be responsible for the delay.)

(2) On the basis of information given by SSA, the enrollee could reasonably have believed that the premiums were being paid by deduction from benefits or by some other means. (An example would be a notice indicating that premiums would be paid by a State Medicaid agency or a group payer or would be deducted from the spouse's civil service annuity.)

(c) *No basis for reinstating coverage.* Coverage may not be reinstated if the enrollee—

(1) Received timely and adequate notice but failed to pay within the grace period, for example because of insufficient income or resources; or

(2) Appealed the termination more than one month after the month in which SSA sent the termination notice.

§ 408.104 Reinstatement procedures.

(a) *Request for payment.* If the conditions of § 408.102(a) (1) and (2) are met, SSA sends written notice requesting the enrollee to pay, within 30 days, all premiums due through the month in which the enrollee appealed the termination.

(b) *Reinstatement of coverage.* If SSA receives the requested payment within 30 days, it sets aside the termination and reinstates the enrollee's coverage without interruption.

Subpart G—Collection of Unpaid Premiums; Refund of Excess Premiums After the Death of the Enrollee

§ 408.110 Collection of unpaid premiums.

(a) *Basis and scope.*—(1) *Basis.* Under the Federal Claims Collection Act of 1966 (31 U.S.C. 3711), HCFA is required to collect any debts due it but is authorized to suspend or terminate collection action on debts of less than $20,000 when certain conditions are met. (See 4 CFR, Parts 101-105 for general rules implementing the Federal Claims Collection Act.) As indicated in § 408.4, unpaid premiums are debts owed the Federal Government by the enrollee or the enrollee's estate.

(2) *Scope.* This section sets forth the methods of collection used by HCFA and the circumstances under which HCFA terminates or renews collection action. The regulations in this section apply to hospital insurance premiums as well as SMI premiums.

(b) *Collection of unpaid premiums.* Generally, HCFA will attempt to collect unpaid premiums by one of the following methods:

(1) By billing enrollees who pay the premiums directly to HCFA or to a designated agent in accordance with § 408.60.

(2) By deduction from any benefits payable to the enrollee or the estate of a deceased enrollee under Title II or XVIII of the Social Security Act, the Railroad Retirement Act or any act administered by the Office of Personnel Management in accordance with § 408.4(b) and Subpart C of this part (Deduction from Monthly Benefits); or

(3) By billing the estate of a deceased enrollee.

(c) *Termination of collection action.* HCFA terminates collection action on unpaid premiums under either of the following circumstances, if the cost of collection exceeds the amount of overdue premiums:

(1) The individual is not entitled to benefits under the Acts listed in paragraph (b)(2) of this section, is not currently enrolled for SMI or premium hospital insurance, and demonstrates, to HCFA's satisfaction, that he or she is unable to pay the debt within a reasonable time.

(2) The individual has been dead more than 27 months (the maximum time allowed for claiming SMI benefits), and the legal representative of his or her estate demonstrates, to HCFA's satisfaction, that the estate is unable to pay the debt within a reasonable time.

(d) *Renewal of collection efforts.* HCFA renews collection efforts in either of the following circumstances, if the cost of collection does not exceed the amount of the overdue premiums:

(1) The individual enrolls again for premium hospital insurance or SMI. (Payment of overdue premiums is not a prerequisite for reenrollment.)

(2) The individual becomes entitled or reentitled to social security or railroad retirement benefits or a Federal civil service annuity.

§ 408.112 Refund of excess premiums after the enrollee dies.

If HCFA has received premiums for months after the enrollee's death, HCFA refunds those premiums as follows:

(a) To the person or persons who paid the premiums or, if the premiums were paid by the enrollee, to the representative of the enrollee's estate, if any.

(b) If refund cannot be made under paragraph (a) of this section, HCFA refunds the premiums to the enrollee's survivors in the following order of priority:

(1) The surviving spouse, if he or she was either living in the same household with the deceased at the time of death, or was, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the decreased beneficiary;

(2) The child or children who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);

(3) The parent or parents who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one parent, in equal parts to each parent);

(4) The surviving spouse who was not living in the same household with the deceased at the time of death and was not, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased beneficiary;

(5) The child or children who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);

(6) The parent or parents who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one parent, in equal parts to each parent).

If none of the listed relatives survives, no refund can be made.

C. Technical amendments.

§ 401.601 [Amended]

1. In § 401.601(d)(2)(iv), reference to "§ 405.962" is changed to "§ 408.110".

§ 405.212 [Amended]

2. In § 405.212(e), "(see § 405.902)" is changed to "under Subpart B of Part 408 of this chapter,".

§ 405.223 [Amended]

3. In § 405.223(b), "Subpart I of this part." is changed to "Part 408 of this chapter.".

§ 405.226 [Amended]

4. In § 405.226, the phrase "Subpart I of this part," is changed to "Part 408 of this chapter,".

§ 405.705 [Amended]

5. In § 405.705(d), "405.962" is changed to "408.110".

(Catalog of Federal Domestic Assistance Program No. 13.774 Medicare—Supplementary Medical Insurance)

Dated: July 6, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 22, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-29062 Filed 12-17-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3560

[AA-650-08-4133-02-2410; Circular No. 2602]

Hardrock Minerals; Final Action To Correct Latent Ambiguity

AGENCY: Bureau of Land Management, Interior.

ACTION: Final action to correct latent ambiguity.

SUMMARY: The Bureau of Land Management has become aware of the existence of a latent ambiguity in the renewal terms applicable to a limited number of hardrock leases issued by the Bureau after October 9, 1964, on Lease Form 4–1100 (dated September 1962). In an effort to resolve the problems caused by this ambiguity, the Bureau will offer to give the holders of the affected hardrock leases an opportunity to elect to obtain a one-time renewal of the lease term identical to that of the term granted in the original lease, 20 years, with all subsequent renewals to be for a term of ten years, the requirement in the existing hardrock leasing regulations. This one-time renewal will be in lieu of the renewal for a term of 10 years applicable to other hardrock leases (43 CFR 3561.3).

EFFECTIVE DATE: January 19, 1988.

ADDRESS: Any inquiries or suggestions should be sent to: Director (650), Bureau of Land Management, Room 3610, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli, (202) 343–3258.

SUPPLEMENTARY INFORMATION: A proposed action to correct the latent ambiguity in a small number of hardrock leases was published in the **Federal Register** on August 21, 1987 (52 FR 31643), with a 30-day comment period. One comment was received and it expressed support for the action.

For hardrock leases issued prior to October 9, 1964, the then current regulations provided for a lease term of 5 or 10 years with a right to renew the lease "for successive periods of like duration." (43 CFR 200.37(f)). The language providing for renewal "for successive periods of like duration" was included in Lease Form 4–1100 (dated September 1962). In 1963, 43 CFR 200.37(f) was rewritten and renumbered as 43 CFR 3221.4(f). In October 1964, 43 CFR 3221.4(f) was amended to provide for an initial lease term not to exceed 20 years for hardrock leases, with renewals to be for a term not to exceed 10 years.

An ambiguity arose when the Bureau of Land Management issued approximately 7 hardrock leases after the effective date of the October 1964 amendment to 43 CFR 3221.4(f) using Lease Form 4–1100 (dated September 1962), which Form continued to use for renewal purposes the language "for successive periods of like duration in accordance with regulation 43 CFR 200.37(f)." This language appeared to grant a lessee the right to renew a lease for a period of 20 years, the initial term of hardrock leases granted after the October 1964 revision of the hardrock leasing regulations. Later versions of Lease Form 4–1100 corrected the language relating to the renewal term to bring it into compliance with the provisions of 43 CFR 3221.4(f), as amended, making it clear that the renewal of a hardrock lease could be for a term not to exceed 10 years. Currently, the renewal limitation on hardrock leases is contained in 43 CFR 3561.3.

When this final action becomes effective, the holders of the seven or so leases that are affected by this ambiguity will be given the opportunity to request that their leases be renewed once for a period of 20 years, rather than the 10 years required by 43 CFR 3561.3 of the existing regulations, with all subsequent renewals to be for the term required by the existing regulations. Therefore, the holders of these seven or so hardrock leases should, if they desire an initial renewal term of 20 years, file a request with the appropriate State Office of the Bureau of Land Management, citing this Action document and requesting a renewal of their hardrock lease for a 20-year term.

The principal author of this final action document is Mary Linda Ponticelli, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

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

This action document will directly affect only approximately seven hardrock leases. The effect of the action will be equally applicable to all of the affected leases, regardless of the size of the entity holding them.

There are no information collection requirements contained in this Action document requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects 43 CFR Part 3560

Government contracts, Mineral royalties, Public lands—mineral resources, Surety bonds.

This final action is carried out under the authority of Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), including the Act of February 7, 1927 (30 U.S.C. 281–287); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) as it relates to the Act of March 4, 1917 (16 U.S.C. 520); Title II of the National Industrial Recovery Act of June 16, 1933 (40 U.S.C. 401, 403(a) and 406); the 1935 Emergency Relief Appropriations Act of April 8, 1935 (48 Stat. 115, 118); section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended by the Act of July 28, 1942 (7 U.S.C. 1011(c), 1018) and section 3 of the Act of June 28, 1952 (66 Stat. 285); section 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026); section 10 of the Act of August 4, 1939 (43 U.S.C. 387) as it relates to the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 1, 1968 (16 U.S.C. 90c et seq.); the Act of October 17, 1972 (16 U.S.C. 460dd et seq); section 6 of the Act of November 8, 1965 (16 U.S.C. 460q et seq.) as it relates to section 3 of the Act of September 1, 1949 (30 U.S.C. 192(c)); sections 403, 404, and 1312 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–4) as it relates to section 10 of the Act of August 4, 1939, as amended (43 U.S.C. 387); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and the Independent Offices Appropriation Act (31 U.S.C. 9701).

J. Steven Griles,

Assistant Secretary of the Interior.

November 25, 1987.

[FR Doc. 87-29024 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-84-M

Proposed Rules

Federal Register
Vol. 52, No. 243
Friday, December 18, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25192; File No. S7-25-87]

Multiple Trading of Options

AGENCY: Securities and Exchange Commission.

ACTION: Rescheduling of date of public hearing; extension of time for comment and for requests to appear at the hearing; and request for additional comment.

SUMMARY: The Securities and Exchange Commission ("Commission") announced today that the public hearing on multiple trading of options, previously scheduled to take place on November 23, 1987 has been rescheduled for February 11, 1988. The Commission is extending until January 25, 1988, the date by which those interested in testifying at the public hearing should notify the Commission; until February 1, 1988, the date by which written testimony is due; and until February 11, 1988, the date for the submission of all other comments. Finally, the Commission is seeking additional comment on certain issues related to the proceeding.

DATES: The public hearing will be held on February 11, 1988, at 9:30 a.m. Requests to appear at the public hearing should be received by January 25, 1988. Those scheduled to appear at the hearing must submit an original and ten copies of their written statements by February 1, 1988. All other written comments must be received by February 29, 1988, and must be submitted in triplicate.

ADDRESSES: The public hearing will be held in Room 1C30 at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Those wishing to appear at the hearing should contact Holly H. Smith, Esq., (202) 272-2406, Special Counsel, Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should send copies of their written testimony to her. All other written comments should refer to File No. S7-25-87 and be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of all written submissions and the transcript of the public hearing will be available at the Commission's Public Reference Room, at the above address, in File No. S7-25-87.

FOR FURTHER INFORMATION CONTACT: Holly H. Smith, Esq., (202) 272-2406, Special Counsel, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5-1, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On June 18, 1987, the Commission issued a release commencing a proceeding on the multiple trading of options to consider whether to: (1) Adopt a policy permitting the multiple trading of options on exchange-listed stocks; and/or (2) amend the rules of the options exchanges to remove restrictions on the multiple trading of options.[1] A public hearing in connection with the proceeding was scheduled to take place on November 23, 1987.[2] On November 13, 1987, however, the Commission issued an order postponing the hearing until February 1988 in order that interested parties would have additional time to develop their testimony and prepare written comments.[3] The Commission has now set February 11, 1988 as the hearing date.

Request for Additional Comment: By letter, dated October 16, 1987, eight members of the U.S. House of Representatives Committee on Energy and Commerce requested that the Commission consider a variety of issues in connection with its proceeding on the multiple trading of options.[4] In particular, the House Letter requests that the Commission consider: (1) The impact of multiple trading on the regional exchanges; (2) the costs of establishing duplicative trading facilities in various markets; and (3) the competitive cost of diverting the resources of the U.S. securities exchanges into inter-exchange competition and away from meeting competition from foreign markets. The Commission requests that commentators specifically address these and other issues raised in the House Letter.

By the Commission.

Dated: December 14, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-29044 Filed 12-17-87; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849.

[2] *See* Securities Exchange Act Release No. 24931 (September 21, 1987), 52 FR 36045.

[3] *See* Securities Exchange Act Release No. 25118 (November 13, 1987) 52 FR 44447.

[4] *See* letter from Congressman John D. Dingell, *et al.*, U.S. House of Representatives, Committee on Energy and Commerce, to David S. Ruder, Chairman, Securities and Exchange Commission, dated October 16, 1987 ("House Letter"). The House Letter has been placed in File No. S7-25-87 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

See also Securities Exchange Act Release No. 24931 (September 21, 1987), 52 FR 36045, in which the Commission requested comment on a letter from Senator Alan Cranston, *et al.*, U.S. Senate, Committee on Banking, Housing, and Urban Affairs, to David S. Ruder, Chairman, Commission, dated August 19, 1987 ("Senate Letter"). The Senate Letter has also been placed in File No. S7-25-87 in the Commission's Public Reference Room.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio; Proposed Regulatory Program Amendment; Performance Bonds

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment package submitted by Ohio as a modification to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed changes to make discretionary, rather than mandatory, the denial of a permit by the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) if the applicant has ever forfeited a coal or surface mining bond or security; to

create a coal mining performance bond fund; to enable the Chief to execute reclamation performance bonds as a surety for coal mine operators under the performance bond fund; and to allow a Phase II bond release to be made for all or part of the area affected under a permit.

This notice sets forth the times and locations that the Ohio program proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. January 19, 1988; if requested, a public hearing on the proposed amendment is scheduled for 1:00 p.m. on January 12, 1988; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. January 4, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, OH 43232; Telephone (614) 866–0578. If a hearing is requested, it will be held at the same address.

Copies of the Ohio program, the amendment, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 L Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, PA 15220.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, OH 43232.

Ohio Division of Reclamation, Fountain Square, Building B–3, Columbus, OH 43224.

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Columbus Field Office.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield (Director), (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Ohio program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background, revision, modifications, and amendements to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 16, 1987 (Administration Record No. OH–0994), the Ohio Department of Natural Resources, Division of Reclamation (ODNR) submitted proposed amendments to the Ohio program at Ohio Revised Code (ORC) section 1513.07, 1513.08, and 1513.16; a new ORC section 1513.081; and a new corresponding rule at Ohio Administrative Code (OAC) section 1501:13-7-09. The proposed changes are briefly summarized below:

The proposed amendment would modify ORC section 1513.07(E)(5) to delete the mandatory denial of a permit by the Chief if the applicant, any partner of the applicant, or any principal officer or shareholder if the applicant is a corporation, has ever failed to comply with ORC Chapter 1513 or has ever forfeited a coal or surface mining bond or security.

ORC section 1513.07(E)(6) would be modified to give the Chief discretionary authority to deny a permit for the reasons deleted from ORC 1513.07(E)(5). Clarification would also be provided of what interests constitute ownership or control of a business entity.

ORC section 1513.08(B) would be modified to allow an operator to obtain a performance bond from the newly created coal mining performance bond fund if authorized by the Chief.

A new section ORC 1513.081 would be created which establishes the coal mining performance bond fund from which the Chief may execute nontransferable surety bonds for coal mining operations not subject to any existing cessation orders. The fund would be supported by a one-time, nonrefundable permium of one thousand dollars paid by the operator for each performance bond and by a tonnage fee of fifty cents per ton of coal mined from the area covered by the bond. Upon release of the bond, operators would receive a refund of the fifty-cent coal tonnage fees paid by the operator for the bonded permit less twelve percent. In the event of bond forefeiture, the Chief may transfer up to two thousand five hunderd dollars per acre from the coal mining performance bond fund to the reclamation forefeiture fund created by ORC section 1513.18(A). Provisions are also included in ORC section 1513.081 for the monthly payment of tonnage fees by the operator and for the issuance of cessation orders by the Chief for nonpayment of fees.

ORC section 1513.16(F)(3)(b) would be modified to allow the Chief to grant a release of performance bonds for all or part of the area affected under a permit.

A new OAC section 1501:13–7–09 would be created reiterating the changes of ORC sections 1513.07(E)(5) and (E)(6), 1513.08(B), 1513.081, and 1513.16(F)(3)(b). OAC section 1501:13–7–09 would also additionally describe permitted areas eligible for bonding, procedures for submission of performance bond applications, criteria for denial of bond applications by the Chief, payment of monthly tonnage fees, replacement of bonds by an operator, and release of bonds by the Chief.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by ODNR satisfy the requirements of 30 CFR 732.15 for approval of State program amendments. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on January 4, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be 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 Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be 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.

IV. Procedural 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, for this action OSMRE is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

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 OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 7, 1987.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87-29086 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 416, 421, 441, and 489

[BERC-245-P]

Miscellaneous Medicare and Medicaid Amendments

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

ACTION: Proposed rule.

SUMMARY: This proposal would amend regulations pertaining to the following matters:

1. Listing of Medicare Part A deductible and coinsurance amounts.
2. Limits on amounts of antigens covered under Medicare Part B.
3. Requirement for certain equipment in ambulatory surgical centers (ASCs).
4. Agreements with intermediaries and carriers and coordination with PROs.
5. Federal financial participation in State expenditures for skilled nursing facility services furnished to individuals under age 21.
6. Bases for denying a provider agreement.

The amendments are necessary to implement a change in the Medicare law, to reflect the revision of the Bankruptcy Code, to correct an unintentional omission, and to simplify or update other regulations.

DATE: To ensure consideration, comments must be mailed or delivered to one of the addresses specified below and must be received by 5 p.m. on February 16, 1988.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-245-P. Comments will be available for public inspection as they are received, beginning approximately three weeks from today, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Stanley Katz, (301) 594-8561, for changes that pertain to ASCs.

Luisa V. Iglesias, (202) 245-0383, for all other changes.

SUPPLEMENTARY INFORMATION: The specific amendments and the reasons for proposing them are discussed below:

A. Amounts of Hospital Insurance Deductible and Coinsurance

1. Current Regulations

Current rules pertaining to Medicare Part A deductibles and coinsurance include tables showing the amunts from the beginning of the program through 1983. Deductible and coinsurance amounts are determined each year in accordance with formulas prescribed by the Medicare statute. The amounts for each calendar year are published in the **Federal Register** no later than October 1 of the preceding year. We have determined that updating the rules to reflect each change is unnecessary because the following practices ensure that all concerned are promptly informed:

- Many newspapers and most publications aimed at retired persons pick up the information and reprint it.
- With the OASDI check mailed December 3 or January 3, SSA includes a stuffer prepared by HCFA.
- "Direct deposit" beneficiaries whose checks are mailed directly to their banks or other financial institutions are notified separately.
- Bills for premiums have the information printed on the bills, and beneficiaries whose SMI premiums are paid by third parties (employer, lodge, etc.) are also separately notified.

• The information goes to the Railroad Retirement Board so they can notify their beneficiaries.

2. Proposed Changes

We would revise §§ 409.82, 409.83, and 409.85 to remove the tables and clarify that the amounts are published in the **Federal Register** for each calendar year no later than October 1 of the preceding year.

B. Limits on Amounts of Antigens

1. Current Regulations

Current regulations do not provide for antigens as a separate service because, before enactment of section 1861(s)(2)(G) of the Medicare statute, antigens were covered only as "incident to" a physician's services.

2. Legislative Change

Section 938 of Pub. L. 96-499 amended the definition of medical and other health services to include an antigen administered by a qualified person other than the physician who prepares the antigen "subject to quantity limitations prescribed in regulations by the Secretary".

3. Amendment to the Regulations

We would amend Part 410 of the Medicae rules to add a § 410.64 to set forth the conditions under which Medicare Part B pays for antigens. On the basis of consultation with allergists, we propose to limit the amount to be prepared at one time, for administration by a qualified person other than the physician who prepares the antigen, to the amount sufficient for a period of not more than 12 weeks. The purpose of this limitation is to ensure that the antigens retain their potency and effectiveness. We realize that there is some risk by allowing the antigens to be administered by someone other than the physician who prepares them.

We specifically request suggestions as to how this risk can be minimized.

C. Conditions for Coverage of Ambulatory Surgical Center (ASC) Services

1. Current Regulations

Under § 416.44(c), the ASC must have available in the operating room emergency equipment, including a thoracotomy set (for cutting through the rib cage into the chest cavity).

2. Proposed Changes

We propose to revise § 416.44(c) to remove the requirement for thoracotomy set because—

• Thoracotomy sets are used to permit open heart massage, which is no longer the preferred method for resuscitation of patients with heart disease.

• It is unlikely that it would be needed in connection with the surgical procedures performed in ASCs.

• Use of this equipment by medical personnel inexperienced in handling it could be risky.

We would, however, include emergency medical equipment in the list of items that the ASC must make available if the medical staff requests it. This means that a throacotomy set would be required if the medical staff considered it necessary.

D. Intermediary Agreements, Carrier Contracts, and Coordination with PROs

1. Current Regulations

Current Medicare Rules (§§ 421.100, 421.200, and 421.204)—

• Specify certain functions that must be included in the agreement or contract; and

• Provide that either party must give 90-day notice if it intends not to renew a carrier contract at the end of its term.

The first provision might appear to preclude other functions; the second has proved to be more stringent than necessary.

2. Proposed Changes

We would amend §§ 421.100 and 421.200 to make clear the following:

1. HCFA's agreement with an intermediary or contract with a carrier may require the intermediary or carrier to perform functions in addition to those listed in the rules.

2. The PRO performs reconsiderations of its determinations.

3. The intermediary or carrier takes appropriate action on PRO determinations, as well as those for which the intermediary or carrier itself made a determination because the PRO had not assumed review responsibility.

We would also—

• Revise § 421.204 to remove the requirement for 90-day notice of intent not to renew a carrier contract and require instead that notice be "in accordance with the provisions of the contract"; and

• Add a parallel provision (§ 421.111) applicable to intermediary agreements.

E. Federal Financial Participation (FFP) in State Expenditures for Skilled Nursing Facility Services Furnished to Individuals under 21

1. Current Regulations

Section 441.11 of the Medicaid rules provides that FFP in State payments for individuals in a facility may continue for up to 30 days after the Medicaid agency terminates or does not renew the facility's provider agreement if—

• The individual was admitted to the facility before the effective date of termination or expiration of the provider agreement; and

• The agency makes reasonable efforts to transfer the individual to another facility or to alternate care.

Through an oversight, SNF care for individuals under 21 was not included the list of services subject to the 30-day continuation.

2. Proposed Change

We would amend § 441.11(c) to add SNF care for individuals under 21.

F. Bases for Denial of Provider Agreements

1. Current Regulations

Section 489.12(a)(3) of the Medicare rules provides that HCFA may refuse to enter into or renew a provider agreement with a provider or potential provider that has been adjudged bankrupt or insolvent.

2. Inconsistency With Bankruptcy Code

Section 525 of the Revised Bankruptcy Code (11 U.S.C. 525) prohibits a "government unit" from denying a "license, permit, charter, franchise or other similar grant to" [a person] solely because the person has been a debtor under that title or a bankrupt under the Bankruptcy Act. The purpose of the prohibition is to ensure that the intent of the Code (i.e., to afford the bankrupt individual or entity the opportunity for a "fresh start") is not frustrated.

3. Change in the Regulations

Since the current provision of § 489.12(a)(3) conflicts with section 525 of the revised bankruptcy code (it specifies that "bankruptcy" or "insolvency" is of itself a basis for denial of a provider agreement), we would revise it to specify that an agreement may be denied if the entity is unable to assure compliance with the requirements of the Medicare statute (title XVIII of the Act).

Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that is likely to have an annual impact of $100 million or more on the economy, cause a major increase in costs or prices, or meet other threshholds specified in section 1(b) of the Order. The Secretary has determined that these proposals will have little, if any, impact and that a regulatory impact analysis is not required.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for any proposed rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all providers and suppliers of services to be small entities. As indicated above, these proposals are expected to have very slight if any economic impact on any group.

Therefore, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and that an initial regulatory flexibility analysis is not required.

Response to Comments

Because of the many comments we receive in response to proposed rules, we cannot acknowledge or reply to them individually. However, we will consider all timely comments and discuss them in the preamble to the final regulations.

List of Subjects

Health facilities, Medicare.

42 CFR Part 410

Medical and other services, Medicare.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV would be amended as set forth below:

A. Part 409 is amended as follows:

PART 409—MEDICARE BENEFITS, LIMITATIONS, AND EXCLUSIONS

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. Section 409.82 is amended by revising paragraphs (b) and (c) to remove the tables and clarify applicability of deductible amounts, to read as follows:

§ 409.82 Inpatient hospital deductible.

* * * * *

(b) Specific deductible amounts. The specific deductible amounts for each calendar year are published in the **Federal Register** no later than October 1 of the preceding year.

(c) *Exception to published amounts.* If the total hospital charge is less than the deductible amount applicable for the calendar year in which the services were furnished, the deductible is the amount of the charge.

3. Section 409.83 is amended by revising paragraphs (b) and (c) to remove the tables and clarify applicability of the co-insurance amounts, to read as follows:

§ 409.83 Inpatient hospital coinsurance.

* * * * *

(b) *Specific coinsurance amounts.* The specific coinsurance amounts for each calendar year are published in the **Federal Register** no later than October 1 of the preceding year.

(c) *Exceptions to published amounts.* (1) If the actual charge to the patient for the 61st through the 90th day of inpatient hospital services is less than the coinsurance amount applicable for the calendar year in which the services were furnished, the coinsurance amount is the actual charge per day.

(2) If the actual charge to the patient for the 91st through the 150th day (lifetime reserve days) is less than the coinsurance amount applicable for the calendar year in which the services were furnished, the beneficiary is deemed to have elected not to use the days because he or she would not benefit from using them.

4. Section 409.85 is amended by revising paragraphs (b) and (c) to remove the tables and clarify applicability of the SNF coinsurance amounts, to read as follows:

§ 409.85 Skilled nursing facility (SNF) care coinsurance

* * * * *

(b) *Specific coinsurance amounts.* The specific SNF coinsurance amounts for each calendar year are published in the **Federal Register** no later than October 1 of the preceding year.

(c) *Exception to published amounts.* If the actual charge to the patient is less than the coinsurance amount applicable for the calendar year in which the services were furnished, the coinsurance amount is the actual charge per day.

B. Part 410 is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1835, 1861(r), (s), and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395(k), 1395l, 1395n, 1375x(r), (s), and (cc), 1395hh, and 1395rr).

2. A new § 410.64 is added, and the table of contents is amended to reflect this change.

§ 410.64 Antigens: Scope and conditions.

Medicare Part B pays for—

(a) Antigens that are furnished as services incident to a physician's professional services; or

(b) A supply of anitgens sufficient for not more than 12 weeks, prepared by a doctor of medicine or osteopathy and administered by or under the supervision of—

(1) The physician who prepared the antigen; or

(2) Another physician.

C. Part 416 is amended as set forth below:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863, and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395z, and 1395aa).

2. Section 416.44 is amended by revising paragraph (c) to remove the requirements for thoracotomy set and add "medical equipment" to the list of items that the ASC must make available if the medical staff requests it, to read as follows:

§ 416.44 Condition for coverage—environment.

* * * * *

(c) *Standard: Emergency equipment.* Emergency equipment available to the operating rooms must include at least the following:

(1) Emergency call system.

(2) Oxygen.

(3) Mechanical ventilatory assistance equipment including airways, manual breathing bag, and ventilator.

(4) Cardiac defibrillator.

(5) Cardiac monitoring equipment.

(6) Tracheostomy set.

(7) Laryngoscopes and endotracheal tubes.

(8) Suction equipment.

(9) Emergency medical equipment, and supplies specified by the medical staff.

* * * * *

D. Part 421 is amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395u, 1395x(u), 1395hh, 1395kk, and 1391l), and 42 U.S.C. 1395b–1.

2. Section 421.100 is amended by revising the introductory text and paragraphs (a) and (f) to read as follows:

§ 421.100 Intermediary functions.

An agreement between HCFA and an intermediary specifies the functions to be performed by the intermediary, which must include, but are not necessarily limited to, the following:

(a) *Coverage.* (1) The intermediary assures that it makes payments only for services that are:

(i) Furnished to Medicare beneficiaries;

(ii) Covered under Medicare; and

(iii) In accordance with PRO determinations when they are services for which the PRO has assumed review responsibility under its contract with HCFA.

(2) The intermediary takes appropriate action to reject or adjust the claim if—

(i) The intermediary or the PRO determines that the services furnished or proposed to be furnished were not reasonable, not medically necessary, or not furnished in the most appropriate setting; or

(ii) The intermediary determines that the claim does not properly reflect the kind and amount of services furnished.

* * * * *

(f) *Reconsideration of determinations.* The intermediary must establish and maintain procedures approved by HCFA for the reconsideration of its determinations to deny payments to an individual or to the provider that furnished services to the individual. The PRO performs reconsideration of cases in which it made a determination subject to reconsideration.

3. A new § 421.111 is added to read as follows:

§ 421.111 Provision for automatic renewal of agreements.

Agreements under this subpart may contain an automatic renewal provision, continuing the agreements from term to term unless either party gives notice, within timeframes specified in the agreement, of its intention not to renew the agreement.

4. Section 421.200 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 421.200 Carrier functions.

A contract between HCFA and a carrier specifies the functions to be performed by the carrier, which must include, but are not necessarily limited to, the following:

(a) *Coverage.* (1) The carrier assures that payment is made ony for services that are:

(i) Furnished to Medicare beneficiaries;

(ii) Covered under Medicare; and

(iii) In accordance with PRO determinations when they are services for which the PRO has assumed review responsibility under its contract with HCFA.

(2) The carrier takes appropriate action to reject or adjust the claim if—

(i) The carrier or the PRO determines that the services furnished or proposed to be furnished were not reasonable, not medically necessary, or not furnished in the most appropriate setting;

(ii) The carrier determines that the claim does not properly reflect the kind and amount of services furnished.

* * * * *

5. Section 421.204 is revised to remove the requirement for a 90-day notice of intent not to renew a carrier contract, and require instead that notice be in accordance with the contract, to read as follows:

§ 421.204 Provision for automatic renewal of contracts.

Contracts under this subpart may contain an automatic renewal provision, continuing the contract from term to term unless either party gives notice, within timeframes specified in the contract, of its intention not to renew the contract.

E. Part 441 is amended as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

2. In § 441.11 the term "subchapter" is changed to "chapter" wherever it appears; the introductory text of paragraph (c) is reprinted, and a new paragraph (c)(8) is added, to read as follows:

§ 441.11 Continuation of FFP for institutional services.

* * * * *

(c) *Services for which FFP may be continued.* FFP may be continued for any of the following services, as defined in Subpart A of Part 440 of this chapter:

* * * * *

(8) Skilled nursing facility services for individuals under 21.

F. Part 489 is amended as set forth below:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

§ 489.12 [Amended]

2. Section 489.12 is amended by revising paragraph (a)(3) and revising paragraph (b), to read as follows:

() *Bases for denial.* * * *

(3) The provider or prospective provider is unable to give satisfactory assurances of compliance with the requirements of title XVIII of the Act.

(b) [Reserved]

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance, and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 12, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 8, 1987.

Otis R. Bowne,

Secretary.

[FR Doc. 87-28904 Filed 12-17-87; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-543, RM-5817]

Radio Broadcasting Services; Arizona City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by The Alpha Group, licensee of Station KXMK(FM) (Channel 292A), Arizona City, Arizona, seeking the substitution of Channel 293A for Channel 292A and modification of its license accordingly.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its consultant, as follows: John Saathoff, Station KXMK(FM), P.O. Box 2587, Arizona City, AZ 85223 (on behalf of petitioner) and C.R. Crisler, Double Eagle Broadcast Services Co., P.O. Box 6324, Fort Smith, AR 72906 (consultant).

FOR FURTHER INFORMATION CONTACT: Nancy 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. 87-543, adopted November 25, 1987, and released December 14, 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. 87-29056 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-538, RM-5872]

Radio Broadcasting Services; Searles Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Debra D. Carrigan seeking the deletion of Channel 283A at Searles Valley, CA on the basis of its lack of community status. In addition, Federal Aviation Administration imposed constraints may render the Class A channel incapable of providing a 70 dBu signal.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy 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. 87-538, adopted November 1, 1987, and released December 11, 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* contract.

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. 87-29054 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-537, RM-6039]

Television Broadcasting Services; Kingston and Oneonta, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Mohawk-Hudson Council on Educational Television, Inc., proposing the deletion of noncommercial educational Channel No. 42 from Oneonta, New York, and its reallocation to Kingston, New York. Channel No. 42 can be allocated to Kingston in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.3 kilometers (9.5 miles) northwest to avoid a short-spacing to Station WGBY-TV, Channel 57, Springfield, Massachusetts, and to Channel 42which is proposed for allocation to Philadelphia for land mobile use in Gen. Docket 85-172, 50 FR 25587, June 20, 1987. Canadian concurrence in the allocation at Kingston is required since the community is located within 250 miles of the U.S.-Canadian border.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

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: Robert A. Woods, Malcolm G. Stevenson, Schwartz, Woods & Miller, Suite 206, The Palladium, 1325-18th Street, NW., Washington, DC 20036 (Counsel to 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. 87-537, adopted November 12, 1987, and released December 11, 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 contractor, 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 of 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

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-29052 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-545, RM-6046]

Radio Broadcasting Services; Hereford, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Don Werlinger d/b/a The Broadcast Development Group, Inc., proposing the allotment of Channel 278C2 to Hereford, Texas, as a second local FM service.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

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: Don Werlinger, P.O. 1223, Lockhart, Texas 78644 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-545 adopted November 25, 1987, and released December 11, 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, Mass Media Bureau.

[FR Doc. 87-29050 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-534, RM-6067]

Radio Broadcasting Services; Lubbock, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Barton Broadcasting Company, permittee of FM Station KEJS, Channel 292A at Lubbock, Texas, proposing the substitution of Channel 293C2 for Channel 292A and modification of its construction permit to specify operation on the higher class channel. A site restriction of 3.6 kilometers (2.2 miles) east of the community is required.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

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: Thomas L. Root, Esquire, Jill L. Rygwalski, Esquire, Thomas L. Root, P.C., 2021 L Street, NW., Suite 750, Washington, DC 20036 (Counsels for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-534, adopted November 23, 1987, and released December 11, 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, Mass Media Bureau.

[FR Doc. 87-29053 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-546, RM-6068]

Radio Broadcasting Services; Marble Falls, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Don Werlinger d/b/a The Broadcast

Development Group, Inc., proposing the allotment of Channel 300A to Marble Falls, Texas, as that community's first FM service. The channel requires a site restriction 2.9 kilometers (1.8 miles) southwest of the community. The proposal also requires concurrence of the Mexican government.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

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: Don Werlinger, P.O. Box 1223, Lockhart, Texas 78644 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-546 adopted November 25, 1987, and released December 11, 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, Mass Media Bureau.

[FR Doc. 87-29051 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-547, RM-6093]

Radio Broadcasting Services; Kelso, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P-N-P Broadcasting, Inc. proposing the allotment of Channel 233A to Kelso, Washington, as that community's first local FM station. A site restriction of 6.8 kilometers (4.2 miles) west of the community is required. In addition, concurrence of the Canadian government is required.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petititioners, or their counsel or consultant, as follows: Duane J. Polich, President, P-N-P Broadcasting, Inc., 9235 N.E. 175th, Bothell, Washington 98011 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-547, adopted November 25, 1987, and released December 11, 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, Mass Media Bureau.

[FR Doc. 87-29055 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-544, RM-6070]

Radio Broadcasting Services; Ravenswood, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ohio River Broadcasting proposing the allotment of Channel 284A to Ravenswood, West Virginia, as that community's second local FM station. A site restriction of 8.8 kilometers (5.5 miles) north of the community is required. In addition, concurrence of the Canadian government is required.

DATES: Comments must be filed on or before February 1, 1988, and reply comments on or before February 16, 1988.

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: Rex Osborne, President, Ohio River Broadcasting, Radio Station WMOV, P.O. Box 647 Ravenswood, WV 26164 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-544, adopted November 25, 1987 and released December 14, 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, Mass Media Bureau.

[FR Doc. 87-29057 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 243
Friday, December 18, 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

National Forest System Law Enforcement Advisory Council; Intent To Establish

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; intent to establish advisory committee.

SUMMARY: The Office of the Secretary hereby gives notice of his intent to establish a National Forest System Law Enforcement Advisory Council. The public may send written comments on establishment of the Council and/or to nominate persons to the Council.

DATE: Comments must be received by January 4, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (5300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposal in the office of the Director, Fiscal & Public Safety Staff, Room 701 RPE, Rosslyn Plaza East, Arlington, Virginia, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Cecil L. Wilson, Law Enforcement Branch, Fiscal & Public Safety Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (703/235-8484).

SUPPLEMENTARY INFORMATION: In the last 2 decades, law enforcement has become an increasingly important aspect of management of the National Forest System as increases in criminal activity within the Forests have mirrored growth in criminal activity in the rest of the society. The recent enactment of the National Forest Drug Control Act of 1986 (16 U.S.C. 559b–f) is evidence of the growing need for increased law enforcement activities in the management of the National Forest System. Accordingly, the Secretary has determined that it is necessary and in the public interest to establish a National Forest System Law Enforcement Advisory Council to assist the Secretary in the protection of the public who use National Forest System lands and their property, employees, forest resources, and Federal property.

The Council will consist of 9–13 members who shall serve 2-year terms. The chairperson shall be the Deputy Chief for Administration of the Forest Service with a non-Federal member serving as the vice-chairperson. The Director of the Forest Service Fiscal and Public Safety Staff shall serve as Secretary. The other members will be appointed by the Secretary of Agriculture. The Council members shall be selected to reflect a spectrum of natural resource and law enforcement interests, expertise, and experience. Members may be chosen from National Forest user groups, industry, academia, State and local governments, professional and natural resources-oriented organizations, labor organizations, urban and rural interests, consumer groups, and the public at large.

The Council's purpose is to advise the Secretary on development and administration of law enforcement within the Forest Service. Specific areas in which the Council will advise are:

(1) Enforcement of Federal laws and regulations relating to the National Forest System;

(2) Cooperation with State and local law enforcement agencies in the enforcement of all States and local laws on lands within the boundaries of the National Forest System;

(3) Aid to States in all ways that are practical in the enforcement of the law of the States concerning livestock, the prevention and extinguishing of forest fires, and the protection of fish and wildlife;

(4) Aid to other Federal agencies in the performance of their duties as they relate to the National Forest System; and

(5) Eradication, prevention, detection, and investigation of controlled substances on National Forest System lands.

In conducting its business, the Council shall seek the views and advice of a variety of public interest groups, Government, organizations, and concerned individuals.

All meetings will be open to the public except when a determination is made in writing by the Secretary that any or all portions of a meeting should be closed in accordance with 5 U.S.C. 552b(c).

Persons wishing to comment on the Council's purpose, responsibility, and composition or to nominate individuals for membership should reply to this notice in writing to the Chief of the Forest Service at the address and by the date indicated.

John F. Franke, Jr.,
Assistant Secretary for Administration.

Date: December 15, 1987.

[FR Doc. 87-29113 Filed 12-17-87; 8:45 am]
BILLING CODE 3410-11-M

Office of the Secretary

Policy for Ground Water Quality

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture has adopted a formal policy for ground water quality protection and enhancement. This policy provides general guidance to the agencies in the Department for helping to protect water users and the natural environment from exposure to harmful amounts of substances in ground water, especially in rural areas and communities, and to enhance ground water quality where appropriate. The USDA supports the prudent use and careful management of soil, crop, and livestock nutrients as well as manufactured agricultural chemicals to prevent unacceptable contamination of ground water in agriculture and silviculture. Emphasis is given to programs and practices that encourage prudent management actions that can minimize or obviate the need for imposing statutory or regulatory restrictions on the use of chemicals that are essential for economical, efficient, and sustainable agricultural production. The full text of the policy statement is provided below.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald B. Buckhalt, Director of Public Liaison, U.S. Department of Agriculture, Room 241-E, Washington, DC 20250, (202) 447-2798.

USDA Policy for Ground Water Quality

Purpose

This statement documents and sets forth the policy of the United States Department of Agriculture (USDA) to protect and enhance ground water quality.

Background

Ground water quality is important to all Americans, and it is the intent of the Department of Agriculture to assure that its programs and activities reflect that importance. There exists evidence that the quality of ground water may be affected by contamination from many sources, including some occurring naturally and some induced by agricultural and silvicultural practices. The Nation's farmers, ranchers, and foresters have need to prudently use agricultural chemicals to provide the food and fiber necessary for improving the quality of life of all mankind, and to meet the needs of a growing population and an expanding economy.

This ground water policy statement is issued to improve the management, coordination, and effectiveness of USDA assistance to farmers, ranchers, foresters, State and local government agencies, and other water users in rural areas.

USDA General Policy for Ground Water Quality

With the need to continue the prudent and sustained use of the Nation's renewable natural resources, it is the policy of USDA to help protect water users and the natural environment from exposure to harmful substances in ground water, especially in rural areas, and to enhance ground water quality where appropriate.

Accordingly, USDA will:

a. Support the purdent use and careful management of nutrients and other agricultural chemicals in agriculture and silviculture with the objective of avoiding future ground water contamination. Where ground water quality enhancement is needed, foster alternative crop management systems, improvements in the management of nutrients and crops, and reductions in the use of chemicals as appropriate.

b. Advocate and foster programs, activities, and practices that can prevent the harmful contamination of ground water from agricultural, silvicultural, and other rural sources to minimize, or make unnecessary, regulatory restrictions on the use of chemicals essential to agricultural production.

USDA Policy for Research, Information-Education and Technology Transfer

a. Continue to conduct and support research, monitoring, assessment, and evaluation of: (1) Factors affecting the movement of nutrients and agricultural chemicals in soils, (2) effectiveness of efforts to protect ground water quality, (3) procedures to predict the effects of changes in chemical management, (4) effects of agricultural and silvicultural practices on chemical movement in ground water, (5) economic benefits of agricultural chemical uses, (6) economic effects of various strategies to reduce ground water contamination, and (7) relative hazards to animal and human health of substances in soil and ground water.

b. Provide both nationwide and site-specific information, education, and technical assistance to private landowners to encourage them to use agricultural and silvicultural practices, including non-chemical methods of pest control, that can minimize the risks of ground water contamination levels that are harmful to public health and the environment.

c. Provide information and education to people and communities in rural areas about methods to maintain safe wells; to avoid local contamination by pathogens, agricultural chemicals, other nutrients, and other substances; to obtain tests of ground water quality; and to treat their water to remove natural and artificial contaminants where needed.

USDA Policy for Cooperation and Coordination

a. Strive to assure that Departmental policies and programs are implemented in a manner that encourages agricultural and silvicultural practices that avoid harmful levels of contamination in ground water.

b. Coordinate with state agencies, other federal agencies, manufacturers, and others to help ensure that they adequately consider the needs of agricultural and silvicultural lands users to use nutrients and pesticides correctly to maintain productivity of soil, plant, and animal resources. Coordinate with and encourage agencies, manufacturers and others to help agricultural and silvicultural land users, through technology transfer, to demonstrate how they may avoid or minimize adverse affects on ground water quality.

Peter C. Myers,

Acting Secretary.

December 14, 1987.

[FR Doc. 87-29026 Filed 12-17-87; 8:45 am]

BILLING CODE 3410-01-M

Determination of Quota Period and Import Quotas for Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes a sugar import quota period of January 1, 1988 through December 31, 1988 and an import quota of 708,280 short tons, raw value, for such period.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941 of May 5, 1982, amended Headnote 3 of Subpart A, Part 10, Schedule 1 of the Tariff Schedules of the United States (TSUS) to establish a system of import quotas for foreign sugar coming into the United States. Under the terms of Headnote 3, the Secretary of Agriculture established an annual sugar import quota period of October 1–September 30 beginning October 1, 1982. (47 FR 34812.)

Presidential Proclamation No. 4941 also permits the Secretary of Agriculture, after consultations with the U.S. Trade Representative and the Department of State, to establish quota periods for other than quarterly periods, if he determines that such periods are appropriate to give due consideration in the United States sugar market to the interests of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. This notice announces the Secretary of Agriculture's determinations, after the appropriate consultations, that the sugar import quota period shall begin on January 1, 1988 and terminate on December 31, 1988 and that the import quota for such period shall be 708,280 short tons, raw value.

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 3, Subpart A, Part 10, Schedule 1 of the TSUS, I have determined that up to 708,280 short tons, raw value, of sugar described in items 155.20 and 155.30 of the TSUS may be entered or withdrawn from warehouse for consumption during the period January 1, 1988 through December 31, 1988. Of the 708,280 short tons, raw value, 2,000 short tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Headnote 3 and 6,280 short tons, raw value, are reserved as a quota adjustment amount allocated in accordance with paragraph (c)(iii) of Headnote 3.

I have also determined that this quota amount (708,280 short tons, raw value) and quota period give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a)(i) of Headnote 3, Subpart A, Part 10, Schedule 1 of the TSUS is modified to read as follows:

3. (a)(i) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse for consumption, during the period January 1, 1988 through December 31, 1988 shall not exceed in the aggregate 708,280 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 700,000 short tons, raw value; 2,000 short tons, raw value, may only be used for the importation of "specialty sugars," as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote; and the remaining 6,280 short tons, raw value, may only be imported for the purposes specified in paragraph (c)(iii) of this headnote (the quota adjustment amount).

Signed at Washington, DC, on December 15, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-29076 Filed 12-15-87; 4:02 pm]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 42-87]

Foreign-Trade Zone 89, Las Vegas, NV: Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Nevada Development Authority (NDA), grantee of Foreign-Trade Zone 89, requesting authority to expand the zone to include four additional sites totalling 903 acres in the Las Vegas area, within the Las Vegas Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 11, 1987.

The Las Vegas zone was approved in November 1983, and comprises four sites (53 acres) in Las Vegas and Clark County, Nevada. The requested expansion would involve four additional sites, totalling 903 acres, in the Las Vegas area: (a) Hughes Airport Center (292 acres), bounded by Paradise Road, White Drive, Chaparral Road, Pilot Road and Gilespie Road, (b) Whitney Mesa Business Center (38 acres), Sunset Road and Ramrod Street, (c) North Las Vegas Business Center (37 acres), Craig Road and North 5th Street, and (d) AMPAC Development Company Business Park (536 acres), Gibson Road.

The additional sites are being requested to provide a broader range of facilities for prospective zone users. The Board will consider whether the number of separate sites being requested is needed to serve the public interest.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Heinrich, District Director, U.S. Customs Service, Pacific Region, 300 South Ferry Street, Terminal Island, San Pedro, California 90731; and Colonel Tadahiko Ono, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, California 90053-2325.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 1, 1988.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, International Arrivals Building, P.O. Box 11049, Las Vegas, Nevada 89111;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 1529, Washington, DC 20230.

Dated: December 14, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-29100 Filed 12-17-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Catholic University of America et al.; Consolidated Decision on Applications for Duty-Free Entry of ICP-MS

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-298. *Applicant:* The Catholic University of America.

Intended Use: See notice at 52 FR 42028.

Docket Number: 87-302. *Applicant:* University of California-LLNL.

Intended Use: See notice at 52 FR 42029.

Docket Number: 87-304. *Applicant:* University of California-LLNL.

Intended Use: See notice at 52 FR 42029.

Instrument: Inductively Coupled Plasma Mass Spectrometer, Model Plasma Quad.

Manufacturer: VG Isotopes, Ltd., United Kingdom.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides simultaneous qualitative and semi-qualitative data for major, minor and trace constituents and abundance sensitivity of at least 10-5 for both high and low mass.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-29102 Filed 12-17-87; 8:45 am]

BILLING CODE 3510-DS-M

Pennsylvania State University; Consolidated Decision on Applications for Duty-Free Entry of Electro Optical Extensometers

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-083.

Intended use: See notice at 52 FR 4164.

Docket Number: 87-244.

Intended use: See notice at 52 FR 30941.

Applicant: The Pennsylvania State University.

Instrument: Optical Extensometers.

Manufacturer: Zimmer, OHG, West Germany.

Advice Submitted By: National Bureau of Standards, November 4, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments provide a resolution of 0.16 μm at 10 Hz and measurement of specimens at temperatures up to 1600°C.

The National Bureau of Standards advises in its memorandum that (1) the capability of each of the foreign instruments described above is pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-29103 Filed 12-17-87; 8:45 am]

BILLING CODE 3510-DS-M

Research Foundation of the State University of New York; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-303. *Applicant:* The Research Foundation of the State University of New York, P.O. Box 9, Albany, NY 12201-0009. *Instrument:* X-Y-Z and Rotation Stage for NRD Press. *Manufacture:* NRD Corporation, Japan. *Intended Use:* See notice at 52 FR 42029, November 2, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-29104 Filed 12-17-87; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301. Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-289. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Portable Dilution Refrigerator. *Manufacturer:* D.Ph.S.R.M., CEN Saclay, France. *Intended Use:* See notice at 52 FR 42027, November 2, 1987. *Reasons For This Decision:* The foreign article provides a minimum temperature of $\simeq$ 50 millikelvin.

Docket Number: 87-290. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Dilution Refrigerator. *Manufacturer:* Oxford Instruments, United Kingdom. *Intended Use:* See notice at 52 FR 37357, October 6, 1987. *Reasons For This Decision:* The foreign article provides temperatures as low as 5 mK.

Docket Number: 87-215. *Applicant:* University of Washington, Department of Chemistry, BG-10, Seattle, WA 98195. *Instrument:* Molecular Beam Equipment. *Manufacturer:* Australian National University, Australia. *Intended Use:* See notice at 52 FR 30942, August 18, 1987. *Reasons For This Decision:* The foreign article is capable of measuring spectra of molecular clusters to 1 part in 1,000,000 in the region of 3000 cm^{-1}.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-29105 Filed 12-17-87; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet Tuesday, January 26, 1988, from 8:30 a.m. to 4:30 p.m., and Wednesday, January 27, 1988, from 8:30 a.m. to 10:00 a.m., in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Maryland; from 2:00 p.m. to 3:00 p.m. in Room 5854, Department of Commerce, Washington DC.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to consider the implications of the legislation presently under consideration by Congress.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301-975-2411.

Ernest Ambler,

Director.

Date: December 14, 1987.

[FR Doc. 87-29118 Filed 12-17-87; 8:45 am]

BILLING CODE 3510-13-M

National Conference on Weights and Measures; Interim Meetings

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice meeting.

SUMMARY: Notice is hereby given that the Interim Meetings of the National Conference on Weights and Measures will be held January 11 through January 15, 1988, at the National Bureau of Standards, Gaithersburg, Maryland. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meetings of the Conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organization to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Bureau of Standards acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATE: The meeting will be held January 11–15, 1988.

Location of Meeting: The National Bureau of Standards, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Executive Secretary, National Conference on Weights and Measures, P.O. Box 3137, Gaithersburg, Maryland 20878; telephone: (301) 975–4009.

Ernest Ambler,
Director.

Date: December 11, 1987.

[FR Doc. 87-29106 Filed 12-17-87; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*).

Send comments on applications to:

Fees and Permits Branch (F/TS21), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235.

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331.

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366.

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926.

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815.

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352.

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly or Shirley Whitted (Fees and Permits Branch, 202–673–5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1988 have been received from the Governments shown below.

Dated: December 14, 1987.

Carmen J. Blondin,
Special Associate for Trade, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels Joint Venture).
**	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

Joint Venture

SPECIES

[In metric tons]

Northwest Atlantic Ocean Fisheries

Country	Illex Squid	Mackerel	Hakes Silver	Hakes Red
Faroe Islands [1]	3000	1000 (*3000)	5000	1000
Poland [2] (amendment correction)		3800 (*16200)		

[1] Faroe Islands' partner: Mayflower Group International Gloucester, MA.
[2] Polish partner: Scan Ocean, Inc., Gloucester, MA.
*Directed fishing.

Correction

The Polish amendment for the mackeral request was incorrectly listed in the previously published notice dated December 4, 1987, 52FR46112. The corrected amounts are listed above.

The following list of vessels was referenced in the notice published December 4, 1987, 52FR46112:

Nation, Vessel name and Vessel type	Application number	Fishery	Activity
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA			
Geng Hai, Large stern trawler	CH-88-0001	BSA, WOC GOA	1* 2*
Kai Chuang, Large stern trawler	CH-88-0003	BSA, WOC GOA	1* 2*
Yan Yuan 1, Large stern trawler	CH-88-0002	BSA, WOC GOA	1* 2*
Yan Yuan No. 2, Large stern trawler	CH-88-0006	BSA, WOC GOA	1* 2*
Yun Hai, Large stern trawler	CH-88-0007	BSA, WOC GOA	1* 2*
GOVERNMENT OF DENMARK			
Ice Flower, Cargo/transport vessel	DA-88-0003	NWA	3
Ice Pearl, Cargo/transport vessel	DA-88-0009	NWA	3
Iceberg, Cargo/transport vessel	DA-88-0001	NWA	3
Iceblink, Cargo/transport vessel	DA-88-0002	NWA	3
Iceport, Cargo/transport vessel	DA-88-0004	NWA	3
Snowdrop, Cargo/transport vessel	DA-88-0007	NWA	3
GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC			
Bodo Uhse, Large stern trawler	GC-88-0040	NWA	1*
Bruno Apitz, Large stern trawler	GC-88-0053	NWA	1*
Willi Bredel	GC-88-0002	NWA	1*
Eduard Claudius, Large stern trawler	GC-87-0059	NWA	1*
Ehm Welk, Large stern trawler	GC-88-0041	NWA	1*
Lichtenhagen, Cargo/transport vessel	GC-88-0055	NWA	3
Ludwig Renn, Large stern trawler	GC-88-0054	NWA	1*
Reutershagen, Cargo/transport vessel	GC-88-0056	NWA	3
GOVERNMENT OF ICELAND			
Olaf I Gardastovu, Factory ship	IC-88-0004	BSA, GOA	2*
GOVERNMENT OF JAPAN			
Banshu Maru No. 6, Large stern trawler	JA-88-0373	NWA	1*
Banshu Maru No. 7, Large stern trawler	JA-88-0374	NWA	1*
Taiyo Maru No. 83, Medium stern trawler	JA-88-0380	NWA	1*
Zao Maru, Large stern trawler	JA-88-0361	NWA	1*
GOVERNMENT OF THE REPUBLIC OF KOREA			
Cheog Yang Ho, Large stern trawler	KS-88-0003	BSA, GOA	1* 2*
Coral Star, Cargo/transport vessel	KS-88-0135	BSA, GOA	3
Crystal Dahlia, Large stern trawler	KS-88-0034	BSA, GOA	1* 2*
Dae Jin No. 21, Large stern trawler	KS-88-0136	BSA, GOA	1* 2*
Dae Sung Ho, Large stern trawler	KS-88-0051	BSA, WOC GOA	1* 2*
Daejin No. 52, Large stern trawler	KS-88-0037	BSA, GOA	1* 2*
No. 99 Tae Baek, Cargo/transport vessel	KS-88-0079	BSA, GOA	3
Dongsan-Ho, Large stern trawler	KS-88-0039	BSA, GOA	1* 2*
Gae Cheog Ho, Factory ship	KS-88-0112	BSA, GOA	2*
Gae Cheog Ho No. 2, Cargo/transport vessel	KS-88-0090	BSA, GOA	3
Gae Yang Ho, Large stern trawler	KS-88-0001	BSA, GOA	1* 2*
Han Kil Ho, Medium stern trawler	KS-88-0044	BSA, GOA	1* 2*
Hanil Ho, Medium stern trawler	KS-88-0107	BSA, GOA	1* 2*
Joon Sung Ho, Large stern trawler	KS-88-0137	BSA, WOC, GOA	1* 2*
Kyung Yang Ho, Large stern trawler	KS-88-0085	BSA, GOA	1* 2*
Nam Bug Ho, Large stern trawler	KS-88-0033	BSA, GOA	1* 2*
Nam Joo Ho, Tanker fuel/water	KS-88-0146	BSA, GOA	3
No. 103 Nam Chang, Cargo/transport vessel	KS-88-0141	BSA, GOA	3
No. 29 Tae Baek, Factory ship	KS-88-0091	BSA, GOA	2*
No. 501 Dong Soo, Cargo/transport vessel	KS-88-0119	BSA, GOA	3
No. 602 Tae Woong, Medium stern trawler	KS-88-0105	BSA, GOA	1* 2*
No. 70 Oyang Ho, Large stern trawler	KS-88-0048	BSA GOA	1* 2*
No. 71 Dong Bang, Large stern trawler	KS-88-0121	BSA, GOA	1*
No. 77 Dong Bang, Cargo/transport vessel	KS-88-0118	BSA, GOA	3
No. 9 Jeong Woo, Cargo/transport vessel	KS-88-0139	BSA, GOA	3
No. 1 Han Sung, Large stern trawler	KS-88-0106	BSA, GOA	1* 2*
No. 3 Chil Bo San Ho, Cargo/transport vessel	KS-88-0074	BSA,GOA	3
No. 5 Chil Bo San Ho, Cargo/transport vessel	KS-88-0075	BSA,GOA	3
No. 6 Chil Bo San Ho, Cargo/transport vessel	KS-88-0076	BSA,GOA	3
No. 7 Sang Won, Medium stern trawler	KS-88-0041	BSA, GOA	1* 2*
Ocean Express, Cargo/transport vessel	KS-88-0142	BSA,GOA	3
Odaeyang No. 106, Cargo/transport vessel	KS-88-0099	BSA,GOA	3
Oryong No. 501, Large stern trawler	KS-88-0123	BSA, GOA	1* 2*
Oryong No. 503, Large stern trawler	KS-88-0095	BSA, GOA	1* 2*
Oyang Ho, Large stern trawler	KS-88-0006	BSA, GOA	1* 2*
Pung Yang Ho, Large stern trawler	KS-88-0004	BSA, GOA	1* 2*

Nation, Vessel name and Vessel type	Application number	Fishery	Activity
Reefer No. 1, Cargo/transport vessel	KS-88-0147	BSA,GOA	3
Reefer No. 2, Cargo/transport vessel	KS-88-0148	BSA,GOA	3
Reefer No. 3, Cargo/transport vessel	KS-88-0149	BSA,GOA	3
Reefer No. 6, Cargo/transport vessel	KS-87-0150	BSA,GOA	3
Reefer No. 5, Cargo/transport vessel	KS-88-0098	BSA,GOA	3
Salvia, Large stern trawler	KS-88-0103	BSA,GOA	1*
Shin An Ho, Large stern trawler	KS-88-0047	BSA, GOA	1* 2*
Khana, Cargo/transport vessel	KS-88-0145	BSA,GOA	3
Shin Yang Ho, Large stern trawler	KS-88-0122	BSA, GOA	1* 2*
Sunflower No. 7, Large stern trawler	KS-88-0002	BSA, GOA	1* 2*
Tae Baek Ho, Large stern trawler	KS-88-0042	BSA, GOA	1* 2*
Tae Woong Ho, Large stern trawler	KS-88-0143	BSA, GOA	1* 2*
Tae Yang No. 12, Cargo/transport vessel	KS-88-0081	BSA,GOA	3
Yuyang Ho, Large stern trawler	KS-88-0104	BSA, GOA	1* 2*
*GOVERNMENT OF THE NETHERLANDS			
Alida, Large stern trawler	NL-88-0006	NWA	1*
Annie Hillina, Medium stern trawler	NL-88-0027	NWA	1*
Ariadne, Medium stern trawler	NL-88-0009	NWA	1*
Astrid, Large stern trawler	NL-88-0028	NWA	1*
Cornelis Vrolijk Fzn, Medium stern trawler	NL-88-0014	NWA	1*
Dirk Dirk, Large stern trawler	NL-88-0026	NWA	1*
Friesland, Medium stern trawler	NL-88-0031	NWA	1*
Geertruid Margreta, Large stern trawler	NL-88-0032	NWA	1*
Hendrika Johanna, Medium stern trawler	NL-88-0025	NWA	1*
Holland, Large stern trawler	NL-88-0023	NWA	1*
Prins Bernard, Large stern trawler	NL-88-0007	NWA	1*
Zeeland, Large stern trawler	NL-88-0022	NWA	1*
*GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC			
Admiral Arciszewski, Large stern trawler	PL-88-0081	NWA	1*
Altair, Large stern trawler	PL-88-0115	BSA,WOC,NWA GOA	1* 2*
Amarel, Large stern trawler	PL-88-0046	BSA,WOC,NWA GOA	1* 2*
Andromeda, Large stern trawler	PL-88-0088	NWA	1*
Antares, Large stern trawler	PL-88-0037	BSA,WOC,NWA GOA	1* 2
Antoni Garnuszewksi, Cargo transport vessel	PL-88-0106	BSA,WOC,NWA GOA	3
Aquarius, Large stern trawler	PL-88-0103	BSA,WOC,NWA GOA	1* 2*
Aquila, Large stern trawler	PL-88-0097	BSA,WOC,NWA GOA	1* 2*
Arcturus, Large stern trawler	PL-88-0038	BSA,WOC,NWA GOA	1* 2*
Awior, Large stern trawler	PL-88-0060	BSA,WOC,NWA GOA	1* 2*
Bogar, Large stern trawler	PL-88-0085	BSA,WOC,NWA GOA	1* 2*
Buran, Cargo/transport vessel	PL-88-0033	BSA,WOC,NWA GOA	3
Cassiopeia, Large stern trawler	PL-88-0099	BSA,WOC,NWA GOA	1* 2*
Dalmor 2, Large stern trawler	PL-88-0114	BSA,WOC,NWA GOA	1* 2*
Delfin, Large stern trawler	PL-88-0065	BSA,WOC,NWA GOA	1* 2*
Denebola, Large stern trawler	PL-88-0075	BSA,WOC,NWA GOA	1* 2*
Denebola, Large stern trawler	PL-88-0075	BSA, WOC, NWA GOA	1* 2*
Dzieci Polskie, Cargo/transport vessel	PL-88-0091	BSA, GOA, NWA WOC	3
Garnela, Large stern trawler	PL-88-0008	BSA, WOC, NWA GOA	1* 2*
Gdynski Kosynier, Cargo/transport vessel	PL-88-0090	BSA, WOC, NWA GOA	3
Gemini, Large stern trawler	PL-88-0048	BSA, WOC, NWA GOA	1* 2*
Goplo, Medium stern trawler	PL-88-0057	BSA, WOC, NWA GOA	1* 2*
Grinwal, Large stern trawler	PL-88-0007	BSA, WOC, NWA GOA	1* 2*
Hajduk, Large stern trawler	PL-88-0066	BSA, WOC, NWA GOA	1* 2*
Halniak, Cargo/transport vessel	PL-88-0029	BSA, WOC, NWA GOA	3
Humbak, Large stern trawler	PL-88-0019	BSA, WOC, NWA GOA	1* 2*
Indus, Large stern trawler	PL-88-0094	BSA, WOC, NWA GOA	1* 2*
Kalmar, Large stern trawler	PL-88-0039	BSA, WOC, NWA GOA	1* 2*
Kantar, Large stern trawler	PL-88-0118	NWA	1*
Kapitan Ledochowski, Cargo/transport vessel	PL-88-0087	BSA, GOA, NWA WOC	3
Kaszuby 2, Cargo/transport vessel	PL-88-0027	BSA, GOA, NWA WOC	3

Nation, Vessel name and Vessel type	Application number	Fishery	Activity
Kociewie, Cargo/transport vessel	PL-88-0116	BSA, GOA, NWA WOC	3
Kolias, Large stern trawler	PL-88-0050	BSA, WOC, NWA GOA	1* 2*
Kulbin, Large stern trawler	PL-88-0117	NWA	1*
Kunatka, Large stern trawler	PL-88-0021	NWA	1*
Laskara, Large stern trawler	PL-88-0024	NWA	1*
Lewanter, Cargo/transport vessel	PL-88-0030	BSA, GOA, NWA WOC	3
Manta, Large stern trawler	PL-88-0052	BSA, WOC, NWA GOA	1* 2*
Marlin, Large stern trawler	PL-88-0034	BSA, WOC, NWA GOA	1* 2*
Mazury, Cargo/transport vessel	PL-88-0098	BSA, GOA, NWA WOC	3
Mors, Large stern trawler	PL-88-0063	BSA, WOC, NWA GOA	1* 2*
Mustel, Large stern trawler	PL-88-0012	BSA, WOC, NWA GOA	1* 2*
Orcyn, Large stern trawler	PL-88-0077	BSA, WOC, NWA GOA	1* 2*
Orlen, Large stern trawler	PL-88-0078	BSA, WOC, NWA GOA	1* 2*
Otol, Large stern trawler	PL-88-0011	BSA, WOC, NWA GOA	1* 2*
Parma, Large stern trawler	PL-88-0084	BSA, WOC, NWA GOA	1* 2*
Perseus, Large stern trawler	PL-88-0004	BSA, WOC, NWA GOA	1* 2*
Pollux, Large stern trawler	PL-88-0006	BSA, WOC, NWA GOA	1* 2*
Prof. Bogucki, Large stern trawler	PL-88-0107	BSA, WOC, NWA GOA	1* 2*
Regulus, Large stern trawler	PL-88-0095	BSA, WOC, NWA GOA	1* 2*
Rekin, Large stern trawler	PL-88-0080	BSA, WOC, NWA GOA	1* 2*
Sagitta, Large stern trawler	PL-88-0040	BSA, WOC, NWA GOA	1* 2*
Sirus, Large stern trawler	PL-88-0062	BSA, WOC, NWA GOA	1* 2*
Solano, Cargo/transport vessel	PL-88-0112	NWA	3
Tazar, Large stern trawler	PL-88-0054	BSA, WOC, NWA GOA	1* 2*
Terral, Cargo/transport vessel	PL-88-0086	NWA	3
Tornado, Cargo/transport vessel	PL-88-0113	NWA	3
Tunek, Large stern trawler	PL-88-0045	BSA, WOC, NWA GOA	1* 2*
Vega, Large stern trawler	PL-88-0055	BSA, WOC, NWA GOA	1* 2*
Walen, Large stern trawler	PL-88-0009	BSA, WOC, NWA GOA	1* 2*
Wlocznik, Large stern trawler	PL-88-0020	BSA, WOC, NWA GOA	1* 2*
GOVERNMENT OF THE U.S.S.R.			
15 Syezd Profsoyuzov, Large stern trawler	UR-88-0087	BSA	1*
Alexandr Kraev, Large stern trawler	UR-88-0003	BSA	1*
Amurskiy Bereg, Cargo/transport vessel	UR-88-0750	BSA, GOC, WOC	3
Baganovo, Large stern trawler	UR-88-0758	BSA	1*
Bereg Nadezdy, Cargo/transport vessel	UR-88-0754	BSA, GOA, WOC	3
Chukotskyi Bereg, Cargo/transport vessel	UR-88-0749	BSA, GOA, WOC	3
Dalniy Vostok, Factory ship	UR-88-0783	BSA	1*
Danko, Large stern trawler	UR-88-0001	BSA	1*
Fyodor Krainov, Large stern trawler	UR-88-0206	BSA	1*
Galifan Batarshin, Large stern trawler	UR-88-0190	BSA	1*
Kamchatsky Bereg, Cargo/transport vessel	UR-88-0755	BSA, GOA, WOC	3
Kargat, Large stern trawler	UR-88-0198	BSA	1*
Katangli, Large stern trawler	UR-88-0018	BSA	1*
Khrustalnyi Bereg, Cargo/transport vessel	UR-88-0732	BSA, GOA, WOC	3
Kizir, Large stern trawler	UR-88-0081	BSA	1*
Mys Chasovoy, Large stern trawler	UR-88-0176	BSA	1*
Mys Elagina, Large stern trawler	UR-88-0165	BSA	1*
Mys Grotovyi, Large stern trawler	UR-88-0092	BSA	1*
Mys Orekhova, Large stern trawler	UR-88-0017	BSA	1*
Mys Sheiikhova, Large stern trawler	UR-88-0703	BSA	1*
Mys Taimyr, Large stern trawler	UR-88-0166	BSA	1*
Mys Vodopadny, Large stern trawler	UR-88-0546	BSA	1*
Mys Yudina, Large stern trawler	UR-88-0025	BSA	1*
Ostrov Karaginskiy, Cargo/transport vessel	UR-88-0255	BSA, GOA, WOC	3
Ostrov Lisyanskogo, Cargo/transport vessel	UR-88-0254	BSA, GOA, WOC	3
Ostrov Shmidta, Cargo/transport vessel	UR-88-0256	BSA, GOA, WOC	3
Ostrov Shokalskogo, Cargo/transport vessel	UR-88-0257	BSA, GOA, WOC	3
Paudzha, Large stern trawler	UR-88-0704	BSA	1*
Pogranichnik Strelnikov, Large stern trawler	UR-88-0225	BSA	1*
Poyma, Large stern trawler	UR-88-0201	BSA	1*
Revoliutsioner, Large stern trawler	UR-88-0187	BSA	1*
Soiuz-5, Large stern trawler	UR-88-0235	BSA	1*
Solnechnyi Bereg, Cargo/transport vessel	UR-88-0485	BSA, GOA, WOC	3
Sovetsk, Factory ship	UR-88-0777	BSA, NWA	1*
Sovgavansky Komsomolets, Large stern trawler	UR-88-0560	BSA	1*
Sulak, Factory ship	UR-88-0238	BSA	1*
Svetlaia, Large stern trawler	UR-88-0080	BSA	1*
Taejnyi Bereg, Cargo/transport vessel	UR-88-0770	BSA, GOA, WOC	3
Tarkhansk, Cargo/transport vessel	UR-88-0795	BSA, GOA, WOC	3

Nation, Vessel name and Vessel type	Application number	Fishery	Activity
Tymovsk, Large stern trawler	UR-88-0046	BSA	1*
Ulbansky Zaliv, Cargo/transport vessel	UR-88-0806	BSA, GOA, WOC	3
Ussuriiskaia Taiga, Cargo/transport vessel	UR-88-0782	BSA, GOA, WOC	3
Vasilii Polechuk, Cargo/transport vessel	UR-88-0804	BSA, GOA, WOC	3
Vasiliy Vinevitin, Large stern trawler	UR-88-0014	BSA	1*
Vladivostok, Factory ship	UR-88-0786	BSA	1*
Vostochnyi Bereg, Cargo/transport vessel	UR-88-0761	BSA, GOA, WOC	3
Yubiley Oktiabria, Large stern trawler	UR-88-0064	BSA	1*
German Matern, Cargo/transport vessel	UR-88-0786	BSA, GOA, WOC	3
Ivan Dvorskij, Large stern trawler	UR-88-0391	NWA	1*

[FR Doc. 87-29112 Filed 12-17-87; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Negotiated Settlement on Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

December 15, 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 December 21, 1987. For further information contact Ross Arnold, 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 or call (202) 343-6581. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the import restraint limit for cotton textile products in Category 369-L, produced or manufactured in Thailand and exported during the extended restraint period which began on August 19, 1987 and extends through December 31, 1987.

Background

A CITA directive dated September 15, 1987 (52 FR 35302) established an import restraint limit for cotton textile products in Category 369-L, produced or manufactured in Thailand and exported during the ninety-day period which began on August 19, 1987 and extended through November 16, 1987.

During consultations held November 11-13, 1987 between the Governments of the United States and Thailand, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, agreement was reached to extend the restraint period and increase the limit for Category 369-L for the period August 19, 1987 through December 31, 1987. The United States Government will continue to control imports of Category 369-L at the agreed level.

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), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tarriff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

The letter to the Commissioner of Customs 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.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1987.

Comissioner 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 September 15, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in Thailand and exported during the ninety-day period which began on August 19, 1987 and extended through November 16, 1987.

Effective on December 21, 1987, the directive of September 15, 1987 is amended to extend the import restraint period for Category 369-L [1] for the period August 19, 1987 through December 31, 1987 at an increased level of 510,000 pounds.[2]

Textile products in Category 369-L 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.

Import charges made to the ninety-day restraint period are to be retained. Additional charges will be made as data become available.

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(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-29099 Filed 12-17-87; 8:45 am]
BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 19, 1988.

[1] In Category 369-L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[2] The restraint limit has not been adjusted to account for imports exported after August 18, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 9, 1987, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 37819) of additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the services listed.

c. The action will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1988.

Laundry Service

Acoma/Canoncito/Laguna PHS Indian Hospital, Acomita, New Mexico

Laundry Service

Zuni PHS Indian Hospital, Zuni, New Mexico

C.W. Fletcher,

Executive Director.

[FR Doc. 87-29072 Filed 12-17-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Addition and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: January 18, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1988, December 10, 1987 (52 FR 46926):

Janitorial/Custodial, Federal Supply Service Depot, 4100 W. 76th Street, Chicago, Illinois.

Deletions

It is proposed to delete the following commodity and services from Procurement List 1988, December 10, 1987 (52 FR 46926):

Commodity

Tube, Mailing and Filing, 8110-00-412-4410

Service

Pallet Repair, Naval Supply Center, Cheatham Annex, Williamsburg, Virginia.

C.W. Fletcher,

Executive Director.

[FR Doc. 87-29073 Filed 12-17-87; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The MidAmerica Commodity Exchange, Inc. ("MCE") has applied for designation as a contract market in futures on Long-Term U.S. Treasury notes. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before February 16, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the MCE Long-Term Treasury note futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and condition can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the MCE is support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts. Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the MCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on December 14, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-29038 Filed 12-17-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87-680-000 et al.]

Central Illinois Light Co. et al.; Electric Rate and Corporate Regulation Filings

December 14, 1987.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER87-680-000]

Take notice that on December 8, 1987, Central Illinois Light Company (CILCO) tendered for filing an amendment to it's original filing of this Docket with regard to Section 35.27 of the Commission's Regulations. The original filing was made to revise CILCO's Wholesale Rate MW-4, applicable to the Village of Riverton, Illinois, to reflect changes in CILCO's tax structure due to the Tax Reform Act of 1986. CILCO made this filing in voluntary compliance with the Federal Energy Regulatory Commission (FERC) Order No. 475.

Comment date: December 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket Nos. EL87-11-002, EL87-18-002, EL87-20-003]

Take notice that on December 7, 1987, Duke Power Company tendered for filing pursuant to Commission Order dated August 3, 1987 a compliance report setting forth a summary of refunds and their computation. Duke Power Company states that it made the required refunds on November 23, 1987.

Comment date: December 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Ogden Martin Systems of Fairfax, Inc.

[Docket No. ER87-76-000]

Take notice that on December 4, 1987, Ogden Martin Systems of Fairfax, Inc. (Ogden Fairfax) tendered for filing with the Federal Energy Regulatory Commission an amendment to its initial rate schedule and supporting documentation previously filed on October 16, 1987. The amendment provides documentation that Ogden Fairfax's initial rate for the sale of capacity and corresponding energy to Virginia Electric and Power Company (Virginia Power) will be equal to or less than Virginia Power's avoided cost over the term of the agreement.

Comment date: December 28, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Utah Power & Light Company

[Docket No. ER88-130-000]

Take notice that on December 7, 1987, Utah Power & Light Company (UP&L) tendered for filing a Notice of Cancellation for the Resale Electric Service Agreement with CP National Corporation for the purchase of wholesale power and energy. UP&L requests that the Resale Electric Service Agreement cancellation be made effective as of January 1, 1987, which is the date UP&L last supplied power under such agreement.

UP&L requests that the Commission's notice requirements in 18 CFR 35.3 be waived, as provided for in 18 CFR Section 35.11, in order to allow the cancellation to be made effective on the date requested and on the date transactions last occurred under the Agreement.

Comment date: December 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER88-131-000]

Take notice that on December 9, 1987, Virginia Electric and Power Company (Company) tendered for filing Rate Schedule TS-M, Transmission Service for Municipal Electric Systems. The Company requests an effective date sixty days from the date of filing. Pursuant to the rate schedule, the Company will provide Firm Transmission and Non-Firm Transmission over the Company's transmission and distribution facilities for Customers as those terms are defined in the rate schedule.

Copies of the filing have been served on each of the Company's wholesale municipal customers in Virginia, Virginia Municipal Electric Association Number One and the Virginia State Corporation Commission.

Comment date: December 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29084 Filed 12-17-87; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-104-000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

December 15, 1987.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-104-000]

Take notice that on December 3, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-104-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for CNG Trading Company (CNG), a marketer, under the certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 13, 1987, as amended November 20, 1987, it proposes to transport natural gas on an interruptible basis for CNG from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters.

Tennessee further states that the maximum daily and annual quantities would be 650,000 dekatherms and 5,475,000 dekatherms, respectively. Tennessee advises that service under § 284.223(a) commenced October 26, 1987, as reported in Docket No. ST88-729 (filed November 20, 1987).

Comment date: January 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-76-000]

Take notice that on November 13, 1987, Transcontinental Gas Pipe Line

Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-76-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in place and by removal 1.41 miles of offshore pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon 1.41 miles of 8-inch pipeline and appurtenant facilities extending from the South Pelto Block 10 "A" platform (SP 10A) to the South Pelto Block 11 "F" platform (SP 11F), offshore Louisiana. Applicant states that the facilities were installed pursuant to budget-type authorization in Docket No. CP76–55, to permit new gas purchased by Applicant at SP 10A to flow to SP 11F for measurement and further transportation to shore. It is stated that the producer-operator of the platforms constructed a line between SP 10A and the adjacent "B" platform in that block (SP 10B), and the gas production from SP 10A was diverted from its original SP 11F route to the new line to SP 10B, for measurement with SP 10B gas and transportation to shore.

Applicant avers that the new routing and handling is more efficient than the old, and eliminates the need for the line to SP 11F proposed to be abandoned. Applicant indicates that at the request of the producer-operator, the pipeline would be removed from the SP 10A and SP 11F platforms, but otherwise would be abandoned in place.

Comment date: January 5, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88–112–000]

Take notice that on December 4, 1987, Northern Natural Gas Company Division of Enron Corp., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88–112–000, an application pursuant to section 7(b) of the Natural Gas Act for permission to abandon and remove two 3,100 horsepower (hp) compressor units and related facilities located in Calcasieu Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to its reduced production and acquisitions in the gulf coast, two 3,100 hp compressor units and associated facilities are no longer needed at the Starks Compressor Station. Pursuant to a gas exchange agreement dated September 12, 1980, Northern indicates that it delivered a portion of its gulf coast production to Transcontinental Gas Pipe Line Corporation (Transco) for redelivery to Texas Eastern Transmission Corporation at Northern's Starks Compressor Station. Because of the reduced production in the gulf coast area, Northern states that it now delivers this production to Transco at the Johnson's Bayou Plant, and these circumstances make it unnecessary for Northern's gulf coast production to be delivered to the Starks Compressor Station. Northern further States that Northern and Transco entered into a transportation agreement whereby Transco will deliver this production directly to Houstion Pipe Line Company near Bammel, Texas, negating the need for deliveries at the Starks Compressor Station.

Northern further states that it has suspended operation of the Starks Compressor Station and anticipates no further operation of the facilities to be required. Northern also states that it proposes to utilize said compressors elsewhere on Northern's system or sell them to potential buyers.

Comment date: January 5, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Associated Natural Gas Company a division of Arkansas Western Gas Company and Associated Natural Gas Company

[Docket No. CP87–101–000]

Take notice that on December 1, 1987, Associated Natural Gas Company, a division of Arkansas Western Gas Company (ANG Division), P.O. Box 1288, Fayetteville, Arkansas 72702–1288, and Associated Natural Gas Company (Associated), 405 West Park Street, Blytheville, Arkansas 71215 (Applicants), filed in Docket No. CP87–101–000 a joint application, pursuant to sections 7(b), 7(c) and 7(f) of the Natural Gas Act (NGA), for authorization to permit Associated to abandon certain natural gas facilities, for a certificate of public convenience and necessity authorizing the ANG division to acquire by merger and to operate those same facilities, for a Section 7(f) service area determination covering a portion of the Associated facilities to be acquired, for an Order No. 63 blanket certificate, and for a declaratory order, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically the Applicants have requested a certificate of public convenience and necessity authorizing the ANG Division to acquire by merger and operate the facilities of Associated which are subject to the Commission's jurisdiction. It is stated that Associated would be merged into Arkansas Western Gas Company (AWG), a natural gas public utility which serves approximately 78,000 local distribution customers in northwest Arkansas. The Applicants assert that, upon the merger, the acquired Associated facilities would be maintained and operated through the ANG Division, which would be an operating division of AWG. It is asserted that the sales and services currently provided by Associated would continue without interruption or change upon the proposed merger.

Applicants state that the jurisdictional facilities to be acquired by the ANG Division include approximately 263 miles of natural gas transmission facilities located in the States of Missouri and Arkansas, and a 55,000 barrel liquified natural gas plant located near Blytheville, Arkansas. Additionally, because it is indicated that Associated would cease to exist upon the merger, the Applicants have further requested that Associated be authorized to abandon those same jurisdictional facilities. It is further stated that the total cost to AWG for the acquisition is $31,294,600, of which $4,470,605 represents an amount for Associated's jurisdictional facilities.

In conjunction with the requested certificate and abandonment authorization, the ANG Division has also requested the Commission for a service area determination under section 7(f) of the NGA covering the above jurisdictional facilities to be acquired from Associated, and within which the ANG Division may extend or enlarge such facilities without further authorization from the Commission.

The Applicants have further requested that the Commission issue a declaratory order confirming that neither the proposed acquisition and operation of Associated's facilities, nor the issuance of the Certificate to the ANG Division, will alter or affect the status of Associated's existing non-jurisdictional facilities which would also be acquired by the ANG Division, or of the existing non-jurisdictional facilities of AWG.

The Applicants further assert that, upon the merger, AWG intends to deliver natural gas through its existing intrastate facilities to interstate pipelines for subsequent redelivery to the ANG Division for use as system supply. The Applicants request a declaratory order confirming that AWG's deliveries of gas would not be deemed to be either the interstate sale for resale or transportation of natural gas, and that AWG would not be required to obtain any authorization from the Commission under the NGA or the Natural Gas Policy Act (NGPA) to engage in such deliveries.

Finally, the Applicants state that it is their understanding that AWG would, upon the completion of the merger and acquisition of Associated, become a local distribution company for the purposes of the NGPA and the Order No. 63 blanket certificate regulations under § 284.224 of the Commission's Regulations 18 CFR 284.224. Accordingly, it is requested that AWG be issued, pursuant to § 284.222, a blanket certificate authorizing AWG to engage in the interstate transportation, sale, and assignment of natural gas to third-parties through its intrastate facilities to the same extent and in the same manner intrastate pipelines are authorized to engage in such activities under NGPA sections 311 and 312.

Comment date: January 5, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29085 Filed 12-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-117-000 et al.]

Archer-Daniels-Midland Company et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

December 15, 1987.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Archer-Daniels-Midland Company

[Docket No. QF88-117-000]

On November 30, 1987, Archer-Daniels-Midland Company (Applicant), of 4666 Faries Parkway, Decatur, Illinois 62526, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Decatur, Illinois. The facility will consist of 5 boilers and 4 steam turbine generating units. Steam produced by the facility will be used for process. The net electric power production capacity of the facility will be 100 MW. The primary energy source will be coal. Installation of the facility began in August, 1985.

2. Northeast Cogen, Inc.

[Docket No. QF88-111-000]

On November 24, 1987, Northeast Cogen, Inc. (Applicant), of 130 W. Main Street, Ft. Wayne, Indiana 46802, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Solvay, New York. The facility will consist of two combustion turbine generating units. Steam produced by the facility will be sold to a manufacturing company or companies. The net electric power production capacity of the facility will be 40 MW. The primary energy source will be natural gas. Installation of the facility is scheduled to begin in the spring of 1988.

3. San Gorgonio Farms, Inc.

[Docket No. QF85-234-001]

On November 16, 1987, San Gorgonio Farms, Inc. (Applicant), of 21515 Hawthorne Boulevard, Suite 1059, Torrance, California 90503, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located on Whitewater Hill, North Palm Springs, California. The facility presently consists of two hundred two wind turbines with a combined electric generating capacity of 31 NW. Applicant proposes the addition of diesel generation to the facility to firm-up existing wind turbine capacity.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29082 Filed 12-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-479-000, Docket No. CP85-437-000, Docket No. CP85-552-000]

Wyoming-California Pipeline Co., Mojave Pipeline Co., and Kern River Gas Transmission Co; Application To Supply Natural Gas for Enhanced Oil Recovery in California, Intent To Supplement Environmental Impact Statement and Request for Comments on Its Scope

December 14, 1987.

Introduction

An application for the construction and operation of a natural gas pipeline has been filed with the Federal Energy Regulatory Commission (FERC) by Wyoming-California Pipeline Company (WyCal), pursuant to section 7(c) of the Natural Gas Act and 18 CFR 157, Subpart E. The pipeline would transport natural gas from various sources outside of California to the Bakersfield, California area for use in enhanced oil recovery (EOR) and related cogeneration projects. Producers of crude oil in the San Joaquin Valley would use the natural gas as boiler fuel to create steam which would be injected into the oil fields to produce crude oil not recoverable by primary recovery methods. Some of the steam would also be used to generate electricity. The producers currently use crude oil and a limited amount of natural gas for steam generation; the WyCal project would allow substitution of natural gas for the crude oil now used, and may allow entry in the market of producers which presently cannot get authority to burn oil due to air pollution restrictions.

WyCal would transport natural gas purchased by the producers. WyCal would not own the gas transported through the pipeline.

Background

Two other applications have been filed with the Commission to serve the EOR market. Specifically, in Docket No. CP85-552-000, Kern River Gas Transmission Company has proposed to build an 837 mile pipeline. In Docket No. CP85-437-000, Mojave Pipeline Company has proposed to build a 389 mile pipeline. Notice of the Commission's intent to prepare a draft environmental impact statement for these proposals was published in the **Federal Register** (50 FR 34,174).

WyCal proposes to follow essentially the same route as Kern River has proposed, to Las Vegas, Nevada, and then connect to the route proposed by Mojave via a connection identified as the East Las Vegas route, identified in the staff's final environmental impact statement (FEIS) to be released this week. The proposed WyCal pipeline deviates from the Kern River proposal at the northern end of the project for approximately 52 miles. Since the proposed WyCal project is basically the same as the Kern River and the Mojave project, a significant amount of work has already been completed as to the environmental impact caused by the construction and operation of the pipeline. The supplement issued to this notice will only address those areas of the WyCal project which deviate from the East Las Vegas route, and the Mojave and Kern River proposals.

Notice of Intent

Notice is hereby given that the staff of the FERC has determined that approval of this project would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's Rules of Practice and Procedure (18 CFR 2.82(b)), a supplement to the FEIS to be issued in Docket Nos. CP85-437-000 and CP85-552-000 will be prepared.

The Proposed WyCal Pipeline

The map attached hereto shows the location of the proposed WyCal pipeline and compressor stations. The total project is approximately 1,006.8 miles long, and will affect approximately 6,102 acres of Federal, state, private, and Indian lands during operation. The project would cross sixteen counties in four states, extending between Lincoln County, Wyoming, and the Bakersfield, California area.

The WyCal proposal would require the construction of four compressor stations. Facilities and equipment at the compressor stations would include compressors and a building to house them, buildings for storage, instrumentation and control, a communications tower, gas coolers, water supply, wastewater system, and electrical supply.

WyCal proposes to use a 100-foot-wide construction right-of-way (ROW) disturbing approximately 12,204 acres of land during construction. The compressor stations for the project would require approximately an additional 10 acres each. In addition to the facilities discussed above, several staging areas, of approximately 12 acres each, will be used for construction, and storage.

A permanent ROW of approximately 50 feet would be maintained. Except at aboveground facilities, access roads, and where the ROW crosses formerly wooded areas, the ROW could be used as it was before construction as long as structures were not built.

Construction of the WyCal Pipeline Project would be within or near:

Uinta National Forest (UT)
Manti-La Sal National Forest (UT)
Fishlake National Forest (UT)
Dixie National Forest (UT)
Moapa River Indian Reservation (NV)
Jean Off-Road-Vehicle Recreation Area (NV)
Sunrise Mountain Natural Area (NV)
Rainbow Gardens Natural Area (NV)
Fort Mohave Indian Reservation (AR)
Havasu National Wildlife Refuge (AR)
Edwards Air Force Base (CA)
California Desert Conservation Area (CA)
Pacific Crest National Scenic Trail (CA)
Elk Hills Naval Petroleum Reserve (CA)

Cooperating Agencies

The federal agencies that were asked to cooperate in the production of the Mojave and Kern River EIS will likewise be contacted in this case.

Any request agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Lois Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The request should reference Docket No. CP87-479-000 and should be received by January 14, 1988. Additional information about this project, including maps of limited areas of the proposed routes, and FERC's involvement in the EIS/EIR may be obtained from Mr. Robert K. Arvedlund, Environmental Analysis Branch, OPPR, at the address on this page or by telephone: (202) 357-9091. Mr. Arvedlund should be sent a copy of any request for cooperating agency status.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the FERC. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EIS; however the FERC will decide what modifications will be adopted in light of production constraints.

Comment and Scoping Procedure

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, and parties to the FERC proceedings. Interested readers of this notice are encouraged to comment on anticipated environmental concerns associated with the project. Comments will be used by the FERC to identify the issues which require in-depth environmental analysis.

Comments (on the scope of the supplement to the FEIS) should also be addressed to the Secretary, Federal Energy Regulatory Commission. Recommendations that the EIS address specific issues should be supported with a detailed explanation of the need to consider such issues. Written comments should be submitted by January 14, 1988, and reference to Docket No. CP87-479-000. Mr. Arvedlund should also be sent a copy of the scoping comments.

Mailing Lists

Organizations and individuals receiving this Federal notice of intent to prepare a suplement to the FEIS have been selected to ensure public awareness of these projects and public involvement in the review process under NEPA. The supplement to the FEIS will be sent automatically to addressees on the Federal Energy Regulatory Commission's official service list for the Mojave, Kern River, and WyCal projects, and to the appropriate Federal agencies, and state clearinghouses in states where each project is located.

Lois Cashell,

Acting Secretary.

[FR Doc. 87-29080 Filed 12-17-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $206,764.89 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Eastern Oil Company of Tampa, Florida (Case No. KEF-0085). The fund will be available to certain identified wholesale customers and unidentified retail customers of Eastern motor gasoline, diesel fuel, and kerosene.

DATE AND ADDRESS: Applications for Refund of a portion of the consent order fund must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to: The Eastern Oil Company Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0085.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Eastern Oil Company of Tampa, Florida. The Consent Order settled possible pricing violations with respect to the firm's sales of motor gasoline, diesel fuel, and kerosene to certain identified wholesale customers and unidentified retail customers during the November 1, 1973 through October 31, 1974 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on April 21, 1987. 52 FR 15311 (April 28, 1987).

As the Decision and Order indicates, Applications for Refunds from the consent order fund may now be filled. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from the identified wholesale customers and unidentified retail customers who purchased motor gasoline, diesel fuel, and kerosene from Eastern during the period November 1, 1973 through October 31, 1974. The specified information required in an Application for Refund is set forth in the Decision and Order. The Decision and Order also addresses the distribution of any funds remaining after the processing of first-stage claims is completed.

Dated: December 14, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

December 14, 1987.

Name of Firm: Eastern Oil Company.

Date of Filing: December 3, 1986.

Case Number: KEF-0085.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on December 3, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order which the DOE entered into with Eastern Oil Company (Eastern).

I. Background

Eastern is a "reseller-retailer" of petroleum products as that term was defined in 10 CFR 212.31. Eastern sells motor gasoline, diesel fuel, and kerosene in the states of Florida, Kentucky, and Tennessee. An ERA audit of the firm's records revealed possible violations of the Mandatory Petroleum Price Regulations at 10 CFR Part 212, Subpart F. As a result, on November 17, 1977, the ERA issued a Remedial Order in which it found that Eastern had overcharged its retail and wholesale customers in sales of motor gasoline, diesel fuel and kerosene during the period November 1, 1973 thorugh October 31, 1974. Subsequently, on February 5, 1986, Eastern entered into a Consent Order with the DOE in order to settle its disputes with the DOE concerning the transactions covered by the Remedial Order.[1] The Consent Order states that Eastern does not admit that it committed any violations.

Eastern has remitted to the DOE a total of $206,764.89 to settle alleged overcharges during the period November 1, 1973 through October 31, 1974 (the consent order period). This amount consists of: (i) $115,383 for alleged overcharges (plus interest through December 31, 1985) in sales to retail customers of diesel fuel and kerosene and certain identified wholesale customers of motor gasoline, diesel fuel,

[1] Eastern appeal of the November 17, 1977 Remedial Order was denied in large part, but the case was remanded to the ERA for reconsideration of specified issues and recalculation of the violation amount. *See Eastern Oil Co.*, 3 DOE § 80,108 (1979). The ERA issued a Revised Remedial Order, which was again appealed by Eastern. The appeal was denied, with certain modifications regarding the disposition of the refunds. *See Eastern Oil Co.*, 9 DOE § 80,129 (1982). On July 22, 1985, the ERA issued an Order for Disposition of Refunds (Disposition Order), which was appealed to OHA by Eastern. The Appeal was settled by the Consent Order.

and kerosene; [2] (ii) $85,000 for alleged overcharges (plus interest through December 31, 1985) in retail sales of motor gasoline; and (iii) $6,381.89 in interest on the firm's installment payments of the consent order amounts.[3]

On April 21, 1987, the OHA issued a Proposed Decision and Order (PDO) setting forth a tentative plan for the distribution of the Eastern consent order funds. 52 FR 15371 (April 28, 1987). We stated in the PDO that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Eastern's alleged overcharges during the consent order period.

In establishing the procedures proposed in the PDO, we relied on information in the Revised Remedial Order issued to Eastern. An exhibit to that Order identifies the wholesale customers allegedly overcharged by Eastern and lists the total alleged overcharge amounts in retail sales of motor gasoline, diesel fuel, and kerosene. Based on this information, we found in the PDO that the identified wholesale customers and the unidentified retail customers are most likely the parties who were adversely affected by Eastern's alleged overcharges, and accordingly, we proposed that they be the parties eligible for refunds in this proceeding.

In the PDO we also proposed to adopt a number of presumptions concerning injury. These presumptions excuse certain categories of refund applicants that purchased Eastern products from making a detailed demonstration of injury, thus simplifying the refund process for these applicants. For example, we tentatively found that end-users (ultimate consumers) whose businesses are unrelated to the petroleum industry would not be required to provide a detailed demonstration that they were injured by Eastern's alleged overcharges. Additionally, we proposed a small-claims presumption regarding resellers of Eastern products (including retailers and refiners). Under such a presumption, a claimant seeking total refunds of $5,000 or less (excluding interest) is not required to submit any evidence of injury, beyond establishing the volume of Eastern products it purchased during the settlement period. Resellers seeking over $5,000 and spot purchasers would be required to provide a more detailed injury showing.

In order to give notice to all potentially affected parties, a copy of the PDO was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. We received comments concerning our proposed procedures from Eastern and from United Petroleum (United), one of the wholesale customers identified in the Revised Remedial Order. These comments will be addressed below in our discussion of the final procedures to be adopted for this proceeding.

II. Jurisdiction and authority

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*). As we stated in the PDO, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over the Eastern consent order fund.

III. Refund Procedures

A. Refund Claimants

The consent order fund will be distributed to Eastern customers who were adversely affected by the firm's alleged overcharges. As we indicated in the PDO, E xhibit B to the Revised Remedial Order issued to Eastern and the amounts by which they were allegedly overcharged. This exhibit also lists the total overcharge amounts in retail sales of motor gasoline, diesel fuel, and kerosene. Five of the identified customers, who are listed in the Appendix to this Decision and Order, and the unidentified retail customers of Eastern motor gasoline, diesel fuel, and kerosene are most likely to be the parties who were adversely affected by any Eastern overcharges during the consent order period.[4]

In its comments regarding the Proposed procedures, Eastern contends that one of the identified customers, United, is not entitled to a refund. In support of this contention, Eastern asserts that it has previously proven that United was not overcharged. *See* May 7, 1987 letter from J. Danforth Browne, Esq., Eastern's counsel, to Richard W. Dugan, Associate Director of the Office of Hearings and Appeals. Eastern's argument is unpersuasive. All issues regarding the merits of the Eastern enforcement proceeding were resolved as a result of the Consent Order entered into between Eastern and the DOE. We do not intend to reopen that proceeding.[5] Among the issues before us in this special refund proceeding are: (i) How to allocate the consent order fund, and (ii) whether applicants suffered economic injury. We will not adopt Eastern's suggestion that we should now find that United is not eligible for a refund in this proceeding. Instead, we will establish a claims procedure in which we will accept refund applications from United and the other customers indicated above.

B. Showing of Injury

In order to be eligible for a refund, an applicant must establish that it was injured as a result of Eastern's alleged overcharges. To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the covered products purchased from Eastern at the same level had the overcharges not occurred. Accordingly, a reseller claimant should show that at the time of its purchases from Eastern,

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[2] In the Consent Order, Eastern agreed to pay $150,598, the total amount of the alleged overcharges (plus interest) in sales to these categories of customers, minus any payments already made by Eastern to any of the identified customers. The firm was given credit by the ERA for two payments totalling $35,215 which it made prior to the execution of the Consent Order to two of seven identified customers, Martin Oil Company and Unoco Oil Company. These customers have signed releases attesting that their claims against Eastern under the terms of the Disposition Order (*see* n.1, *supra*) have been satisfied in full and waiving any further claim to a refund. The firm has therefore remitted $115,383 ($150,598 minus $35,215) to the DOE to compensate for the alleged overcharges to five wholesale customers and its retail customers of diesel fuel and kerosene.

[3] We have proportionally increased the principal amounts allocated to the various customer groups to reflect the installment interest. The amounts allocated to the customer groups are:

Identified customers: $101,026.66
Retail diesel sales: $11,228.43
Retail kerosene sales: $6,803.52
Retail motor gasoline sales: $87,706.28

[4] The two identified Eastern customers who have already received direct payments from the firm (Martin Oil Co. and Unoco Oil Co.) will not be eligible to receive refunds in this proceeding. *See* n.2. They are therefore not listed in the appendix.

[5] We note, however, that in its initial Appeal of the 1977 Remedial Order, Eastern provided no evidence to substantiate its claim that United was not overcharged, and, accordingly, we rejected this contention. *Eastern Oil Co.*, 3 DOE ¶80,108 at 80,540–80,541 (1979).

market conditions would not permit it to increase its prices to pass through the additional costs associated with the overcharges.[6] *See Office of Enforcement*, 10 DOE ¶85,056 (1983); *see also Office of Enforcement*, 10 DOE ¶85,029 (1982). In addition, the reseller must show that it maintained a "bank" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[7] The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶85,014 (1982).

The comments filed by United relate to the required showing of injury. United protests that the burden of proof for resellers claiming refunds over the proposed $5,000 small claims threshold will be unduly burdensome and time consuming and will discourage refund claimants from applying. *See* June 12, 1987 letter from Catherine Zoller of United Petroleum to Diane Wasch, OHA Staff Analyst. United also states that it no longer retains the necessary cost "bank" information to make the injury showing and contends that since it was identified as a overcharged customer it should not be required to submit further proof of injury.

United has misunderstood the purpose of the injury showing. Although United is eligible for a potential refund of $75,824 based upon the findings in the Eastern enforcement proceeding, the question remains whether or not United passed through any or all of the alleged overcharges to its customers. If it did pass through the alleged overcharges, it did not suffer economic injury as a result of Eastern's pricing practices. In that case, it would not be eligible for a refund. *See* 10 CFR 205.280 ("This Subpart establishes special procedures pursuant to which refunds may be made to injured persons * * *"). The burden of proof lies with the company to prove injury. *See Inland U.S.A., Inc./UCO Oil Co.*, 13 DOE ¶85,288 (1985), *reconsideration denied*, 13 DOE ¶85,394 (1986).

United's argument that it no longer has information regarding its banks of unrecouped costs provides no basis for changing the injury showing required in this proceeding.[8] If United disposed of its records, that action was prematurely taken. The firm has been provided notice at all stages of the Eastern enforcement proceeding and this refund proceeding. The firm was therefore certainly aware of the ongoing proceedings involving Eastern's alleged overcharges and should have maintained the records necessary to defend its interests. Moreover, until an amendment to the recordkeeping regulations on February 5, 1985, United, like all firms in the petroleum industry, was required to maintain records regarding its pricing of petroleum products during the period of controls. *See* 50 FR 4957 (February 5, 1987) (preamble to amendment to 10 CFR 201.1 eliminating recordkeeping for most firms). The preamble to the February 5 amendment put firms on notice that they might wish to retain voluntarily their records in order to support Subpart V claims. We therefore reject United's argument that it should not be required to make a showing of injury.

1. The Small Claims Presumption

As proposed in the PDO, we will establish a small claims presumption of injury for applicants requesting refunds of $5,00 or less. The principal purpose of the small claims presumption is to permit claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. *See McCarty Oil Co.*, 13 DOE ¶ 85,012 at 88,035 (1985). Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of covered products from Eastern. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the overcharges to their own customers. The cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury should also not exceed the amount of the refund to be gained. We thus shall adopt a small claims presumption in this proceeding. *See, e.g., Aztex Energy Co.*, 12 DOE ¶85,116 (1984); *Marion Corp.*, 12 DOE ¶85,014 at 88,031–88,032 (1984). Any reseller applicant claiming a refund of $5,000 or less, based upon the potential refund amounts set forth in the Appendix to this Decision and Order need not make a detailed showing of injury in order to be eligible to receive a refund. These applicants need only document their purchases from Eastern.[9]

2. Spot Purchasers

We further adopt our proposal that resellers that made spot purchases from Eastern are ineligile to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. Spot purchasers tend to have considerable discretion as to where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 8 DOE at 85,369–97. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchases.

3. End-Users

In the PDO, we made a tentative finding that end-users and ultimate consumers of Eastern covered products whose businesses are unrelated to the petroleum industry were injured by the overcharges addressed in this proceding. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the Consent Order, and thus were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983): *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), and cases cited therein. We have received no comments objecting to this finding. We will therefore adopt our proposal that end-users of petroleum products purchased from Eastern need only document their purchases from the

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[6] Generally, this showing is made by use of the "competitive disadvantage" methodology. Under this methodology, the prices paid by the applicant to the consent order firm during each month of the consent order period are compared with average market prices as reported in *Platt's Oil Price Handbook and Oilmanac. See Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

[7] Retailer and reseller applicants will be required to submit bank information in connection with sales made from the first month in which they purchased Eastern products through July 14, 1979 and April 30, 1980, respectively, the dates on which the banking requirement for retailers and most resellers terminated. 44 FR 42541 (July 19, 1979); 45 FR 29546 (May 2, 1980).

[8] In accordance with our previously stated position regarding firms that do not have contemporaneous cost bank data, we will permit United to reconstruct or approximate its cost banks using profit margin data. *See, e.g., Husky Oil Co.*, 13 DOE ¶ 85.045 at 88.113–114 (1985); *Union Texas Petroleum Corp./Arrow Enterprises, Inc.*, 15 DOE ¶85,087 (1986).

[9] United and any other reseller whose calculated refund (excluding interest) exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

firm to make a sufficient showing that they were injured by the alleged overcharges.

C. Calculation of Refund Amounts

As we stated in the PDO, the use of the information in the Revised Remedial Order and the Disposition Order will result in refunds which most closely correspond to the injuries which the Eastern customers probably experienced. Specifically, we note that (i) the ERA audit of Eastern was thorough and relatively narrow in scope; (ii) the Consent Order is limited to the same time period and the same products as the audit; and (iii) the Consent Order states that it is intended to resolve the disputes concerning Eastern's compliance with the remedial provisions of the Revised Remedial Order, as modified by the Disposition Order.

We thus proposed that the allocable share of the consent order fund for each of the five identified Eastern customers who succesfully meets the specified injury requirements be equal to the amount by which it was allegedly overcharged, plus the interest on this amount through December 31, 1985, and a propostional amount of the installment interest. With the exception of Eastern's comments concerning United, which we have rejected in Part IIIA, *supra*, we have received no adverse comments on this proposed allocation on the consent order funds. Hence we will adopt it. The maximum potential refund for each identified customer is listed in the Appendix to this Decision. In addition, interest which has accrued on the money in the escrow account will be added to the refund of each successful applicant in proportion to the size of its refund.

We will also adopt a volumetric refund methodology to allocate the funds attributable to Eastern's alleged overcharges in its retail motor gasoline, diesel fuel, and kerosene sales.[10] In this case, there will be a separate volumetric refund amount for each of the three products. We have chosen to use three separate volumetric amounts because the overcharge amounts listed in the Revised Remedial Order, when considered in conjunction with Eastern sales volume data, lead us to the conclusion that the per gallon amount of overcharges for the three products varies widely. We thus shall utilize three different volumetric refund amounts in order to distribute the refund monies in a manner which more closely approximates the claimants' actual injury. *See, e.g., E.B. Lynn Oil Co.*, 14 DOE ¶ 85,228 (1986); *Blex Oil, Inc.*, 13 DOE ¶ 85,019 (1985).

We have determined the volumetric refund factors by dividing the three product pools by the estimated total volume of the relevant product sold by Eastern to its retail customers during the consent order period. This results in per gallon refund amounts of $0.0039974 for motor gasoline, $0.03337951 for diesel fuel, and $0.0139813 for kerosene.[11] A successful claimant's refund will be based on the number of gallons of the product(s) it purchased from Eastern during the consent order period multiplied by the applicable volumetric refund amount(s). In addition, the interest which has accrued on the money in escrow will be added to each successful applicant's refund in proportion to the size of its refund.

As in prior cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

D. Application for Refund Procedures

We have determined that the procedures described in the PDO are the most equitable and efficacious means of distributing the Eastern consent order fund. Accordingly, we will now accept Applications for Refund from eligible customers who purchased petroleum products from Eastern during the period November 1, 1973 through October 31, 1974. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

The consent order firm's name (Eastern Oil Company) and case number (KEF-0085) and the applicant's name and address should be prominently displayed on the first page.

The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

The manner in which the applicant used Eastern's petroleum products, i.e., whether it was a reseller, retailer, or end-user.

The volume of Eastern motor gasoline, diesel fuel, or kerosene that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges. If the product was not purchased directly from Eastern, the claimant must include a statement setting forth the reasons for believing the product originated from the firm.

A statement of whether the applicant was in any way affiliated with Eastern. If so, the applicant should state the nature of the affiliation.

A statement of whether there has been any change in ownership of the entity that purchased petroleum products from Eastern since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

In addition, United and any other reseller or retailer applicant who wishes to claim a refund in excess of $5,000 must also:

(i) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with monthly bank calculations from the beginning of the consent order period until the end of the banking regulations (July 14, 1979 for retailers; April 30, 1980 for most resellers); and

(ii) Submit evidence to establish that it did not pass through the alleged overcharge to its customers. For example, a firm may submit weighted average monthly purchase prices for each product purchased from Eastern for each month of the consent order period and compare those prices with average prices in the firm's market area for each of those months. (In the absence of an accurate market survey provided by the applicant, the OHA will use the market price information contained in *Platt's Oil Price Handbook and Oilmanac.*)

All Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. The applications must be filed in duplicate and must be received within

[10] We recognize that the impact on an individual purchaser could have been greater than the applicable volumetric refund amount, and we will allow any purchaser to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88, 233-34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[11] These figures differ from the volumetric refund factors proposed in the PDO as a result of a recalculation of the total volume of each product sold.

90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant that believes that its application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Applications from which the material alleged to be confidential has been deleted together with a statement specifying why the information is alleged to be privileged or confidential.

E. Distribution of Funds Remaining after First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99-509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA sections 3003(c) and (d). The Secretary has delegated these responsibilities to the OHA, and any funds in the Eastern consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Eastern customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Eastern Oil Company pursuant to the Consent Order executed on February 6, 1986, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George G. Breznay,

Director, Office of Hearings and Appeals.

Date: December 14, 1987.

Appendix.—Eastern Oil Company, Case No. KEF-0085

I. Identified customers	Potential refund
Northside Propane Gas Co.	$3,846.12
Robert South	$12,865.97
Unitd Petroleum, Inc.	$75,824.23
Anthony Llanes	$5,441.49

Appendix.—Eastern Oil Company, Case No. KEF-0085—Continued

I. Identified customers	Potential refund
Highway Transport Co.	$3,048.85

II. Unidentified customers	Volumetric refund amount
Diesel Retail Customers	$0.0337951
Kerosene Retail Customers	$0.0139813
Gasoline Retail Customers	$0.0039974

[FR Doc. 87-29120 Filed 12-17-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3303-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 30, 1987 through December 4, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-D02003-VA, Rating EC2, South Coeburn Field, Natural Gas Pipeline and Road Construction and Drilling Development, Approval, Clinch Ranger District, Jefferson National Forest, Wise and Scott Counties, VA. **SUMMARY:** EPA's review identified deficiencies in stream and riparian definitions, wetland identification, sediment service and controls, groundwater impacts, and the alternatives and analysis section.

ERP No. D-BOP-D81015-PA, Rating EC2, Schuylkill Federal Correctional Institution Complex, Construction and Operation, Schuylkill County, PA. **SUMMARY:** EPA expressed concern with the requested additional information on waste disposal, public utilities service, and other support services for the proposed facility.

ERP No. D-FHW-B40066-00, Rating EO2, US 7 in Bennington, VT Improvements, US 7 to US 7/VT-67A Interchange; VT-9 in Bennington, VT and NY-7 in Hoosick, NY Improvements, VT-9 or NY-7 to US 7-VT-67A Interchange or VT-9 east of Bennington Village, Funding, Bennington County, VT and Rensselaer County, NY. **SUMMARY:** An onsite inspection by EPA will be required to determine if wetland impacts in the build corridors are avoidable and/or significant. Once the least environmentally damaging alternative is identified, unavoidable impacts to special aquatic sites must be mitigated on at least a 1:1 value basis. EPA recommends that a closed drainage system be installed through the Bennington Aquifer Protection Area should alternative 5 or 5A be selected, that current de-icing practices be reevaluated, and that alternative de-icing measures be considered. EPA also requests that additional air quality analysis be conducted for full disclosure of air quality impacts. Finally, EPA requests a meeting with FHWA and Vermont's Agency of Transportation to discuss EPA's comments.

ERP No. D-FHW-E40709-00, Rating LO, US 27/Central Bridge and Approach Roads Replacement, Newport, NY to Cincinnati, OH, Ohio River, Funding and 404 Permit, Campbell County, KY and Hamilton County, OH. **SUMMARY:** ERP No. D-FHW-F40294-OH, Rating EC2, Trotwood Connector Construction, OH-49 to US 35 and Turner Road Extension, Turner Road/Wolf Road Intersection to the Trotwood Connector, Funding and 404 Permit, Montgomery County, OH. **SUMMARY:** EPA noted concern with potential project impacts on air quality and adverse noise levels within the community. In addition, clarification of the rationale for selecting the preferred alignment alternatives was requested in the final EIS.

ERP No. D-FRC-K05050-CA, Rating LO, EL Portal Hydroelectric Project, Construction, Operation and Maintenance, License, Merced River, Mariposa County, CA. **SUMMARY:** EPA expressed support for the no action alternative recommended by FERC staff, particularly in light of the Merced River Wild and Scenic River Act which prohibits hydropower developments on the river segment where the El Portal project is proposed.

Final EISs

ERP No. F-AFS-J65137-MT, Gallatin National Forest, Land and Resource Management Plan, Implementation, Madison, Carbon, Gallatin, Park, Meagher, and Sweet Grass Counties, MT. **SUMMARY:** The document does not provide sufficient information on its monitoring program to address EPA's concerns regarding timely detection and remediation of adverse environmental impacts. EPA has requested the guidance documents indicated in the final Forest Plan be provided to assist in our determination of the monitoring program's adequacy.

ERP No. F-AFS-J65139-MT, Deerlodge National Forest, Land and Resource Management Plan, Implementation, Silver Bow, Powell, Deerlodge, Madison, Jefferson and Granite Counties, MT. **SUMMARY:** The document partially addressed EPA's comments on the draft EIS. EPA is concerned that the extent and frequency of the present monitoring plan is insufficient to detect and remedy adverse impacts on a timely basis. EPA would like to participate in review of the guidance documents for this monitoring plan and the application of the environmental impact analysis process to specific projects.

ERP No. F-CDB-K36093-CA, Adoption-Telegraph Canyon Creek Flood Control Project, Community Development Block Grant Funds, City of Chula Vista, San Diego County, CA. **SUMMARY:** EPA stated that it would not object to HUD's release of funds for the project provided that the conditions previously agreed upon by the COE and FWS in the 1983 final EIS remain a part of the project.

ERP No. F-COE-E6157-TN, Mill Creek Basin Flood Damage Reduction Plan, Mill and Sevenmile Creeks, Dry Dam Construction, Implementation, Davidson and Williamson Counties, TN. **SUMMARY:** EPA does not anticipate significant adverse environmental consequences form the proposed action.

ERP No. F-COE-35038-OH, Ashtabula Harbor, Dredging and Confinement of Polluted Sediments, Implementation, Ashtabula County, OH. **SUMMARY:** We concur with the COE and the plan for the dredging and disposal of Ashtabula Harbor sediments. We commend the COE on its carefully conceived plan which, if implemented with appropriate operational modifications, will result in tangible environmental benefits to the Ashtabula River, and, in turn, to Lake Erie.

ERP No. F-COE-G35016-LA, Lake Pontchartrain and Lake Maurepas Clam Shell Dredging, 10-year Permit Renewal, Section 10 and 404 Permit, Livingston, Jefferson and St. Charles Parishes, LA. **SUMMARY:** EPA has no objections to the proposed action with appropriate mitigation. Such mitigation should be included in any permits issued for this project.

ERP No. F-COE-G35017-LA, Atchafalaya, East Cote Blanche and Four League Bays, Oyster Shell Dredging Operation, Section 10 and 404 Permit, Iberia, St. Mary, Terrebonne and Vermilion Parishes, LA. **SUMMARY:** EPA has no objections to the proposed action with appropriate mitigation. Mitigation stipulations, including compensatory mitigation, should be considered in permit stipulations.

ERP No. F-COE-G36139-TX, El Paso Southeast Area Local Flood Control Plan, Implementation, 404 Permit, City of El Paso, El Paso County, TX. **SUMMARY:** The document adequately responded to EPA comments issued on the draft EIS and has no objections to the project as proposed.

ERP No. F-DOE-E00005-SC, Savannah River Plant Alternative Cooling Water Systems for C- and K-Reactors and D-Area Powerhouse, Construction and Operation, Implementation, Aiken, Barnwell and Allendale Counties, SC. **SUMMARY:** EPA concludes that DOE has not demonstrated a reasonable assurance that the DOE preferred once—through cooling tower system will assure the "protection and propagation of a balanced indigenous population of shellfish, fish and wildlife" as required for a section 316(a) variance to the South Carolina Water Quality Standards. The recirculating alternative, which is both clearly permittable and environmentally preferrable, should therefore be selected by DOE in the ROD for implementation.

ERP No. F-FHW-B40064-ME, Sears Island Marine Dry Cargo Terminal and Access Road Construction, Funding, Section 404 and 10 Permits, Waldo County, ME. **SUMMARY:** EPA has raised environmental objections to this project under NEPA and now recommends that the section 404 permit and federal grants be denied for the Sears Island proposal. This decision is based on EPA's position that the substantial adverse environmental impacts that the project would cause are both avoidable and unnecessary in light of the availability of a practicable, less environmentally damaging alternative at Mack Point.

ERP No. F-FHW-G40036-TX, Beltway 8 Section VI Circumferential Freeway Construction, US 59 South to I-45 South, Funding, City of Houston, Harris County, TX. **SUMMARY:** EPA finds the document satisfactorily responds to those areas of concern within EPA's jurisdiction and expertise and has no objection to the proposed action.

ERP No. F-FHW-L40157-AK, Eagle River Loop Road Connection to Hiland Drive/Glenn Highway Interchange, Funding, 404 Permit, Anchorage, AK. **SUMMARY:** EPA continues to have environmental concerns regarding residential noise impacts and secondary growth effects.

ERP No. F-MMS-A02221-00, 1988 Central, Western and Eastern Gulf of Mexico, Outer Continental Shelf (OCS) Oil/Gas Sales Nos. 113, 115, and 116, Lease Offerings, TX, AL, FL, LA and MS. **SUMMARY:** EPA expressed its continuing objection to unrestricted leasing in the Gulf planning areas and urged the MMS to adopt leasing stipulations to protect topographic highs and live bottoms. EPA also noted that such stipulation had been proposed for sale #113, the first of the three 1988 Gulf sales that will occur.

ERP No. F-SFW-L64034-AK, Selawik National Wildlife Refuge Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, Kotzebue Sound, AK. **SUMMARY:** Monitoring activities have been identified as necessary to ensure that selection of the preferred alternative does not result in adverse impacts. EPA's concern is that such activities may not occur without the additional funding that has also been identified as necessary. EPA has suggested that implementation of activities which require monitoring be delayed until funding can also be assured.

ERP No. F-SFW-L64035-AK, Nowitna National Wildlife Refuge Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, Yukon River Valley, AK. **SUMMARY:** Monitoring activities have been identified as necessary to ensure that selection of the preferred alternative does not result in adverse impacts. EPA's concern is that such activities may not occur without the additional funding that has also been identified as necessary. EPA suggested that implementation of activities which require monitoring be delayed until funding can also be assured.

Dated: December 15, 1987.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 87-29123 Filed 12-17-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3303-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA.

Availability of Environmental Impact Statements Filed December 7, 1987 Through December 11, 1987 Pursuant to 40 CFR 1506.9

EIS No. 870435, Draft, AFS, CA, Gallatin Marina (Formerly Eagle Lake

Marina) Future Development Policy, Implementation, 404 Permit, Lassen National Forest, Lassen County, CA, Due: February 1, 1988, Contact: Steve Young (916) 257-2151.

EIS No. 870436, Final, BLM, ID, Medicine Lodge Resource Area, Wilderness Study Areas Recommendations, Wilderness Designation or Nondesignation, Sand Mountain and Snake River Islands WSAs, Bonneville, Fremont and Jefferson Counties, ID, Due: January 18, 1988, Contact: Lloyd Ferguson (208) 529-1020.

EIS No. 870437, Final, BLM, ID, Lemhi Resource Area WSA Recommendation, Wilderness Designation and Nondesignation, Eighteenmile Wilderness Study Area, Salmon District, Lemhi Country, ID, Due: January 18, 1988, Contact: Gary Wyke (208) 334-1952.

EIS No. 870438, Draft, AFS, CA, OR, Rogue River National Forest, Land and Resource Management Plan, Implementation, Jackson, Klamath, Josephine and Douglas Counties, CA and Siskiyou County, OR, Due: April 1, 1988, Contact: Steven Deitemeyer (503) 776-3600.

EIS No. 870439, Draft, MMS, CA, Northern California OCS Oil and Gas Sale No. 91, Lease Offerings, Humboldt and Mendocino Counties, CA, Due: February 1, 1988, Contact: Steven Alcorn (213) 894-6741.

EIS No. 870440, Final, BLM, UT, San Juan Resource Area, Resource Management Plan, Implementation, San Juan County, UT, Due: January 18, 1988, Contact: Steve Howard (801) 524-3127.

EIS No. 870441, Draft, BLM, CA, NV, California Vegetation Management Program, Implementation, Orange, Riverside, Kern, Inyo, and Modoc Counties, CA and NV, Due: February 15, 1988, Contact: Carl Rountree (916) 978-4722.

Amended Notices

EIS No. 870312, Draft, AFS, Gifford Pinchot National Forest, Land and Resource Management Plan, Implementation, Clark, Lewis, Klicktat, Cowlitz, Skamania and Yakima Counties, WA, Due: January 30, 1988, Contact: Lloyd DeWerff (206) 696-7552.

Published FR 9-25-87—Review period extended.

Dated December 15, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-29122 Filed 12-17-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00087; FRL-33044]

Biotechnology Science Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee. The meeting will be open to the public. The Committee will be informed of and discuss issues associated with rulemaking for biotechnology within the Offices of Toxic Substances and Pesticide Programs. The Committee will also discuss confidentiality issues and be informed of recent produce reviews.

DATE: The meeting will be held on Tuesday, January 5, 1988, starting at 10 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, The TSCA Assistance Office, Office of Pesticides and Toxic Substances (TS-799), 401 M Street SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: December 15, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-29157 Filed 12-17-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 10, 1987.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, Interior Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 634-1535. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0171
Title: Section 73.1125, Station main studio location
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 36 Responses; 18 Hours
Needs and Uses: A licensee of an AM, FM, or TV broadcast station is required to notify the Commission when the station's main studio is relocated. This information informs the Commission of a change in mailing address and is used to ensure that the station is located within the principal community contour.

OMB Number: 3060-0176
Title: Section 73.1510, Experimental Authorizations
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 30 Responses; 60 Hours
Needs and Uses: A licensee of an AM, FM, or TV broadcast station seeking an experimental authorization must file an informal application with the Commission describing the nature and purpose of experimentation. The information is used by Commission staff to ensure that the experimentation will not cause interference to another station.

OMB Number: 3060-0157
Title: Section 73.99, Presunrise service authorization (PSRA) and postsunset service authorization (PSSA)
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 150 Responses; 38 Hours
Needs and Uses: A licensee of an AM radio broadcast station desiring to use a presunrise or postsunset service authorization must submit a letter of intent to the Commission. The letter is used by Commission staff to maintain complete technical information about the station and to ensure that interference is not caused to other stations.

OMB Number: 3060-0178
Title: Section 73.1560, Operating power and mode tolerances
Action: Extension

Respondents: Busineses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 1,189 Responses; 1,189 Hours
Needs and Uses: Licensees of AM, FM, or TV broadcast stations must file a notification with the Commission when operating at reduced power for more than 10 consecutive days and upon restoration of normal operations. If normal operations cannot be restored within 30 days, licensees must file a written request for additional time. This information is used by the Commission to maintain complete and accurate technical information about station operations.

OMB Number: 3060–0207
Title: Section 73.961, Tests of the Emergency Broadcast System
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 11,000 Recordkeepers; 13,750 Hours
Needs and Uses: This information is needed to maintain accurate records and documentation of broadcast station compliance with Commission rules, locate Emergency Broadcast System equipment failures, and to enhance and encourage station participation in the national, state, and local Emergency Broadcast System.

Federal Communications Commission.
William Tricarico,
Secretary.
[FR Doc. 87-29061 Filed 12-17-87; 8:45 am]
BILLING CODE 6712-01-M

Comment Dates Extended on Remand of Average Schedule Revisions

December 4, 1987.

On December 4, 1987, the Chief, Common Carrier Bureau extended [1] the comment and reply filing dates on the National Exchange Carrier Association's [NECA] September 17, 1985 proposed average schedule revisions, the data filed by NECA on September 15, 1987, and the record that was before the United States Court of Appeals for the District of Columbia Circuit in *City of Brookings et al. v. Federal Communications Commission.*[2] The original notice was published in the **Federal Register** November 12, 1987 (52 FR 43399).

As a consequence of the availability of additional information to the public, and the need to afford additional time for the analysis of that data, initial comments may be filed on or before January 5, 1988, and reply comments may be filed on or before February 3, 1988.

Persons wishing to file comments or reply comments should file five copies with the Secretary of the Federal Communications Commission (Room 222); two copies with the Policy and Program Planning Division, Common Carrier Bureau (Room 544); and one copy with the International Transcription Service (Room 245). [3] All comments and replies should be captioned: "In the Common Carrier Matter of: *City of Brookings* Remand Proceeding."

For further information, contact Kent Nilsson at (202)-632-6363.

Subject: Commission approval of National Exchange Carrier Association proposed revisions to the average schedules pursuant to 47 CFR 69.606(a).

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-29060 Filed 12-17-87; 8:45 am]
BILLING CODE 6712-01-M

[1] Order in the Matter of Extensions of Time for Filing Comments in the *City of Brookings* Remand Proceeding, DA 87-1761 (released Dec. 4, 1987).

[2] *City of Brookings Municipal Telephone Company, et al. v. Federal Communications Commission,* 822 F.2d 1153, 1171 (D.C. Cir. 1987).

[3] All room references are to the Commission's Offices at 1919 M St., NW., Washington, DC 20554.

Applications for Consolidated Hearing; Hartke Communications Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No.	MM Docket No.
A. Hartke Communications Corp.	Key West, Florida.	BPCT-870212KJ	87-548
B. Conch Republic Television, Inc.	Key West, Florida.	BPCT-870331LV.	
C. Penny Drucker.	Key West, Florida.	BPCT-8703319K.	

2. Purusant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A
Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800.

Roy J. Stewart,
Chief, Video Services Division, Mass Media Bureau.
[FR Doc. 87-29058 Filed 12-17-87; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Proceeding; PN Radio Co. et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. PN Radio Company.	Roswell, NM	BPH-850711NQ.	87-542
B. Integrated Broadcast Management, Inc.	Roswell, NM	BPH-850712RV.	
C. Robert C. Martin, Dwight Williams and Anna Rosales Williams d/b/ a Serious Note Broadcasting.	Roswell, NM	BPH-850712RW.	
D. FM Roswell Limited Partnership.	Roswell, NM	BPH-850712RY.	
E. Majorie S. Moore.	Roswell, NM	BPH-850712RU (Dismissed).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR. 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify

whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Air Hazard, C
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-29059 Filed 12-17-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 87-28]

Lake Charles Stevedores, Inc. v. Lake Charles Harbor and Terminal District; Filing of Complaint and Assignment

Notice is given that a complaint filed by Lake Charles Stevedores, Inc. ("Stevedores") against the Lake Charles Harbor and Terminal District ("District") was served December 14, 1987. Stevedores alleges that District has violated sections 10(b)(11), 10(b)(12) and 10(d), Shipping Act of 1984, 46 U.S.C. app. 1709(b)(11), (b)(12), and (10)(d), through the allocation of work by District in connection with (1) the unloading of United States Department of Agriculture export cargo from railcars or trucks for temporary storage at warehouses at the Port of Lake Charles and (2) the furnishing of stevedoring services at District's Bulk Terminal No. 1.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 14, 1988, and the final decision of the Commission shall be issued by April 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 87-29025 Filed 12-17-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

President's Advisory Committee on Mediation and Conciliation; Meeting

Pursuant to section 10 of the Federal Advisory Committee Act (Pub. 92-463, as amended) notice is hereby given that a meeting of the President's Advisory Committee on Mediation and Conciliation will be held on Wednesday, January 6, 1988 from 10:30 a.m. to 5:00 p.m. in the ninth floor Ching Room of the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

The purpose of the meeting is to consider the Committee's Report to the President, and to the Director of the Federal Mediation and Conciliation Service, and to formulate positions and recommendations to be presented in the Report. As this involves the discussion of views concerning existing or proposed legislation, and possible impact on collective bargaining positions, the meeting will be closed pursuant to 5 USC 552b(c)(9)(B).

Further information regarding this meeting may be obtained from Mr. Dennis R. Minshall, Executive Director, President's Advisory Committee on Mediation and Conciliation, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, or call (202) 653-5290. Dated: January 14, 1988.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 87-29041 Filed 12-17-87; 8:45 am]

BILLING CODE 6372-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 4, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-965-41149 for copies of package)

1. Annual Report of Earnings—0960-0057—These forms are used by the Social Security Administration to obtain earnings information from beneficiaries so that the proper amount of benefits can be paid. The respondents are individuals or households. Respondents: Individuals or households. Number of Respondents: 1,500,000; Frequency of Response: Occasionally; Estimated Annual Burden: 250,000 hours.

OMB Desk Officer: Elana Norden.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Medicare Questionnaire—Beneficiary Incentives to Participate in Alternative Health Plans (AHPs)—NEW—This data collection will be used to study Medicare beneficiaries preferences among AHPs. This will allow HCFA to predict the effect of new capitation policies on the numbers of beneficiaries joining AHPs. Respondents: 2,200; Frequency of Response: One-time; Estimated Annual Burden: 1,100 hours.

2. Preclearance-Development of Outcome-Based Quality Measures for Home Health Services—NEW—The purpose of this project is to develop and test improved measures of quality of Medicare home health services based on patient outcomes. Respondents: Individuals or households. Number of Respondents: 1; Frequency of Response: One-time; Estimated Annual Burden: 1 hour.

OMB Desk Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Revised Head Start Program Information Report—0980-0017—Head Start programs use this report to collect data in order to ascertain the status of the delivery of service to children and their families. Respondents: State or local governments, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1,920; Frequency of Response: One-time; Estimated Annual Burden: 6,720 hours.

2. Quarterly Estimate of Expenditures for Foster Care and Adoption Assistance—0980-0130—To determine the State's funding needs for the following three programs: (1) Non-voluntary Foster Care, (2) Voluntary Foster Care, and (3) Adoption Assistance. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: Quarterly; Estimated Annual Burden: 2,244 hours.

3. Quarterly Statement of Expenditures for Foster Care and Adoption Assistance—0980-0131—To determine the States actual expenditures for each of the following program activities: (1) Non-voluntary Foster Care, (2) Voluntary Foster Care, and (3) Adoption Assistance. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: Quarterly; Estimated Annual Burden: 3,264 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. OCSE-Local-2 Statistical Form—NEW—This information will be used to monitor the improved collection performance of State and local child support agencies in accordance with the mandates of PL 98-378. States are required to submit quarterly statistics for 150 counties and/or localities operating child support programs. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: Quarterly; Estimated Annual Burden: 204 hours.

OMB Desk Officer: Elana Norden.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Food and Drug Administration

1. Medical Device Reporting—0910-0201—This regulation requires a manufacturer or importer of medical devices to report to FDA whenever they possess information suggesting a device has caused or contributed to a death or serious injury, or has malfunctioned and likely to cause or contribute to a death or serious injury. Importers are required to establish and maintain files or reports and records of this information. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 691; Frequency of Response: Occasionally; Estimated Annual Burden: 70,260 hours.

Alcohol, Drug Abuse and Mental Health Administration

1. Seroprevalence of HIV Infection Among IV Drug Users in Selected Cities—New—This study is designed to establish an ongoing monitoring system to estimate the extent of HIV infection among intravenous drug users in selected cities and to provide information on the demographic and behavioral variables of this population. The study will provide prevalence rates and trends in support of Federal planning and research into the problem of AIDS among IV drug users. Respondents: Individuals or households. Number of Respondents: 6,000; Frequency of Response: One-time; Estimated Annual Burden: 6,000 hours.

Office of the Assistant Secretary for Health

1. Assessment of the Development and Implementation of State AIDS Contact Notification Programs—New—Indidivudals who test positive for HIV antibody are encouraged to notify their sexual and needle sharing partners of their infected status and to encourage them to seek testing. States have taken different approaches to implement contact notification, which has been used traditionally in the prevention of venereal disease. An analyses of several of these approaches will be conducted to assist policymakers in making recommendations. Respondents: State or local governments. Number of Respondents: 50; Frequency of Response: Single-time; Estimated Annual Burden: 113 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

SSA: 301-965-4149
PHS: 202-245-2100
HCFA: 301-594-1238
FSA: 202-245-0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. ATTN: (name of OMB Desk Officer).

Date: December 15, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87-29093 Filed 12-17-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87N-0270]

Studies for Developing Procedures to Evaluate the Safety of Bound Drug Residues; Availability of Grants (Cooperative Agreement); Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice that announced the anticipated availability of approximately $300,000 for Fiscal Year 1988 for cooperative agreements to support studies for developing procedures to evaluate the safety of drug residues that are bound to tissues of food-producing animals (52 FR 39281; October 21, 1987). The notice is being amended to require that applicants submit an original application and six copies instead of two copies. This action is necessary in order to provide a complete copy with attachments to each of several reviewers, concurrently. The Office of Management and Budget has approved the six-copy requirement for this purpose.

FOR FURTHER INFORMATION CONTACT: David B. Batson, Center for Veterinary Medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rm. 8-89, Rockville, MD 20857, 301-443-6510.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-24434, appearing on page 39283, third column, in the **Federal Register** of Wednesday, October 21, 1987, under "VIII. SUBMISSION REQUIREMENTS," the first sentence is revised in part to read "The original and six copies of the completed Grant Application Form PHS 398 (Rev. 9/86) * * *."

Dated: December 11, 1987
John M. Taylor,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 87-29034 Filed 12-17-87; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 87N-0267]

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice that announced the anticipated availability of funds for Fiscal Year 1988 for awarding grants to support clinical trials on safety and effectiveness of orphan products (52 FR 39996; October 26, 1987). The notice is being amended to clarify the disposition of applications judged to be nonresponsive to the request and to require that applicants submit an original application and six copies instead of two copies. This latter action is necessary in order to provide a complete copy with attachments to each of several reviewers concurrently. The Office of Management and Budget has approved the six-copy requirement for this purpose.

FOR FURTHER INFORMATION CONTACT: Carol A. Wetmore, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rm. 12A-40, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-24648, appearing on page 39998 in the **Federal Register** of Monday, October 26, 1987, the following revisions are made:

1. In the second column, under "VI. B. *Review Criteria,*" the second sentence is revised to read "Applications that are judged to be nonresponsive will be returned to the applicant."

2. In the third column, under "VII. SUBMISSION REQUIREMENTS," the first sentence is revised in part to read as follows "The original and six copies of the completed Grant Application Form PHS 398 (Rev. 9/86) * * *."

Dated: December 11, 1987.
John M. Taylor,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 87-29033 Filed 12-17-87; 8:45 am]
BILLING CODE 4160-01-M

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:

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. January 14 and 15, 1988, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing January 14, 1988, 9 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.; open public hearing, January 15, 1988, 9 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.; Philip A. Corfman, Center for Drug Evaluation and Research (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

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 obstetrics and gynecology.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On January 14, 1988, the committee will discuss the potential utility of estrogen pellets for the treatment of menopausal symptoms. On January 15, 1988, the committee will discuss the risks and benefits of oral contraceptives containing more than 50 micrograms of estrogen.

Obstetrics-Gynecology Devices Panel

Date, time, and place. January 29, 1988, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 6, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of medical devices used for in vitro fertilization.

FDA public advisory committee meeting 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 the 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 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 (HFI–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, approximatley 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: December 11, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–29035 Filed 12–17–87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Announcement of Study To Provide Scientific Review of National Nutrition Monitoring System Information and Data; Correction

AGENCY: Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Correction of study notice.

SUMMARY: On November 30, 1987, the Department of Health and Human Services and the United States Department of Agriculture announced in the **Federal Register** (52 FR 45504) that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology is undertaking a scientific review of National Nutrition Monitoring System information and data. Two members of the ad hoc Export Panel on National Nutrition Monitoring listed in the notice were inadvertently omitted. These were Mildred Kaufman, M.S., University of North Carolina, Chapel Hill, NC, and Milton Z. Nichaman, M.D., D.Sc., University of Texas School of Public Health, Houston, TX. The other members of the committee are C. Wayne Callaway, M.D., George Washington University Medical Center, Washington, DC; Oral Capps, Jr., Ph.D., Texas A&M University, College Station, TX; Catherine Cowell, Ph.D., New York City Department of Health, New York, NY; Peter R. Dallman, M.D., University of California, San Francisco, CA; Ronald N. Forthofer, Ph.D., University of Texas School of Public Health, Houston, TX; A. Catharine Ross, Ph.D., Medical College of Pennsylvania, Philadelphia, PA; Howard G. Schutz, Ph.D., University of California, Davis, CA. On December 2, 1987, the panel elected Dr. Nichaman to serve as its chairman.

Dated: December 14, 1987.

J.M. McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 87–29094 Filed 12–17–87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA-340-08-4333-08]

Wilderness Inventory Decisions

AGENCY: Office of the Secretary, Interior.

ACTION: Amendment of wilderness inventory decisions.

SUMMARY: This notice amends previous wilderness inventory decisions by the Bureau of Land Management with respect to areas under 5,000 acres that no longer qualify for wilderness study because of changes in the status of adjacent Federal lands. Eighteen areas containing 31,616 acres are being deleted.

EFFECTIVE DATE: January 19, 1988.

ADDRESS: Any comments received prior to the effective date will be considered. Comments should be addressed to: Keith H. Corrigall, Chief, Branch of Wilderness Resources, Bureau of Land Management, Main Interior Building Room 2661, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Questions about particular wilderness study areas should be directed to the appropriate Bureau of Land Management State Directors, whose addresses appear at the end of this notice (Appendix A). Questions about the nationwide aspects of the program should be directed to Keith Corrigall, Chief, Branch of Wilderness Resources, Bureau of Land Management, Main Interior Building Room 2661, Washington, DC 20240, telephone (202) 343–6064.

Amendment of Wilderness Inventory Decisions

Under the Bureau of Land Management Wilderness Inventory Handbook, issued September 27, 1978, the Department specified that a roadless area of public lands possessing wilderness characteristics could be identified as a wilderness study area despite being smaller than 5,000 acres if it was "contiguous with lands managed by another agency which have been formally determined to have wilderness or potential wilderness values * * *." More than 150 wilderness study areas were identified under this criterion.

Subsequently Congress has released from wilderness study status the roadless lands contiguous to 18 of the wilderness study areas the Department identified under the criterion. These wilderness study areas are listed in Table 1. As a consequence of that congressional action, the Department's rationale for identifying 18 wilderness study areas listed in Table 1 is no longer valid. The contiguous lands they depended upon for identification as wilderness study areas no longer satisfy the applicable criterion under the Wilderness Inventory Handbook.

Under the Wilderness Inventory Handbook, the Department also specified that a roadless area of public lands possessing wilderness characteristics could be identified as a wilderness study area despite being smaller than 5,000 acres if:

(2) The public has indicated strong support for study of a particular area of less than 5,000 acres and it is demonstrated that it is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management, or

(3) They are contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more.

None of the 18 wilderness study areas listed in Table 1 qualifies under either criterion. A review of the case files and records data shows that at the time of the wilderness inventory none of the 18 areas was subject to strong public support.

With respect to criterion (3), although the lands contiguous to each of the wilderness study areas listed in Table 1 are administered by an agency with authority to study and preserve wilderness lands, Congress has supplanted the general authority to study the lands by declaring specifically that the contiguous lands will not be further considered for wilderness preservation. As a result, the Wilderness Inventory Handbook's criterion (3) is not applicable.

The Department has analyzed the environmental effects of the proposed action announced in this notice in an environmental assessment. The Department finds that it will have no significant impact on the environment. The environmental assessment is available for public review. Requests for review of the environmental assessment should be made to Keith Corrigall, Chief, Branch of Wilderness Resources, Bureau of Land Management, Main Interior Building Room 2661, Washington, DC 20240.

The 18 wilderness study areas listed in Table 1 have been determined to qualify no longer for wilderness study area status, and they are deleted from that status effective 30 days after publication of this action in the **Federal Register.** The areas will thereupon cease to be subject to the Bureau of Land Management's Interim Management Policy for Lands Under Wilderness Review.

J. Steven Griles,

Assistant Secretary.

December 15, 1987.

TABLE 1.—DELETED WILDERNESS STUDY AREAS

Name	Number	Acreage	County	Contiguous forest service area	Released by Public Law No.
California:					
Tepusquet Peak	CA-010-007	1,024	Santa Barbara.	Miranda Pine, Tepquesquet Peak	98-425
Spoor Canyon	CA-010-036	240	Santa Barbara.	Fox Mountain	98-425
Cuyama	CA-010-037	1,014	Santa Barbara.	Fox Mountain, Cuyama	98-425
Independence Creek	CA-010-057	3,510	Inyo	Independence Creek	98-425
Wonoga Peak	CA-010-058	3,530	Inyo	Wonoga Peak	98-425
Tinemaha	CA-010-059	3,280	Inyo	Tinemaha	98-425
Rock Creek West	CA-010-070	414	Mono	Rock Creek West, Whiskey Creek	98-425
Excelsior (South ½)	CA-010-088	3,300	Mono	Deep Wells, Excelsior	98-425
Carson-Iceberg	CA-010-105B	1,040	Mono	Toiyabe	98-425
Machesna [1]	CA-010-108	520	San Luis Obispo.	Machesna Mountain	98-425
North Fork America	CA-040-102	50	Placer	North Fork American	98-425
Tuolumne River	CA-040-201	3,005	Tuolumne	Tuolumne River	98-425
Washington:					
Cache Creek	OR-6-10	951 [2]	Asotin	Mountain Sheep	98-328
Utah:					
Big Hollow	UT-020-105	3,593	Tooele	Stansbury Mountain (Deseret Peak)	98-428
Wyoming:					
South Paint Rock	WY-010-236	660	Big Horn	Cloud Peak Contiguous	98-550
Paint Rock	WY-010-239	2,770	Big Horn	Cloud Peak Contiguous	98-550
East Fork	WY-040-106	1,415	Sublette	Green/Sweetwater	98-550
Mill Creek	WY-040-335	1,300	Fremont	Green/Sweetwater	98-550
Total (18 Units)		31,616			

[1] A portion of the Machesna area containing 80 acres, contiguous to the Machesna Wilderness designated by Congress, is not being deleted and remains a wilderness study area.

[2] An additional 1,723 acres were previously released from the Cache Creek area by Congress. The total acreage of the area is 2,674 acres, a more accurate recalculation of the acreage previously cited, 2,935 acres.

Appendix A

State Offices

U.S. Department of the Interior

Bureau of Land Management

California: (916) 978-4730, 2800 Cottage Way, Sacramento, California 95825.

Oregon: (503) 231-6832, 825 NE Multnomah Street, Post Office Box 2965, Portland, Oregon 97208.

Utah: (801) 524-3137, 324 South State Street, Salt Lake City, Utah 84111-2303.

Wyoming: (307) 778-2073, 2515 Warren Avenue, Post Office Box 1828, Cheyenne, Wyoming 82003.

[FR Doc. 87-29075 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[ID-030-88-4332-01]

Environmental Impact Statement; Availability; Idaho State Office, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Lemhi and Medicine Lodge Wilderness final environmental impact statements.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared final environmental impact statements (FEIS) which assesses the environmental consequences of managing three WSAs as wilderness, non-wilderness, or partial wilderness. The alternatives assessed in the EISs incldue: (1) A "no wilderness" alternative: (2) an "all wilderness" alternative: and (3) "partial wilderness" alternative for each WSA. The names of the three WSAs considered in the EISs, their total acreage, and the proposed action for each WSA are as follows:

Lemhi EIS, FES 87–67

Eighteenmile WSA—24,922 acres; 14,796 acres are recommended as suitable for wilderness designation; 10,126 acres are recommended as nonsuitable for wilderness.

Medicine Lodge EIS, FES 87–68

Sand Mountain WSA—21,100 acres; all nonsuitable for wilderness designation.

Snake River Island WSA—770 acres; all nonsuitable for wilderness designation.

These Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made during the 30 days following the publication in the **Federal Register** of the Environmental Protection Agencies' notice of the filing of these EISs. This complies with the Council on Environmental Quality Regulations 40 CFR 1506.106(2).

SUPPLEMENTARY INFORMATION: A limited number of copies of the Lemhi FEIS may be obtained from the District Manager, Salmon District Office, Box 430, Salmon, Idaho, 83467, and copies of the Medicine Lodge FEIS from the District Manager, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401. Copies are available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th C Streets, NW., Washington DC 20240.

Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION, CONTACT: George Nelson, Wilderness Program Leader, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706, Telephone: (208) 334–1616.

Date: December 9, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–28740 Filed 12–17–87; 8:45 am]

BILLING CODE 4310-GG-M

[OR 43466; OR-080-08-4212-14: GP8-037]

Realty Action; Notice of Direct Sale Benton County, Oregon

December 11, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of section 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2050; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the fair market value:

Willamette Meridian, Oregon

T. 13 S., R. 5 W.,
Sec. 3, Lot 6.

Containing 0.51 acre in Benton County, Oregon.

The land has not yet been appraised. Anyone wishing to know the appraised value may inquire at the address shown below.

Upon publication of this notice in the **Federal Register,** the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The parcel is difficult and uneconomic to manage as a part of the public lands and is not suitable for management by another Federal department of agency. The parcel is suitable for agricultural production and has been farmed for many years inadvertently, without authorization. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered to the Venell Farms, Inc., using direct sale procedures authorized under 43 CFR 2711.3–3. The parcel will be sold to Venell Farms, Inc., at fair market value without competitive bidding. The land will be conveyed subject to a reservation to the United States for rights-of-way for ditches or canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945);

Detailed information concerning the sale is available for review at the Salem District Office.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed sale of the land to the Alsea Area Manager, 1717 Fabry Road SE, Salem, OR 97306. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this action will become the final determination of the Department of the Interior.

John H. Mears,

Alsea Area Manager.

[FR Doc. 87–29039 Filed 12–17–87; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-07-4520-12; Group 623]

Filing of Plat of Survey; California

December 7, 1987.

1. This plat of the following decribed land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County

T. 28 S., R. 40 E. and
T. 28 S., R. 39 E.

a. This plat, representing the correctiave dependent resurvey of the south boundary (which includes a portion of the Seventh Standard Parallel South), Township 28 South, Range 40 East, a portion of the south boundary of Township 28 South, Range 39 East, and the east and west boundaries and subdivisional lines, Township 28 South, Range 40 East, Mount Diablo Meridian, California, under Group No. 623, was accepted October 27, 1987.

Mount Diablo Meridian, Kern County

T. 29 S., R. 40 E.

b. This plat, in three (3) sheets, represents the corrective dependent resurvey of the Seventh Standard Parallel South through Range 40 East, a portion of the south boundary, and the subdivisional lines, Township 29 South, Range 40 East, Mount Diablo Meridian, California under Group No. 623, was accepted October 23, 1987.

2. This plat will immediateldy become the basis record of describing the land for all authorized purposes. This plat has been placed in the open files and is

available to the public for information only.

3. This plat was executed to meet certain administrative needs of the Bureau.

4. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-29027 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; C-17-87]

Filing of Plat of Survey; California

December 7, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mariposa County

T. 4 S., R. 18 E.

2. This supplemental plat of the S½ of section 21, Township 4 South, Range 18 East, Mount Diablo Meridian, California, was accepted October 29, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-29028 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; Group 962]

Filing of Plat of Survey; California

December 7, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Benito County

T. 16 S., R. 7 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 20, Township 16 South, Range 7 East, Mount Diablo Meridian, California, under Group No. 962, was accepted October 29, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the National Park Service, Pinnacles National Monument.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-29029 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; Group 921]

Filing of Plat of Survey; California

December 7, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Imperial County

T. 12 S., R. 16 E.

2. This plat, representing the dependent resurvey of a portion of the west boundary, a portion of the south boundary of section 30, the survey of the subdivision of section 30, and the metes and bounds survey of Lot 13, in section 30, Township 12 South, Range 16 East, San Bernardino Meridian, California, under Group No. 921, was accepted November 13, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-29030 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

Availability of an Environmental Assessment; Big Cypress National Preserve; FL

AGENCY: Big Cypress National Preserve, Florida, National Park Service, Interior.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: Notice is hereby given pursuant to § 9.52(b) of Title 36 Part 9, Subpart B of the Code of Federal Regulations of the availability for review of and comment on an environmental assessment for an oil and gas Plan of Operations substantially modified and resubmitted by Shell Western E & P Inc., for the purpose of conducting geophysical seismic exploration surveys in the Big Cypress National Preserve.

DATE: Comments received by February 16, 1988, will be entered into the official records.

ADDRESSES: Copies of the environmental assessment are available for review at:

Big Cypress National Preserve, S.R. Box 110, Satinwood Drive, Ochopee, Florida 33943, Telephone (813) 695-2000.

Office of Science and Natural Resources, Southeast Regional Office, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, Telephone (404) 331-4916.

Miami-Dade Public Library, 101 West Flagler, Miami, Florida 33130.

Collier County Public Library, 650 Central Avenue, Naples, Florida 33940.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Fagergren, Superintendent, Big Cypress National Preserve.

Dated: December 11, 1987.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 87-29031 Filed 12-17-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent Corporation:* Macfield, Inc. P.O. Box 737 Madison, North Carolina 27025

Wholly-Owned Subsidiaries which will participate in the operations:

(A) Macfield Spinning, Inc., P.O. Box 1462, Sanford, North Carolina 27330—North Carolina
(B) Federal Spinning, Inc., P.O. Box 158, Sanford, North Carolina 27330—North Carolina
(C) Imperial Cotton, Inc., P.O. Box 1462, Sanford, North Carolina 27330—North Carolina
(D) Imperial Spinning, Inc., P.O. Box 580, Wallace, North Carolina 28466—North Carolina

2. Pine Wood Furniture, Inc., Saddleback Cove, P.O. Box 820, Travelers Rest, SC 29690

Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Pine Wood Express, Inc. (Incorporated in the state of SC), Saddleback Cove, P.O. Box 820, Travelers Rest, SC 29690.

Noreta R. McGee,

Secretary.

[FR Doc. 87-29066 Filed 12-17-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

List of Publications; Correction

This Notice is to correct information regarding the inspection of Antritrust Division publications listed in a **Federal Register** Notice published at 52 FR 34329-34330 (September 10, 1987). The Department of Justice no longer maintains Reading Room 1266 at 10th and Pennsylvania Avenue, NW. Arrangements to inspect the publications listed may be made by contacting Antitrust Division Library personnel at (202) 633-2431.

Date: December 10, 1987.

Charles F. Rule,

Assistant Attorney General.

[FR Doc. 87-29064 Filed 12-17-87; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications, on behalf of Bellcore and NEC Corporation, simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NEC is a Japanese corporation with its principal place of business at 33-1, Shiba 5-chome, Minato-Ku, Tokyo 108, Japan.

Bellcore and NEC entered into an agreement effective October 1, 1987 to collaborate on cooperative theoretical and experimental studies in high speed and coherent optical devices and systems research to better understand the applications for exchange and exchange access services of technology and equipment useful for optical transmission including broadband ISDN and to demonstrate feasibility of research concepts by experimental prototypes and experimental systems of such technologies and equipment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-29070 Filed 12-17-87; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on November 16, 1987, disclosing a change in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. COS filed additional written notifications on August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, October 5, 1987, and October 23, 1987. The Department published notices in the Federal Register in response to these aditional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), and December 4, 1987 (52 FR 46130), respectively. COS filed an additional written notification on July 31, 1987, which was published on December 15, 1987 (52 FR 47642).

On November 2, 1987, Bell Atlantic and VANCE Systems became parties to COS; on November 10, 1987, Southwestern Bell Telephone Company became a party to COS; and on October 15, 1987, Convergent Technologies withdrew as a member of COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-29071 Filed 12-17-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps Center Assessment Advisory Committee; Meeting

A public meeting of the Job Corps Advisory Committee will be held on Thursday and Friday, January 21 and 22, 1988, commencing at 9:00 a.m., in Room N-3437 A and B, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC.

The purpose of the meeting is to continue discussions which were initiated in the Committee's first meeting on November 6 and 7, 1987, of recommendations to improve the Job Corps Center Assessment (capacity reduction) system.

Individuals or organizations wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Job Corps, U.S. Department of Labor, Room N-4508, Washington, DC 20210. Telephone (202) 535-0500. Papers will be accepted and included in the record of the meeting if received on or before January 15, 1988.

Roger D. Semerad,

Assistant Secretary of Labor.

Signed at Washington, DC, this 8th day of December 1987.

[FR Doc. 87-29121 Filed 12-17-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effectvie date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. AL87-17 dated January 2, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should request a project wage determination using form SF-308 (Part 1 (29 CFR), § 1.5). Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawn decision in contract specifications, the opening of bids for which is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Listing by Location (index)—pp. xxi–xxii
Listing by Decision (index)—p. xlix

Volume II

Illinois:
- IL87-1 (Jan. 2, 1987)—pp. 69–70,76
- IL87-2 (Jan. 2, 1987)—pp. 98–99
- IL87-8 (Jan. 2, 1987)—pp. 142,144
- IL87-11 (Jan. 2, 1987)—p. 158
- IL87-13 (Jan. 2, 1987)—p. 177
- IL87-15 (Jan. 2, 1987)—p. 197
- IL87-16 (Jan. 2, 1987)—p. 207
- IL87-17 (Jan. 2, 1987)—p. 216

Indiana:
- IN87-2 (Jan. 2, 1987)—p. 252
- IN87-3 (Jan. 2, 1987)—p. 269
- IN87-5 (Jan. 2, 1987)—p. 293

Ohio:
- OH87-29 (Jan. 2, 1987)—pp. 832–833

Volume III

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 11th day of December 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-28877 Filed 12-17-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Design, Manufacturing, and Computer-Integrated Engineering; Open Meeting

National Science Foundation announces the following meeting:

Name: Advisory Committee for Design, Manufacturing, and Computer-Integrated Engineering (DMCE).
Date and Time: Jan. 6–7, 1988
9:00 a.m.–5:00 p.m., Jan. 6
9:00 a.m.–3:00 p.m., Jan. 7
Place: National Science Foundation, 1800 G Street, NW., Washington, DC, Room 540.
Type of Meeting: Open.
Contact Person: Dr. Michael J. Wozny, Division Director, DMCE, Room 1108, National Science Foundation, Telephone: 202/357–7508.
Summary Minutes: Dr. Wozny.
Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design, Manufacturing, and Computer-Integrated Engineering.
Summarized Agenda: Discussions on issues, opportunities and future directions for the Division in Design, Manufacturing, and Computer-Integrated Engineering; discussion of the DMCE budget for FY 1987; discussion of budget issues with the NSF Assistant Director for Engineering, as well as other items.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 87-29065 Filed 12-17-87; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1987; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 10, No. 2 ("Report to Congress on Abnormal Occurrences: April–June 1987"). This report will be available in the NRC's Public Document Room, 1717 H Street, NW., Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

There were no AOs at the nuclear power plants.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

AO 87–9—Diagnostic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On January 21, 1987, a 66-year-old female at Halifax-South Boston Community Hospital, South Boston, Virginia, received 782 microcuries of I–131 instead of a 100-microcurie dose usually given for a thyroid scan.

Nature and Probable Consequences—The purpose of the scan was to rule out the presence of a substernal thyroid, following removal of the normal thyroid many years ago. The thyroid scan and confirming computerized axial tomography (CAT) scan demonstrated the presence of a nonfunctional substernal thyroid.

No adverse effects to the patient are expected from the reported misadministration. The dose to the whole body was estimated as 0.37 rem (assuming a 15% thyroid tissue uptake) and a thyroid tissue dose of 625 rem. Patients are often administered radioiodine following surgical or radioactive thyroid removal to check for hidden thyroid tissue.

Cause or Causes—The misadministration was caused by the nuclear medicine technician's misinterpretation of the dose calibrator value.

Actions Taken To Prevent Recurrence

Licensee—The nuclear medicine technician was instructed to verify that the dose was within the proper range for a given procedure and to check with the radiologist prior to administration.

NRC—A telephonic contact was made to the radiologist reporting this misadministration for additional information and assurance that corrective action had been taken. The incident will be reviewed during the next NRC routine inspection at the hospital.

AO 87–10—Therapeutic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—From April 20–22, 1987, a patient treated on the cobalt-60 teletherapy unit at St. Peter's Medical Center, New Brunswick, New Jersey, received a radiotherapy administration of 600 rads to the lumbar spine area, which was not the prescribed treatment site.

Nature and Probable Consequences—A patient, diagnosed as having breast cancer with metastasis to the bone, was undergoing treatment to the thoracic spine of 3000 rads in 15 fractionated doses of 200 rads each. She had previously undergone palliative treatment to the lumbar spine and sacral hip areas and still retained the tattoo marks for those treatment fields. The technologist mistakenly used these tattoos to position the patient for treatment, rather than the tattoos defining the thoracic spine treatment area.

During the course of treatment, the patient was treated as both an in-patient and out-patient. The misadministration occurred while the patient was an in-patient. During treatment set-up on April 20, 21 and 22, 1987, the patient's gown was only raised far enough to expose the tattoos in the previously treated lumbar spine and sacral hip areas and the technologist involved mistakenly assumed that the lumbar spine tattoos defined the currently prescribed treatment field. Had the technologist raised the gown to expose the entire back, the tattoos in the thoracic spine area would have been seen.

The technologists involved with the patient's treatment noted that the light field was larger than the tattooed field, but assumed the discrepancy was due to skin shifting and did not notify the supervising technologist, radiation oncologist, or medical physicist. When the patient returned for treatment on April 23, 1987 as an out-patient, the gown she wore opened in the back and the entire back was exposed during treatment set-ups. The technologists then realized that the patient had been erroneously treated in the lumbar spine area, rather than the prescribed thoracic spine area. They immediately notified the supervising technologist and radiation oncology physician.

The consequence of this incident was that a patient received an unprescribed dose to the lumbar spine of 600 rads.

The patient's referring physician and radiotherapist concluded that the dose would have no detrimental clinical effect due to the patient's current disease state.

Cause or Causes—The causes are attributed to human errors, including failures to comply with established procedures, i.e.,

1. The technologist did not expose the patient's entire back during treatment set-up;
2. The two technologists did not perform all simulation and set-up procedures together;
3. The technologist who originally simulated, tattooed and set up the patient for the initial treatments did not realize the error in subsequent set-ups; and
4. The technologists did not follow established procedures in the event the light field does not match the patient tattoo marks, which require notifying the supervising technologist, the radiation oncologist, or the medical physicist.

Actions Taken to Prevent Recurrence

Licensee—The licensee's immediate and planned corrective actions included: A review of internal policies to evaluate possible changes to prevent further misadministrations; a training session with all technologists to review the incident and internal policies; special training sessions for the technologists involved and review of all their work; and immediate probation of the two technologists.

NRC—A senior Region I NRC inspector conducted a routine inspection of the teletherapy program and review of the misadministration on April 28, 1987. No violations of NRC regulations were associated with this incident. An NRC medical consultant is reviewing the case.

AO 87-11—Diagnostic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On June 3, 1987, NRC received written notification that on May 20, 1987, a patient at the National Institutes of Health, Bethesda, Maryland, received 120 millicuries of technetium-99m pertechnetate rather than the prescribed radiopharmaceutical, 10 millicuries of gallium-67 citrate.

Nature and Probable Consequences—A patient, scheduled to be injected with 10 millicuries of gallium-67 on May 20, 1987, was administered a radiopharmaceutical on that day and asked to return on May 22 for a scan. The patient study did not show the typical gallium-67 citrate uptake and an energy spectrum obtained by the gamma camera indicated that technetium-99m had been injected, and not the prescribed gallium-67.

The radiopharmacist reviewed the usage records for May 20, 1987 and discovered a 3.3 milliliter excess of gallium-67. The only technetium-99m radiopharmaceutical which could not be accounted for was technetium-99 pertechnetate. The radiopharmacist concluded that approximately 120 millicuries of technetium-99m in 3.3 milliliters were withdrawn by mistake by the radiopharmacist and was not assayed for activity in a dose calibrator. This radiopharmaceutical was then dispensed to a physician who administered it to the patient.

The licensee informed the NRC that the Chief of the Nuclear Medicine Department, the Chief of the Radiopharmacy and the Chief of the Radiation Safety Branch were notified as soon as the midadministration was discovered. The referring physician was notified by written memorandum. The patient experienced no adverse effect from this misadministration but received the following unwarranted approximate organ doses:

Tissue	Rads
Bladder Wall	10.2
Gastrointestinal Tract:	
Stomach Wall	6.1
Upper Large Intestinal Wall	14.4
Lower Large Intestinal Wall	13.2
Red Marrow	2.0
Testes	1.1
Thyroid	15.6
Brain	1.4
Whole Body	1.3

Cause or Causes—The causes are attributed to failure on the part of the radiopharmacist to read labels on stock solutions and the failure to assay for activity before administration to the patient.

Actions Taken to Prevent Recurrence

Licensee—All radiopharmacy personnel have been retrained in the existing policies requiring that all labels be checked and all radiopharmaceuticals assayed in a dose calibrator before being dispensed.

NRC—Region I reviewed this incident during a routine inspection of the licensee on June 8–12, 1987. One apparent violation, failure to assay the dose before administration to the patient, was associated with this incident.

AO 87-12—NRC Order Issued To Remove a Hospital's Radiation Safety Officer.

One of the AO examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On June 15, 1987, an Order Modifying License, Effective Immediately, was issued to Milford Memorial Hospital, Milford, Delaware. The action was based on (1) the falsification of daily constancy checks of the dose calibrator by the licensee's two technologists, and (2) the falsification of records of Radiation Safety Committee (RSC) meetings by the Radiation Safety Officer (RSO) for about 15 years.

Nature and Probable Consequences—As part of an NRC inspection at Milford Hospital on December 17, 1986, an NRC inspector reviewed the records of daily constancy checks performed on the dose calibrator. The inspector observed that during a period of time in 1986, the recorded results of the constancy checks were almost always the same value. In the presence of the licensee's RSO at the time, the inspector asked one of the two licensee technologists reponsible for performing the constancy checks if these tests had been performed. She initially stated that the constancy checks had been performed daily.

However, when the technologist performed the constancy check procedure a short time later in the presence of the inspector and obtained a significantly different value than previously recorded, she admitted that she had recorded data in the past without actually performing the check. The other technologist also admitted that she had documented the results of daily constancy checks without having performed the checks. Subsequent to the inspection, the investigation determined that these records were falsified for the period May 6, 1986 through December 17, 1986.

Although the RSO at that time stated that he had performed an audit of these specific records of constancy checks on November 16, 1986, he did not recognize that the records had been falsified. Apparently, the RSO verified that records of constancy checks existed, but he did not assess the accuracy of the records.

During an inteview with investigators from the NRC Office of Investigations (OI) on May 18, 1987, the Assistant Administrator of the hospital stated that during a review of previous RSC meeting minutes, he noticed that there were minutes for a January 20, 1987 meeting that he neither attended nor was given notice of despite his previous instructions to the RSO that he or the Hospital Administrator be present at those meetings. As a result of his inquiries he had found that these RSC meetings, which were required by the license to be conducted quarterly, had not been conducted for at least the past year, but that the RSO had created a record each quarter to represent that the meetings had occurred.

The RSO subsequently admitted to OI investigators that no RSC meetings had been held since approximately 1970, but that false records had been prepared to indicate that the meetings had occurred. These false records had been presented to NRC inspectors during the various NRC inspections as evidence that the RSC meetings had occurred, as required. Specific meeting minutes of the RSC also had been provided to the NRC, in letters dated April 7, and May 14, 1982, to resolve NRC concerns regarding the licensee's application for license renewal dated February 23, 1982.

The consequence of these occurrences was a reduction in the level of safety associated with the use of licensed material by this licensee. No specific hazard was identified.

Cause or Causes—The causes of these occurrences appear to be a lack of adequate management control by the licensee and a lack of integrity on the part of individual members of the licensee's staff.

Actions Taken to Prevent Recurrence

Licensee—The licensee suspended the RSO (a physician) from his duties as RSO shortly after determining that he had falsified the records. Subsequent to the NRC Order, the licensee suspended him from all duties but later permitted him to function in accord with the restriction specified by the NRC Order. The licensee is conforming to the various provisions of the NRC Order described below.

NRC—The June 15, 1987 Order required: (1) The removal of the RSO; (2) the suspension of the RSO's authorization to independently use or supervise the use of licensed material as currently permitted by the license; (3) the performance of monthly independent audits of the licensee's radiation safety program by an independent party; and (4) a review of the Radiation Safety Program by the new RSO, correction of deficiencies identified, and certification by the licensee to the NRC that the nuclear medicine program is being operated safely and in accordance with NRC requirements.

A subsequent NRC inspection has shown that the licensee is in compliance with the Order.

AO 87-13—Significant Breakdown in Management and Procedural Controls at an Industrial Radiography Licensee

One of the AO examples notes that a major deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On June 17, 1987, the NRC issued an Order Modifying License (Effective Immediately) to United States Testing Company, Inc., Unitech Services Group (USTU), San Leandro, California, which required the licensee to temporarily cease all operations until certain specified corrective actions were taken.

Nature and Probable Consequences—During an indepth special safety inspection on February 10 through June 1, 1987 of USTU in San Leandro, California, it was determined that the large radiography firm had committed numerous violations of NRC and Agreement State requirements. Based on initial findings, a Confirmatory Action letter (CAL) was sent to the licensee regarding radiation safety certification of radiographers and radiographer assistants on February 13, 1987. Upon completion of the full inspection, which covered the licensee's activities from January 1, 1985 to March 1, 1987, NRC issued the previously mentioned Order Modifying License on June 17, 1987.

At the time of the inspection, USTU was licensed by the NRC and several Agreement States to perform industrial radiography. The licensee employed approximately 200–300 radiographers, assistant radiographers and trainees, and conducted radiographic operations at 11 locations under NRC jurisdiction and 35 locations under Agreement State jurisdiction. As the result of the inspection, it was determined that the licensee was (1) allowing individuals to perform radiography after failing one or more certification examinations, (2) allowing individuals to perform radiography before all training and examinations were completed, and (3) allowing individuals with expired certifications to perform radiography. Also, three radiation overexposures and associated evaluations were not reported. In addition, numerous other radiation safety violations associated with field audits, radiation surveys, inoperable survey instruments, surveillance over high radiation areas, and proper maintenance and equipment inspections were indentified at NRC and Agreement State locations.

Deficient implementation of radiation safety requirements by this licensee resulted in the use of radiactive materials by inadequately trained personnel, thereby endangering themselves and co-workers. In fact, the NRC inspection was initiated by an incident on February 5, 1987, involving the overexposure of inadequately trained personnel (a radiographer and an assistant radiographer) at a USTU job site in Arizona, an Agreement State. This event was reported as Agreement State abnormal occurrence AS81-1 ("Breakdown in Management and Procedural Controls at an Industrial Radiography Licensee") in NUREG-0090, Vol. 10, No. 1 ("Report to Congress on Abnormal Occurrences: January–March 1987").

Cause or Causes—The root cause appears to be attributed to widespread disregard for compliance with regulatory requirements. However, the event remains under investigation by the NRC Office of Investigations, and a complete understanding of all contributing causes awaits their report.

Actions Taken To Prevent Reccurence

Licensee—As discussed further below, the licensee has taken, or is taking, appropriate actions in response to the February 13, 1987 CAL, and the June 17, 1987 NRC Order.

NRC—Initial findings of the NRC indepth special safety inspection indicated that the licensee was using radiographers that had not received required radiation safety training. The CAL issued on February 15, 1987, required a licensee official to verify in writing that assigned radiographers, by name, have received appropriate training. Subsequent inspections by the NRC and Agreement States have verified licensee conformance with the CAL.

The Order Modifying License incorporated a two-phase action plan. The licensee is required to enlist a consultant to assist in performing an assessment of program deficiencies and necessary corrective actions. In the interim, the licensee may continue operations only if very stringent on-site management controls are in place as prescribed by the Order. This includes assignment of a qualified Radiation Safety Officer (RSO) at each major project site or centralized facilities for temporary job sites, with responsibility for radiation safety program implementation and the authority to shut down any operations not in regulatory compliance.

The NRC Region V staff has reviewed the training and certification documentation of the new Radiation Safety Officers submitted in compliance with the Order. All documentation was acceptable.

A reinspection schedule has been established which will examine the actions taken by the licensee, pursuant to the Order, at selected job sites under NRC and Agreement State jurisdiction.

The consultant's action plan has been evaluated and approved with minor revisions by Region V as stipulated in the Order.

On September 25, 1987, NRC Information Notice No. 87-45 ("Recent Safety-Related Violations of NRC Requirements by Industiral Radiography Licensees") was issued to all NRC licensees authorized to possess and use sealed sources for industrial radiography to inform them of the event.

Dated in Washington, DC, this 14th day of December 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-29083 Filed 12-17-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana and Michigan Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licensees DPR-58 and DPR-74, issued to Indiana and Michigan Electric Company (the licensee), for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The amendments would change the name of the Indiana and Michigan Electric Company in the facility Operating Licenses to correspond to the new name—Indiana and Michigan Power Company.

The amendments would respond to the licensee's application dated October 5, 1987.

The Need for the Proposed Action

The proposed amendments are needed to recognize the official name change of the licensee and to update the Facility Operating Licenses, DPR-58 and DPR-74. The change does not in any way affect or alter the licensee's assets, financial condition, corporate structure or corporate organization. It is a change in name only.

Environmental Impacts of the Proposed Action

The proposed amendments do not affect the probability or consequences of accidents nor do they otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed amendments.

The proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

These actions involve no use of resources not previously considered in the Final Environmental Statement related to operation of the D.C. Cook Nuclear Plant.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the amendments dated October 5, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland, this 3rd day of December, 1987.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-29090 Filed 12-17-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498 OL and 50-499 OL]

Houston Lighting and Power Co. (South Texas Project, Units 1 and 2); Issuance of Director's Decision Under 10 CFR 2.206 (DD-87-20)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition under 10 CFR 2.206 filed by Mr. Lanny Sinkin on behalf of Citizens Concerned About Nuclear Power, Inc. The petitioner asked the Nuclear Regulatory Commission (NRC) to reopen the record in the South Texas Nuclear Project licensing hearings based upon the testimony given by NRC witnesses during hearings on April 1987 before the Senate Committee on Government Affairs. The petitioner alleged that the testimony of these witnesses before this Congressional Committee sheds doubt on the credibility of NRC personnel in the South Texas Nuclear Project licensing hearings.

The petitioner's request has been denied for the reasons fully described in the "Director's Decision Under 10 CFR 2.206," issued on this date, which is available for public inspection at the Commission's Public Document Room, 1717 H. Street NW., Washington, DC 20555, and the Local Public Document Rooms for the South Texas Nuclear Project located at the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701 and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Bowling Highway, Warton, Texas 77488.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 13th day of December, 1987.

For the Nuclear Regulatory Commission.
Thomas E. Murley,
Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-29091 Filed 12-17-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority Sequoyah Nuclear Plant, Units 1 and 2; Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating Licenses No. DPR-77 and DPR-79 which authorize operation of the Sequoyah Nuclear Plant, Units 1 and 2, respectively. These licenses provide that, among other things, the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The Sequoyah facility consists of two pressurized water reactors located at the licensee's site in Hamilton County, Tennessee.

II

General Design Criterion (GDC) 56 of Appendix A to 10 CFR Part 50 requires that each line that is connected directly to the containment atmosphere and penetrates primary reactor containment shall be provided with containment isolation valves. The combination of valves, automatic or locked closed, and the location of valves, one inside and one outside containment, are specified in GDC 56. These requirements must be met unless it can be demonstrated that the containment isolation provisions for a specific class of lines are acceptable on some other defined basis.

As part of the original design of Sequoyah Nuclear Plant Units 1 and 2, TVA relied upon certain closed systems as the outside containment isolation barrier to meet the Commission's regulations, specifically GDC-55 and 56, on some "other defined basis." The NRC staff issued NUREG-0011, dated March 1979, which documents the acceptability of TVA's compliance with the GDC; however the staff did not specifically address the acceptability of an "other defined basis" for any containment isolation configurations.

Subsequent to the development of the TMI Action Plan, NRC staff policy has been established that closed systems outside containment are not generally acceptable as an isolation barrier for lines covered by GDC 55 and 56.

As a result of an NRC staff inspection conducted at Sequoyah in March 1986, apparent discrepancies in system compliance with the containment isolation requirements were identified. These findings led to a general reassessment of the containment isolation design and the "other defined basis" assumptions made for the Sequoyah Nuclear Plant, Units 1 and 2.

Subsequent to discussions with TVA, by letter dated January 2, 1987 TVA redesignated certain existing system line isolation valves as containment isolation valves. The Commission's requirements, however, could not be met in every isolated case. In most of the cases evaluated, the explicit requirements of GDC 55 and 56 could be satisfied by valve redesignation, thereby imposing them to the associated operability, surveillance, and testing requirements. For those cases where the staff requirements could not be met, TVA has requested an exemption from the GDC.

This exemption addresses the Sequoyah Nuclear Plant, Units 1 and 2, containment isolation valves in the vacuum relief lines with respect to the valve location requirements only.

The vacuum relief penetrations at the Sequoyah Nuclear Plant, Units 1 and 2, provide a containment isolation design consisting of a single automatic isolation valve located outside containment and a spring-loaded vacuum relief check valve in series.

Both of these redundant isolation valves are located outside the primary containment. Thus, while the licensee has provided a design that complies with the requirements of GDC 56 in terms of the number valves, there is deviation from the explicit GDC requirements with regard to valve location. Therefore, by submittal dated February 3, 1987, supplemented by letter dated April 8, 1987, the licensee has requested an exemption from the requirements of GDC 56 for the isolation provisions of the containment vacuum relief lines. Specifically, the exemption is from the requirements of GDC 56 regarding valve location.

With regard to the adequacy of redundant isolation, the staff concludes that with both the spring-loaded check valves and the automatic butterfly valves cited as containment isolation valves, the design is adequate for assuring redundancy in achieving containment isolation. The basis for this conclusion is the fact that the first outer isolation valve, the automatic butterfly valve, is bolted directly to the containment penetration sleeve thereby essentially extending the containment. The penetration sleeve between primary containment and the butterfly valve has been evaluated by the licensee to demonstrate that stresses in the penetration sleeve are well below allowable values in accordance with Branch Technical Position MEB 3-1. Therefore, a break in the penetration sleeve between the first valve and the containment need not be considered. Therefore, this design essentially extends the containment to include the butterfly valves. Furthermore, it is the staff's judgment that no improvement to plant safety would be achieved by modification of the isolation design to fully comply with the GDC, and therefore is not warranted, nor necessary to achieve the underlying purpose of the rule. Therefore, the staff finds that an exemption from the requirements of GDC 56 in the case of the containment vacuum relief lines is justified.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee's design provides two, redundant means of isolation, and that implementing the required modifications to meet the location requirements would not significantly enhance plant safety.

The Commission hereby grants an exemption from the requirements of GDC 56 of Appendix A to 10 CFR Part 50 to the licensee for operation of Sequoyah Nuclear Plant, Units 1 and 2, in that the vacuum relief lines can be isolated using a spring-loaded check valve in series with a butterfly valve both of which will be located outside primary containment.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (52 FR 46868, December 10, 1987).

For further details with respect to this section, see the request for exemption dated February 3, 1987, as supplemented April 8, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of December 1987.

For the Nuclear Regulatory Commission.

Stewart D. Ebneter,

Director, Office of Special Projects.

[FR Doc. 87-29088 Filed 12-17-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2); Exemption

I

The Tennessee Valley Authority (the licensees) is the holder of Facility Operating Licenses No. DPR-77 and DPR-79 which authorize operation of the Sequoyah Nuclear Plant, Units 1 and 2, respectively. These licenses provide that, among other things, the facility is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The Sequoyah facility consists of two pressurized water reactors located at the licensee's site in Hamilton County, Tennessee.

II

General Design Criterion (GDC) 55 of Appendix A to 10 CFR Part 50 requires that each reactor coolant pressure boundary line penetrating the primary reactor containment be provided with containment isolation valves. The combination of valves is to be one inside and one outside containment and either automatic or locked closed. The GDC does allow for a demonstration of acceptability on some other defined basis.

As part of the original design of Sequoyah Nuclear Plant, Units 1 and 2, TVA relied upon certain closed systems as the outside containment isolation barrier to meet the Commission's regulations, specifically GDC-55 and 56, on some "other defined basis." The NRC staff issued NUREG-0011, dated March 1979, which documents the acceptability of TVA's compliance with the GDC; however, the staff did not specifically address the acceptability of an "other defined basis" for any containment isolation configurations.

Subsequent to the development of the TMI Action Plan, NRC staff policy has been established that closed systems outside containment are not generally acceptable as an isolation barrier for lines covered by GDC 55 and 56.

As a result of an NRC staff inspection conducted at Sequoyah in March 1986, apparent discrepancies in system compliance with the containment isolation requirements were identified. These findings led to a general reassessment of the containment isolation design and the "other defined basis" assumptions made for the Sequoyah Nuclear Plant, Units 1 and 2.

Subsequent to discussions with TVA, by letter dated January 2, 1987 TVA redesignated certain existing system line isolation valves as containment isolation valves. The Commission's requirements, however, could not be met in every isolated case. In most of the cases evaluated, the explicit requirements of GDC 55 or 56 could be satisfied by valve redesignation, thereby imposing them to the associated operability, surveillance, and testing requirements. For those cases where the staff requirements could not be met, TVA has requested an exemption from the GDC.

This exemption addresses the Sequoyah Nuclear Plant, Units 1 and 2, containment isolation valves in the Residual Heat Removal (RHR) System loop supply line with respect to the valve location requirements only.

The containment isolation provisions for the Sequoyah Nuclear Plant, Units 1 and 2 RHR System reactor coolant loop supply (discharge line) through penetration X-17 utilizes a check value and a motor-operated remote manual valve inside containment and a water seal and closed system outside containment. The licensee has designated this inboard remote manual valve as a containment isolation valve. This valve, therefore, is subject to appropriate operability, surveillance and testing requriements, and thereby, in combination with the inboard check valve, satisfies the redundancy requrements of GDC 55. While the designation of the motor-operated valve as a containment isolation valve is necessary, this change does not bring the isolation design into compliance with the requirements of GDC 55.

Although the licensee has provided an isolation design which satisfies the GDC in terms of redundancy of valves, it is not in compliance with the requirement of GDC 55 concerning valve location. The location of both containment isolation valves inside containment clearly does not satisfy the criteria of GDC 55 which specifies a valve inside and outside containment. Allowances for valve location are made in cases where it is impractical to locate valves on either side of the containment, e.g., in a situation where location of an isolation valve inside containment would mean it could be submerged following an accident.

Consequently, by letter dated February 3, 1987, supplemented by leter dated April 8, 1987, the licensee requested an exemption from the valve location requirement of GDC 55 for the RHR loop supply line. The licensee contends that an exemption is warranted on the basis that the isolation capability for this line was technically adequate and that further modification to the design was not cost effective.

The licensee has designed the remote manual valve in the RHR loop supply line to the loop 1 and 3 hot legs as a containment isolation valve. This line has multiple isolation provisions; a remote manual valve and two missile-protected check valves inside containment and a closed system outside containment.

The licensee has stated that in addition to the check valve and the remote manual isolation valve there are other isolation barriers that provide protection against leakage to the environment from these penetrations. First, the system outside containment is a closed system designed to seismic Category 1 standards and meets at least Safety Class 2 design requirements. Secondly, these lines are suplied by two RHR pumbs which are interconnected to provide a water seal at a pressure sufficient to preclude containment atmospheric leakage.

The NRC staff recognizes that both the water seal and the closed system outside containment are equivalent to a valve as an isolation barrier since both of these barriers can withstand a single active failure. The staff has evaluated the Sequoyah isolation design and exemption request for the RHR loop supply line and concludes that the exemption is justified on the grounds that the existing redundant isolation capability, in consideration of both the water seal and closed system outside containment, provides reasonable assurance against offsite releases and, therefore, application of GDC 55 in these particular circumstances is not necessary to achieve the purpose of the criterion.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption—namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee's design meets the underlying intent of GDC 55 which is to provide a redundant means of isolation. The design does this by providing a spring-loaded check valve in series with a remote manual isolation combined with a water seal and a closed system outside containment.

The Commission hereby grants an exemption from the requirements of GDC 55 of Appendix A to 10 CFR Part 50 to the licensee for operation of the Sequoyah Nuclear Plant, Units 1 and 2, in that the RHR loop supply line to the loop 1 and 3 hot legs can be isolated using two check valves and a remote manual valve all of which are located inside containment.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (52 FR 46869, December 10, 1987).

For further details with respect to this action, see the request for exemption dated February 3, 1987, as supplemented April 8, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of December.

For the Nuclear Regulatory Commission.

Steward D. Ebneter,

Director, Office of Special Projects.

[FR Doc. 87-29089 Filed 12-17-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25193; File Nos. 4-218 and S7-433]

Joint Industry Plan; Filing and Summary Effectiveness of Amendments and Order Withdrawing Amendments to the Consolidated Quotation Plan and Consolidated Transaction Plan Fee Schedules

On December 7, 1987, the participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation System ("CQS") submitted amendments to the Plan governing the operation of the consolidated quotation reporting system ("CQ Plan") and the Plan governing the operation of the consolidated transaction reporting system ("CTA Plan").[1]

I. Description of the Amendments

The amendments revise Network B[2] fees to accommodate "Other Services" (services subscribers offer costomers that differ from conventional services);[3] raise the Network B analysis programs charge; and establish a single, lower fee for receipt of Network B last sale and bid-ask data by nonprofessional subscribers. The amendments also make several conforming and technical changes.

First, the amendments incorporate into the CTA and CQ Plans new fees for Other Services that are substantially lower than other professional Network B charges. In effect, the new fees charge the broker-dealer or vendor on the basis of "device equivalency" as if the broker-dealer or vendor were serving its customers by manual interrogation of a last sale data base.

Second, the amendments reduce the monthly fees vendors pay to provide their nonprofesional customers with Network B data. Previously vendors paid $5.00 under the CTA Plan and $4.00 under the CQ Plan. The amendment provides for a single, combined monthly fee of $3.00 for CTA and CQ data.

Finally, the amendments increase the monthly Network B analysis programs charge from $50.00 to $200.00. Under the old fee schedule, use of CTA and CQ data for other categories of computer programs (for example, compilation of stock tables and operations control programs) required payment of a monthly fee of $200.00. Thus, the fee increases merely brings the fee for the analysis program classification in line with similar classifications.

The participants stated that they designed the amendments to permit wider dissemination of market data by making it less expensively available to investors. They believe that the new fees also offer greater flexibility to broker-dealers and vendors in designing new market data services. Finally, the participants stated that they believe the amendments fulfill the national market system objectives of dissemination of last sale information and thus are consistent with Section 11A of the Securities Exchange Act of 1943.

II. Summary Effectiveness of the Amendments

Rule 11Aa3-2 provides that the Securities and Exchange Commission ("Commission") may, upon publication of notice of the amendment, summarily put into effect for 120 days an amendment to a national market system plan. The Commission first must determine, however, that is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission believes that granting summary effectiveness for these amendments is consistent with the Act.

First, the fees for "Other Services" already had been in effect under experimental authority granted the CQS and CTA prior to their submission to the Commission for approval.[4] Further, making these fees a permanent part of the CTA and CQ Plan fee structure and reducing the non-professional fees will enable a greater number of investors to receive last sale and quotation data and should encourage innovation among broker-dealers and vendors in creating new methods of providing information to customers.

The Commission also believes that the increase in the fee subscribers pay for the program analysis classification is consistent with the Act. The Commission believes the increase corrects an apparent inequity among the charges for different computer program classifications.

The Commission received several comment letters on the proposed amendments.[5] The 120-day period will

[1] The participants originally submitted the amendments on March 31, 1987. *See* Securities Exchange Release No. 24334 (April 13, 1987), 52 FR 12997. On August 12, 1987, the participants withdrew those amendments and refiled them pursuant Rule 11Aa3-2(c)(4). *See* Securities Exchange Act Release No. 24797 (August 13, 1987), 52 FR 31108. On December 7, 1987, the participants again withdrew the amendments and resubmitted them pursuant to Rule 11Aa3-2(c)(4). *See* letter dated December 7, 1987, from Carrie E. Dwyer, Senior Vice President and General Counsel, American Stock Exchange ("Amex"), to Kathryn V. Natale, Assistant Director, Division of Market Regulation. The Commission requested that the participants resubmit the amendments to allow the Commission adequate time to review them and to review the comment letters already submitted on the proposal.

[2] "Network B" refers to the consolidated data stream of transaction and quotation data on eligible securities that are listed on the Amex or that are traded on another exchange but substantially meet the Amex listing standards.

[3] Examples of "Other Services" are services that allow customers to: (1) Obtain real-time stock market information over the telephone through an automated process involving a computer-generated voice; or (2) obtain real-time stock market information over a leased printer located in their homes or offices.

[4] *See* Securities Exchange Act Release No. 20216 (September 23, 1986), 48 FR 44299, in which the Commission approved amendments to the CTA and CQ Plans authorizing the Plan administrators (*i.e.*, the New York Stock Exchange and the Amex) to engage in market tests and pilot programs of limited scope and duration without the prior approval of the Operating Committee or, implicitly, the Commission.

[5] *See* letters dated June 5, 1987, from Paul Zurkowski, President, Information Industry Association ("IIA"); August 25, 1987, from Carrie E. Dwyer, Senior Vice President and General Counsel, Amex; September 29, 1987, for Tess Lander-Mickley,

Continued

afford the Commission adequate time to carefully consider those comments. Further, while the Commission reviews the comment letters, the Plan participants will be able to apply the modified fee schedule, rather than reverting to the old schedule during this interim period.[6]

III. Request for Comment

To assist the Commission in determining whether to approve permanently the amendments, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of this 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 also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1988.

IV. Withdrawal of Amendments to the CTA and CQ Plans

As noted above, the CTA and CQ Network B Participants requested that the Commission order withdrawn the amendments to the CTA and CQ Plans submitted on August 12, 1987.

It is therefore ordered, That the above-described amendments be withdrawn.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Vice President, Reuters Information Services, Inc.; and October 27, 1987, from Kenneth B. Allen, Senior Vice President, Government Relations, IIA, to Jonathan G. Katz, Secretary, SEC.

[6] It is important to note that the Commission recently considered and approved similar changes to the CTA and CQ Network A Fee Schedule. *See* Securities Exchange Act Release No. 24130 (February 20, 1987), 52 FR 6413.

Dated: December 14, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-29115 Filed 12-17-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25194; File No. SR-MBS-87-10]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1987, the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MBS Clearing Corporation's (MBSCC) procedures regarding the physical withdrawal of securities eligible ("Eligible Securities") for deposit in MBSCC's Depository Division. The procedures will be in effect for the period starting on November 24, 1987, and ending 60 days from the date of publication of the notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies and sets forth MBSCC's policy regarding the physical withdrawal of Eligible Securities. The policy covers Eligible Securities subject to the Public Securities Association's ("PSA") Good Delivery Guideline for securities issued by the Government National Mortgage Association ("GNMA"), as adopted on December 29, 1986, as well as those not subject to PSA's guideline. The PSA guideline was announced together with a schedule by GNMA and PSA for the conversion of GNMA securities into book-entry form.

The policy substantially limits, but does not altogether prohibit, the withdrawal of securities subject to PSA's Good Delivery Guideline. Securities not subject to the guideline may be withdrawn by MBSCC Participants and registered in the name of the Participant or the name of a customer of the Participant. Securities subject to the guideline may be withdrawn and registered in a Participant's name only if the Participant is legally required to obtain or maintain physical possession of the securities.

Participants may otherwise request physical withdrawal of securities on behalf of a customer only if the customer is legally required to obtain or maintain physical possession of the securities or the customer, to the best of the Participant's knowledge, does not intend to trade or deliver for financing purposes the withdrawn securities.

At the present time, GNMA securities with the following coupon rates have been converted to book-entry form and are subject to the PSA guideline: 5.50%–7.49%, 16.00%–17.50%, 14.00%–15.99%, and 13.00%–13.99%. On April 27, 1987, PSA and MBSCC modified the conversion schedule of GNMA securities. For additional coupons, notice will be given of coupons to be designated as specified for book-entry settlement 45 days in advance of the issuance date of new pools of coupons.

In response to concerns raised by various commentators, MBSCC has further revised the withdrawal policy to make it clear that a Participant may make a request to withdraw securities subject to the PSA Good Delivery Guideline if it is legally required to maintain, as well as obtain, physical possession of securities. The phrase "legally required to obtain or maintain physical possession" is expanded to include those legal requirements imposed by any rule or regulation of any governmental agency, self-regulatory organization as defined in the Securities Exchange Act of 1934 or designated contract market as defined in the Commodity Exchange Act. In addition, the policy has been revised to enable the Participant, or its customer, to obtain securities in time to comply with such legal requirements.

Consistent with PSA's Good Delivery Guideline, the policy essentially ensures that securities subject thereto will be cleared and settled in book-entry form through a registered clearing agency. The policy is designed to reduce physical withdrawal requests for book-entry eligible securities subject to the guideline and encourage the centralized processing of mortgage-backed securities transactions. By placing reasonable restrictions on the physical withdrawal of mortgage-backed securities subject to the PSA guideline, the proposed rule change will both foster PSA's mandate for book-entry settlement of certain transactions and significantly reduce delays, unmatched transaction orders and other human errors often associated with the physical delivery and transfer of certificates.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities, thereby reducing current inefficient procedures and costs to issuers and investors of mortgaged-backed securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

While written comments have not been generally solicited, MBSCC has submitted responses to comments submitted to the Commission. In response to certain concerns raised by the Chicago Board of Trade regarding the obtaining of GNMA certificates for collateral purposes relating to Collateralized Depository Receipts, MBSCC has made revisions to the proposed rule change discussed in Item 3(a) above.

In a separate rule filing to MBSCC's Depository Division rules (SR-MBS-87-7, submitted July 24, 1987), MBSCC has responded to concerns raised by some commentators regarding the submission of claims under a GNMA or other similar guarantee on behalf of Participants. The Depository Division rules have been amended to make clear that MBSCC, in filing claims for payment under any guarantee, will be acting solely as agent for its Participants, except in certain circumstances, where MBSCC or a third-party lender have made principal and interest advances.

Representatives of PSA and GNMA have had the opportunity to review the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 14, 1987.

Exhibit A—MBSCC Procedure for Physical Withdrawal of Despository Eligible Securities

The following is MBSCC's Procedure for physical withdrawal of securities from the MBSCC Depository. The Procedure covers securities that are *not* yet subject to PSA's Good Delivery Guideline, as adopted by PSA on December 29, 1986, *as well as those* subject to the Guideline. This Procedure limits almost in its entirety the withdrawal of securities that are subject to PSA's Good Delivery Guideline. This is consistent with PSA's and GNMA's intent to move vigorously to a book-entry settlement environment for GNMA securities.

Securities Not Yet Subject to Good Delivery Guideline

In the case of securities not yet subject to the Good Delivery Guideline, a Participant will be permitted to withdraw Securities held by the Depository upon the Participant's submission of a request on the form prescribed by MBSCC. The Participant must specify whether the securities should be registered in the name of the Participant or the name of a customer of the Participant. Assuming that the request is made within the appropriate cut-off times prescribed by MBSCC, securities will be processed within four-to-twelve hours of such request.

Securities Subject to Good Delivery Guideline

MBSCC will honor requests to withdraw securities subject to the PSA Good Delivery Guideline in a Participant's name only in the unlikely event that the Participant is legally required to obtain or maintain physical possession of securities. Other Participants may submit requests for withdrawal of securities only if they request that the securities be registered in the name of a customer who is legally required to obtain or maintain physical possession of the securities or who, to the best of the Participant's knowledge, does not intend to trade, or deliver for financing purposes, the securities withdrawn. For purposes hereof, a Participant or its customer will be deemed legally required to obtain or maintain physical possession of securities if obligated to do so under any applicable law or any rule or regulation of any governmental agency, any self-regulatory organization as defined in the Securities Exchange Act of 1934, or any designated contract market as defined in the Commodity Exchange Act (including, in the case of a self-regulatory organization or designated contract market which is a Participant in the Depository, the rules or regulations of such self-regulatory organization or designated contract market).

Assuming a request for withdrawal satisfies the foregoing guidelines and is made within the appropriate cut-off times and on forms prescribed by MBSCC. MBSCC will make the securities available (a) seven calendar days from the date of withdrawal request, or (b) on such earlier date as the Participant requesting the withdrawal certifies to MBSCC is necessary to enable the Participant or its customer to comply with any applicable legal requirement. Participants should advise their customers that payment will be required on settlement date, even though the physical security may be received sometime thereafter.

By making a request for the withdrawal of securities, a MBSCC Depository Participant represents to the Depository that the withdrawal will satisfy the foregoing guidelines. Abuse of this policy will subject the offending Participant's continued participation in the Depository to review by the MBS Clearing Corporation Board of Directors.

[FR Doc. 87-29114 Filed 12-17-87;8:45am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 14, 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 stocks:

Gallagher (Arthur J.) & Co., Common Stock, $1.00 Par Value (File No. 7-0866)
Johnston Industries, Inc. Common Stock, $.10 Par Value (File No. 7-0867)
Regal Beloit, Common Stock, No Par Value (File No. 7-0868)

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 January 6, 1988, 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. 87-29042 Filed 12-17-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 14, 1987.

The above named national securities exchange had 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 stocks:

Bethlehem Corp. (The) Common Stock, No Par Value (File No. 7-0836)
Brown-Forman Inc., Class A Common Stock, $.15 Par Value (File No. 7-0837)
Baruch-Foster Corp., Common Stock, $.50 Par Value (File No. 7-0838)
BIC Corp., Common Stock, $1.00 Par Value (File No. 7-0839)
Bio-Rad Laboratories, Inc., Class A Common Stock, $1.00 Par Value (File No. 7-0840)
Bio-Rad Laboratories, Inc., Class B Common Stock, $1.00 Par Value (File No. 7-0841)
Buckhorn Inc., Common Stock, $1.00 Par Value (File No. 7-0842)
Baker (Michael) Corporation, Common Stock, $1.00 Par Value (File No. 7-0843)
Baldwin Technology Company, Inc., Class A Common Stock, $.01 Par Value (File No. 7-0844)
Blount, Inc., Class A Common Stock, $1.00 Par Value (File No. 7-0845)
Belvedere Corporation, Common Stock, $.10 Par Value (File No. 7-0846)
Bowne & Co., Inc., Common Stock, $1.00 Par Value (File No. 7-0847)
Boddie-Noell Restr Pptys, Common Stock, $1.00 Par Value (File No. 7-0848)
Bowmar Instrument Corp., Common Stock, No Par Value (File No. 7-0849)
Bamberger Plymers, Common Stock, $.01 Par Value (File No. 7-0850)
Brad Ragan, Inc., Common Stock, $1.00 Par Value (File No. 7-0851)
Barnwell Industries, Inc., Common Stock, $.50 Par Value (File No. 7-0852)
BRT Realty Trust, Shares of Beneficial Interest, $3.00 Par Value (File No. 7-0853)
BDS Bancorp. Inc., Common Stock, No Par Value (File No. 7-0854)
Bush Industries, Inc., Class A Common Stock, $.10 Par Value (File No. 0855)
Bermuda Star Line, Inc., Common Stock, $.01 Par Value (File No. 7-0856)
BSN Corporation, Common Stock, $.03 Par Value (File No. 7-0857)
Buell Industries, Inc., Common Stock, $1.00 Par Value (File No. 7-0858)
Bowl America Incorporated, Class A Common Stock, $.10 Par Value (File No. 7-0859)
Casablanca Industries, Inc., Common Stock, $.50 Par Value (File No. 7-0860)
Camco, Incorporated, Common Stock, $1.00 Par Value (File No. 7-0861)
Curtice-Burns Foods, Inc., Class A Common Stock, $2.22 Par Value (File No. 7-0862)
Cosmopolitan Care Corp., Common Stock, $.01 Par Value (File No. 7-0863)
Claremont Capital Corp., Common Stock, $1.00 Par Value (File No. 7-0864)
Compudyne Corp., Common Stock, $.75 Par Value (File No. 7-0865)

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 January 6, 1988, 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, D.C. 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 Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-29043 Filed 12-17-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1144]

Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 4, 1988 at the Institute for Telecommunication Sciences, 325 Broadway, Boulder, Colorado. The meeting will begin at 1:30 p.m.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting is to review preparations for the international meeting of Study Group 6 in the Spring of 1988.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

Date: December 7, 1987.

[FR Doc. 87-29109 Filed 12-17-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1147]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Counsultative Committee (CCITT) will meet on January 15, 1987 at 9:30 a.m. at the Marriott Hotel at Newark Airport.

The purpose of the meeting will be to discuss contributions and other preparations for the final meeting of Study Group XV in April.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise Cindy Perfumo: (201) 234-4047.

Date: December 14, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 87-29108 Filed 12-17-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1146]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on January 7, 1988, at 9:00 a.m. in Room 1105 of the Department of State.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems connected with preparation of the documentary series entitled *Foreign Relations of the United States* and other responsibilities of that Office. Of particular importance are editorial and publishing practice and questions related to declassification of official records as specified in Executive Order 12356 (April 2, 1982).

In accordance with section 10(d) of the Advisory Committee Act (Pub. L. 92-463) it has been determined that certain discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552b (c)(1), and that the public interest requires that such activities be withheld from disclosure. The meeting will therefore be closed when such discussions take place from 2 p.m. to 5 p.m. on Thursday, January 7, and from 9 a.m. to 5 p.m. on Friday, January 8.

Persons wishing to attend the open portion of the meeting should come before 9:00 a.m. on January 7 to the Diplomatic Entrance of the Department of State at 22nd and C Streets NW., Washington, DC. They will be escorted to Room 1105 and at the conclusion of the open portion of the meeting back to the Diplomatic Entrance.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520; telephone (202) 663-1122.

December 14, 1987.

William Z. Slany,

Executive Secretary.

[FR Doc. 87-29110 Filed 12-17-87; 8:45 am]

BILLING CODE 4710-11-N

Sunshine Act Meetings

Federal Register
Vol. 52, No. 243
Friday, December 18, 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).

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TIME AND DATE: Wednesday, January 13, 1988, 10:00 a.m.

PLACE: 1111 20th Street, NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken December 14, 1987.

MATTERS TO BE CONSIDERED: Adjudication in the 1985 cable royalty fee distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW, Suite 450, Washington, DC 20036, 202-653-5175.

Dated: December 16, 1987.

Mario F. Aguero,

Chairman.

[FR Doc. 87-29174 Filed 12-16-87; 1:09 pm]

BILLING CODE 1410-09-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:50 p.m. on Monday, December 14, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B)).

Dated: December 15, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-29126 Filed 12-16-87; 10:02 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (52 FR 47096 December 11, 1987).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 8, 1987.

CHANGES IN THE MEETING: Time change/deletion/additional item.

A closed meeting scheduled for Wednesday, December 16, 1987, at 2:30 p.m., has been rescheduled for Wednesday, December 16, 1987, at 1:45 p.m.

The following item will not be considered at a closed meeting scheduled for Wednesday, December 16, 1987, at 1:45 p.m.:

Settlement of injunctive action.

The following additional item will be considered at a closed meeting scheduled for Wednesday, December 16, 1987, at 1:45 p.m.:

Status report of judicial proceeding.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2014.

Jonathan G. Katz,

Secretary.

December 14, 1987.

[FR Doc. 87-29172 Filed 12-16-87; 1:08 pm]

BILLING CODE 8010-01-M

Reader Aids

Federal Register

Vol. 52, No. 243

Friday, December 18, 1987

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

210.....47112
226.....47592
229.....47112
701.....46601, 47014

13 CFR

102.....47699
Proposed Rules:
121.....47937

14 CFR

21.....46348
25.....46348
39.....45612-45614, 45808-45810, 46064-46067, 46452, 46739, 46985-46995, 47387, 47551, 47702-47704, 47990
71.....45615, 45616, 46556, 46740-46742, 46995-46997, 47304, 47308, 47676
75.....47677
91.....47672
97.....45617, 46743
121.....45910, 47991
135.....45910, 47991
1208.....48015
1213.....45935
1221.....45811
Proposed Rules:
Ch. I.....45831
39.....45640, 45642, 45831, 46094, 46776, 47015, 47016 47399-47401, 47943-47946
43.....47680
71.....45644, 46778, 46779, 47017-47020, 47402, 47727
73.....47021
91.....47680

15 CFR

11.....48015
371.....45618
374.....45618
385.....46886
399.....46886, 47388
801.....46587
Proposed Rules:
18.....47597

16 CFR

6.....45619
13.....45937
305.....46888
1015.....45631
Proposed Rules:
13.....45645, 45970, 45972
453.....46706
1016.....47599

17 CFR

1.....46070, 47705
211.....46454
274.....46350
Proposed Rules:
34.....47022
240.....48125

18 CFR

2.....47897, 47914
157.....47897
271.....46072
284.....47914
380.....47897
389.....45823
1306.....48015
1312.....47720
Proposed Rules:
1310.....47728

19 CFR

Proposed Rules:
4.....46602
101.....47908
128.....47729
143.....47729
177.....47601

20 CFR

355.....47705
404.....47914
Proposed Rules:
365.....47601
614.....46604

21 CFR

74.....45938
176.....46968
184.....47918
333.....47312
369.....47312
520.....48094
558.....48095
Proposed Rules:
182.....46968
352.....46095

22 CFR

302.....47714
502.....47991
Proposed Rules:
502.....47029
1506.....46779

23 CFR

Proposed Rules:
625.....47403
635.....45645

24 CFR

3280.....47552
Proposed Rules:
42.....47953
43.....47953
813.....46614
885.....46614

25 CFR

Proposed Rules:
177.....46781

26 CFR

1.....47554
31.....45632
35a.....46075
54.....46747
602.....46075, 46747, 47554
Proposed Rules:
1.....45835, 47609
48.....45901
54.....46782
602.....46782, 47609

27 CFR

9.....46589
19.....47557
25.....47557
47.....48096
240.....47557
250.....46592, 47557
270.....47557
275.....47557
285.....47557
Proposed Rules:
250.....46628

28 CFR

Ch. VII.....48097
2.....46596, 47921
549.....48068
Proposed Rules:
701.....47406

29 CFR

12.....48015
1910.....46075, 46168
1915.....46075
1917.....46075
1918.....46075
1926.....46075, 46168
1928.....46075
1952.....48103
2613.....47561
2617.....47561
2619.....47561, 47562
2621.....47563
2676.....47564
Proposed Rules:
103.....47029
1910.....47097

30 CFR

779.....47352
780.....47352
783.....47352
784.....45920, 47352
816.....47352
817.....45920, 47352
935.....46597
942.....47716
Proposed Rules:
904.....47411
935.....46377, 46379, 46783, 48125
952.....46095
953.....46097

31 CFR

351.....46455
Proposed Rules:
0.....45648

32 CFR

41.....46997
209.....47389
229.....47720
259.....48015
536.....45938
706.....46080, 47922
1900.....46456
Proposed Rules:
199.....46098, 47029
1636.....47949
1656.....47949

33 CFR

62.....46351
95.....47526
100.....46351
110.....46760
117.....46081, 47391, 47923
146.....47526
150.....47526
165.....46351, 47924
173.....47526
177.....47526
Proposed Rules:
165.....45973, 47413
179.....47950

34 CFR

15.....48015
668.....45712, 46353
674.....45738
675.....45738
676.....45738
690.....45712
Proposed Rules:
251.....47951
333.....46720
776.....47538
778.....46784
790.....46785

36 CFR

296.....47720
904.....48015
1155.....47717

37 CFR

Proposed Rules:
304.....45664

38 CFR

4.....46439
21.....45633
25.....48015
Proposed Rules:
21.....46494

39 CFR

224.....46998
225.....46998
226.....46998
227.....46998
228.....46998
229.....46998
777.....48029

40 CFR

4.....48015
52.....45634, 45958, 45959, 46463, 46762, 46764, 47392, 47565, 47566, 47925
60.....47826
81.....46081, 46465
82.....47486
85.....46354
86.....47858
123.....45823
144.....45788, 46946
180.....45824, 46019, 46598, 47990
260.....46946
264.....45788, 46946
265.....45788
270.....45788, 46946
271.....45634, 45788, 46466
355.....48072
600.....47858
716.....47990
Proposed Rules:
35.....46712
52.....46495, 46786, 47610
60.....47032
62.....46380
80.....47032
82.....47489
86.....47032
180.....47733, 47734
600.....47032

721 46496

41 CFR

101-6 45926
101-7 45825
101-44 47393
101-47 46467
105-51 48015
105-55 46468
114-50 48015
128-18 48015
201-1 46468
201-2 46468
201-23 46468
201-24 46468

42 CFR

124 46022
401 48112
405 48112
408 48112
417 47003
431 47926
435 47926
440 47926
441 47926
466 47003
476 47003
Proposed Rules:
405 47990
409 48127
410 48127
416 48127
421 48127
435 47414
436 47414
441 48127
442 47990
488 47990
489 ..... 47990, 48127

43 CFR

4 ..... 46355, 47097
7 47720
3420 46469
3460 46469
3560 48124
Proposed Rules:
3450 46499

44 CFR

25 48015
65 46501
67 46505
Proposed Rules:
67 ..... 46787, 47611

45 CFR

15 48015
Proposed Rules:
233 47420

46 CFR

4 47526
5 47526
26 47526
35 47526
78 47526
97 47526
109 47526
167 47526
185 47526
196 47526
197 47526
560 45960
586 46356
Proposed Rules:
38 45665
42 47422
44 47422
45 47422
54 45665
69 46103
98 45665
151 45665
170 47422
174 47422
249 48077
503 45835
572 46501
588 46505

47 CFR

15 45961
25 45636
73 ..... 45636, 45963-45965, 46598, 46599, 47004, 47567, 47722-47724, 47935
74 47567
76 ..... 45961, 46363
90 47569
Proposed Rules:
1 46628
15 47615
43 46628
64 47951
73 ..... 45974, 45975, 46629-46631, 47032, 47033, 47735, 47736, 48130-48133
80 45665

48 CFR

232 47005
519 47396
532 47005
552 47005
553 47006
819 46082
1801 46765
1805 46765
1807 46765
1808 46765
1809 46765
1812 46765
1813 46765
1815 46765
1827 46765
1830 46765
1831 46765
1832 46765
1836 46765
1837 46765
1852 ..... 46765, 47935
1853 46765
2401 47395
2402 47395
Proposed Rules:
31 46043
245 47427
2409 46560
2412 46560
2413 46560
2415 46560
2416 46560
2417 46560
2424 46560
2427 46560
2432 46560
2434 46560
2437 46560
2442 46560
2446 46560
2451 46560
2452 46560
2453 46560
2470 46560
5706 47033

49 CFR

1 ..... 46364, 46478, 47007, 47097
24 47994
25 48015
571 ..... 46479, 46480
1002 46481
1007 46481
1011 ..... 45636, 46773
1052 45966
1103 46481
1150 46481
1152 ..... 45636, 46773
1160 ..... 45827, 46481
1162 46481
1169 46481
1171 46481
1177 46481
1180 46481
1182 46481
Proposed Rules:
24 45667
173 ..... 46510, 46511
383 47326
701 46381

50 CFR

14 46019
17 ..... 46083, 46085
20 46087
80 47571
611 ..... 45966, 46484
642 47724
649 46088
650 46485
652 47008
675 ..... 45966, 46484
681 47572
Proposed Rules:
17 ..... 45976, 46106, 46334, 46336
20 47428
21 47428
253 47990
655 47034
658 47615
663 45668

LIST OF PUBLIC LAWS

Last List December 17, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 578/Pub. L. 100-192

To amend the National Trails System Act to designate the Trail of Tears as a National Historic Trail. (Dec. 16, 1987; 101 Stat. 1309; 1 page) Price: $1.00

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