9-9-88
Vol. 53 No. 175
Pages 35061-35190

federal register

Friday
September 9, 1988

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

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for 6 months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: September 13; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Doris Tucker, 202–523–3419

CHICAGO, IL

WHEN: September 19; at 9:15 a.m.
WHERE: Room 3320, Federal Building, 230 S. Dearborn St., Chicago, IL
RESERVATIONS: Call the Federal Information Center, Chicago 312–353–5692

Contents

Federal Register
Vol. 53, No. 175
Friday, September 9, 1988

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 53, No. 175
Friday, September 9, 1988

Presidential Documents

Title 3—

The President

Proclamation 5851 of September 7, 1988

Citizenship Day and Constitution Week, 1988

By the President of the United States of America

A Proclamation

Two centuries and more ago, America was blessed with the vision of freedom and with the will and ability to achieve and sustain it for posterity. We founded a Republic in which "We the People" would set limits on the power of government, and not the other way around—in which government would be forever bound to respect and to preserve life and liberty for everyone alike. The Nation thus begun was no accident, but rather the creation of men and women of character, idealism, and incredible capacity for self-sacrifice in our country's cause. All throughout our history, in peace and in war, Americans have loved and labored in defense of our Independence and our rights. For these reasons, and because freedom has enemies in every generation, Citizenship Day and Constitution Week ought to remind each of us that we must never take for granted our existence as a free land.

The men of genius who pledged their lives, their fortunes, and their sacred honor as they signed our Declaration of Independence did not take our liberty or our citizenship as Americans for granted. Neither did those who painstakingly framed our Constitution and held for the Bill of Rights during our days as a fledgling Nation. Those who have served and sacrificed in uniform through the centuries have surely taken the blessings of liberty very seriously. So have the millions of immigrants who have braved countless obstacles to reach the safety and freedom of our shores.

Remembrance of the heritage of liberty and love of country embodied in our citizenship and Constitution is our duty and delight as Americans. We are continuing to celebrate the Bicentennial of the Constitution, as well as its ratification and the adoption of the Bill of Rights, with appropriate themes and programs through 1991; each of us now should offer our allegiance anew as we pledge to live by the principles of our land and to do our part in preserving liberty for the generations yet unborn.

We will have a special chance to do this during Constitution Week, 1988, because the Commission on the Bicentennial of the United States Constitution is recommending, and I am encouraging, that schools, social clubs, and community organizations make it possible for local citizens who so desire to affirm their citizenship by taking this oath of citizenship: "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; and that I will well and faithfully discharge my duties and responsibilities as a citizen of the United States."

We should do so while keeping in mind the truth that Dwight David Eisenhower, then Supreme Commander of Allied Forces in Europe, expressed eloquently during the dark days of World War II: "The winning of freedom is not to be compared to the winning of a game—with the victory recorded forever in history. Freedom has its life in the hearts, the actions, the spirits of men and so must be daily earned and refreshed—else like a flower cut from its life-giving roots, it will wither and die."

The Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 as "Citizenship Day" in commemoration of the signing of the Constitution and in recognition of all who, by birth or by naturalization, have attained the status of citizenship, and authorized the President to issue annually a proclamation calling upon officials of the government to display the flag on all government buildings on that day. Also, by joint resolution of August 2, 1956 (36 U.S.C. 159), the Congress designated the week beginning September 17 and ending September 23 of each year as "Constitution Week" in recognition of the historic importance of the Constitution and the significant role it plays in our lives today.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 17, 1988, as Citizenship Day and call upon appropriate government officials to display the flag of the United States on all government buildings. I urge Federal, State, and local officials, as well as leaders of civic and educational organizations, to conduct ceremonies and programs that day to commemorate the occasion.

Furthermore, I proclaim the week beginning September 17 and ending September 23, 1988, as Constitution Week, and I urge all Americans to observe that week with appropriate ceremonies and activities, including the aforementioned oath of citizenship, in their schools and other suitable places.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-20639
Filed 9-7-88; 4:30 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5852 of September 7, 1988

Emergency Medical Services Week, 1988

By the President of the United States of America

A Proclamation

At some point, virtually all of us or members of our families have witnessed or benefited from the life-saving actions of the dedicated members of emergency medical service teams. These skillful Americans richly deserve the gratitude and esteem of all their countrymen, every day of the year and especially during Emergency Medical Services Week.

Those who make up emergency medical service teams—doctors and nurses, medical technicians and paramedics, and educators and administrators, as well as many devoted volunteers and members of law enforcement, fire fighters, and park rangers—work together for all of us. Every day, their knowledge, training, and efficiency help them save lives and care for accident victims and the critically ill. Often, they must work under difficult or even dangerous conditions; but always, they seek and strive to preserve life and health.

The efforts of emergency medical service teams extend also to research into the discovery of new methods and technology for the improvement of their work; to establishment and enhancement of strong professional standards; and to effective public education to reduce loss of life from emergencies. The experienced emergency medical service personnel in our neighborhoods and communities can teach us all a great deal about accident prevention, good health habits, cardiopulmonary resuscitation (CPR), and what to do in medical emergencies.

Let us each be sure to offer all emergency medical service team members our support, cooperation, consideration, and thanks for all they do, day in and day out.

The Congress, by House Joint Resolution 539, has designated the week beginning September 18, 1988, as "Emergency Medical Services Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 18, 1988, as Emergency Medical Services Week, and I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-20640
Filed 9-7-88; 4:31 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5853 of September 7, 1988

Minority Enterprise Development Week, 1988

By the President of the United States of America

A Proclamation

America's economic progress depends on full participation by all our citizens. Our Nation will continue to command economic respect worldwide into the 21st century, but we will do so only so long as we continue to maintain our technological prowess; rekindle our entrepreneurial spirit; reduce government intervention in the marketplace; and seek to ensure that Americans of all races, creeds, colors, and national origins have every chance to take full part in the domestic and international economy.

Our more than 800,000 minority business men and women truly exemplify the meaning of entrepreneurship—the overcoming of every obstacle in the effort to find and fulfill efficiently a need for a product or service. Minority entrepreneurs are an indispensable force in our economy, enhancing life for all Americans by introducing innovations in business and by participating more extensively in the Federal procurement process with the cooperative support of government.

It is particularly important now to encourage minority business owners to pursue available export opportunities. Such trade can make minority entrepreneurs instrumental in export markets and create a wide range of new opportunities.

During Minority Enterprise Development Week, and throughout the year, we can all be deeply thankful for the economic freedom that enables America's business men and women, including minorities, to seek their vision of a better future for themselves, their children, and their country.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of October 2 through October 8, 1988, as Minority Enterprise Development Week. I call upon all Americans to join with minority business enterprises across our country in appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-20641
Filed 9-7-88; 4:32 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 175
Friday, September 9, 1988

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations; Interest Credit Continuation

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding section 502 Rural Housing (RH) loans. This action is taken to implement a provision of law. The intended effect is to remove program restrictions on the provisions of interest credit assistance.

EFFECTIVE DATE: October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Neal A. Hayes, Jr., Senior Loan Officer, Single Family Housing, Processing Division, Farmers Home Administration, USDA, Room 5344, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382–1474).

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor". This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on budget levels, and funding allocations will not be affected because of this action.

Background

A proposed rule published in the **Federal Register** (53 FR 14810) on April 26, 1988, invited the public to submit written comments for the Agency to consider with regard to the development of the final rule. Five (5) comments were received from interested persons representing housing advocacy groups and FmHA employees.

Discussion of Comments

1. All of the respondents expressed positive opinions on the proposed regulation revision.

One of the five respondents desired the Agency to modify the $5 monthly and $60 annually eligibility threshold criteria and retain the appeal right exclusions.

The Agency has fully considered the respondents comments regarding the monetary eligibility threshold criteria and retention of the appeal right exclusions. Previous administrative actions have determined and established a minimum monetary eligibility threshold to serve as the eligibility basis for interest credit assistance. Adoption of a graduated monetary eligibility threshold criteria would create an unnecessary burden to the Agency in the administration of its interest credit assistance program. The proposed modification to the appeal right exclusion was not adopted by the Agency. Regulations provide for a review of Agency decisions relative to the verification of applicant/borrower incomes versus eligiblity to receive Interest Credit Assistance (ICA).

Therefore, the ICA regulation revisions, except § 1944.34(l), as contained in the proposed rule are being adopted by the Agency.

2. Two of the five respondents provided additional comments concerning a modification to a portion of the interest credit assistance regulations; namely, FmHA Instruction 1944–A, § 1944.34 (f)(5)(iii), titled "Existing loans."

It was suggested that FmHA provide interest credit assistance to borrowers who initially received interest credit assistance, subsequently, graduated to note rate terms and have now experienced a severe loss of income and remain classified as "moderate income" borrowers.

The comments are appreciated but are beyond the scope of the changes proposed at this time. These comments will be evaluated in the pending major revisions to FmHA Instruction 1944–A, which will be published in the **Federal Register** as a proposed rule at a later date.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410.

For the reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The Regulatory Flexibility Act, Pub. L. 96–354, requires the Agency to examine the impact of a rule on small entities. Vance L. Clark, Administrator of the Farmers Home Administration, has determined that this final rule action will not have a significant economic impact on a substantial number of small entities because it deals with the extension of subsidy assistance only to individual Farmers Home Administration single family housing borrowers.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan program—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

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

PART 1944—HOUSING

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

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

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

2. Section 1944.34(g)(2)(i)(C) is amended by removing the last sentence.

3. In § 1944.34 paragraphs (i)(1)(ii) and (i)(3)(i) are revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(i) * * *

(1) * * *

(ii) Interest credit will not be renewed if the amount of interest credit for which the borrower qualifies is less than $5 monthly or $60 annually.

* * * * *

(3) * * *

(i) *Increased adjusted income.* If the County Supervisor determines that the borrower's adjusted income has increased to the level where the interest credit is less than $5 monthly or $60 annually, the interest credit will be canceled effective the date the County Supervisor becomes aware of the situation. The borrower will be notified in accordance with paragraph (l) of this section.

* * * * *

Date: August 18, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-20580 Filed 9-8-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

[Docket No. 88-117]

9 CFR Part 97

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by removing, and adding, commuted traveltime allowances in Connecticut, Georgia, Maine, Massachusetts, New York, Texas, and Vermont.

A commuted traveltime allowance is the time required for a VS employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: September 9, 1988.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8513.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, Chapter I, Subchapter D, and 7 CFR, Chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR Part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a VS employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by removing, and adding, commuted traveltime allowances between certain locations in Connecticut, Georgia, Maine, Massachusetts, New York, Texas, and Vermont. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations. Executive Order 12291 And Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making it effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

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

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR Part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by removing and adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Remove:			
* * * * *			
Connecticut			
* * * * *			
Bradley International Airport, Windsor Locks.	East Providence, RI.		4
Do	Harwinton, CT		2
Do	Stockbridge and East Brookfield, MA.		3
Do	Storrs, CT		3
* * * * *			
Georgia			
* * * * *			
Atlanta International Airport.	Ellijay		6
* * * * *			
Maine			
* * * * *			
Bangor	Carmel		1
* * * * *			
Vermont			
* * * * *			
Burlington International Airport.	Highgate Springs.		2
Do	Montpelier		2
Derby Line	St. Albans		4
* * * * *			
Add:			
* * * * *			
Connecticut			
* * * * *			
Bradley International Airport, Windsor Locks.	Northboro, MA		4
Do	Waterbury, CT		3
Do	N. Stonington, CT.		4
* * * * *			
Georgia			
* * * * *			
Atlanta International Airport.	Covington		3
* * * * *			
Maine			
* * * * *			
Bangor	Newport		1
Jackman	Augusta		6
* * * * *			
Massachusetts			
* * * * *			
Boston	Northboro		4
Do	N. Attleboro		4
* * * * *			
New York			
* * * * *			
Champlain	Milton, VT		3
Do	Calais, VT		5
* * * * *			
Texas			
* * * * *			
Forney	Corsicana		3
Do	Ft. Worth		3
Do	Tyler		3

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * * * *			
Vermont			
* * * * *			
Burlington International Airport.	Milton		1
Do	Calais		3
Derby Line	Milton		4
Do	Calais		4
Highgate	Milton		2
Do	Calais		4
* * * * *			

Done in Washington, DC, this 2nd day of September 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20499 Filed 9-8-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-32]

Special Local Regulations for the Hampton Bay Days Festival, Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the Hampton Bay Days Festival, a weekend event held in September each year. Notice of the precise dates and times of the events will be published annually in the Local Notice to Mariners and in the **Federal Register**. The special local regulations govern vessel activities during the festival and are considered necessary due to the potential dangers to waterway users, the confined nature of the waterway, and the expected spectator craft congestion during the festival.

EFFECTIVE DATES: These regulations are effective on September 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804-398-6204).

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking in the **Federal Register** on July 13, 1988, (53 FR 26449). Interested persons were requested to submit comments. No comments were received. Good cause exists under 5 U.S.C. 553 for making this rule effective in less than 30 days after publication in the **Federal Register**. Delaying the effective date would result in a significant adverse impact on this year's festival, since the required safety area would not be provided.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. The regulations as proposed are adopted. By a separate notice published in this issue of the **Federal Register**, these regulations are made applicable to the 1988 Hampton Bay Days Festival that will be held during the following times and dates:

(a) 3:30 p.m. to 8:00 p.m., September 9, 1988.

(b) 9:30 a.m. to 10:30 p.m., September 10, 1988.

(c) 12:30 p.m. to 2:30 p.m., September 11, 1988.

Economic Assessment and Certification

These regulations are considered non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policy and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.508 is added to read as follows:

§100.508 Hampton River, Hampton, Virginia.

(a) *Definitions*—(1) *Regulated Area:* The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01'03.0" North, longitude 76°20'26.0" West, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01'01.5" North, longitude 76°20'32.0" West.

(2) *Spectator Vessel Anchorage Areas*—(i) *Area A.* Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01'48.0" North, longitude 76°20'22.0" West, across the river to the eastern shore at latitude 37°01'44.0" North, longitude 76°20'13.0" West, and to the north by the C & O Railroad Bridge. The anchorage area will be marked by orange buoys.

(ii) *Area B.* Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Bayberry Psychiatric Hospital. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01'26.0" North, longitude 76°20'24.0" West, latitude 37°01'22.0" North, longitude 76°20'26.0" West, and latitude 37°01'22.0" North, longitude 76°20'23.0" West. The anchorage area will be marked by orange buoys.

(3) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Hampton Roads.

(b) *Special Local Regulations*—(1) Except for vessels operated by Bay Days, Inc., participants in the Hampton Bay Days Festival, and as provided in paragraph (b)(2) of this section; no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Spectator vessels may enter and anchor in the special spectator anchorage areas described in paragraph (a)(2) of this section without the permission of the Patrol Commander, if they proceed at a slow, no wake speed while in the regulated area.

(3) Vessels less than 20 meters long may anchor in the special anchorage areas described in paragraph (a)(2) of this section without exhibiting the anchor lights and shapes required by Inland Navigation Rule 30, 33 U.S.C. 2030.

(4) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective period:* This section is effective during Hampton Bay Days Festival events, and or one hour before each event starts and one hour after each event ends. The Commander, Fifth Coast Guard District publishes a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates this section is in effect.

Dated: August 30, 1988.

W.J. Ecker,

Acting Captain, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-20544 Filed 9-8-88; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[OGD 05-88-69]

Special Local Regulations for the Hampton Bay Days Festival, Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.508.

SUMMARY: This notice implements 33 CFR 100.508 for the 1988 Hampton Bay Days Festival. This event will be held on September 9, 10, and 11, 1988, on the Hampton River, in and around downtown Hampton, Virginia. These special local regulations are considered necessary to control vessel traffic due to the confined nature of the waterway and the expected vessel congestion at the time of the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants in the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.508 are effective during the following periods:

(a) 3:30 p.m. to 8:00 p.m., September 9, 1988.

(b) 9:30 a.m. to 10:30 p.m., September 10, 1988.

(c) 12:30 p.m. to 2:30 p.m., September 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The regulations in 33 CFR 100.508 govern the activities of the Hampton Bay Days Festival held on the Hampton River, in and around downtown Hampton, Virginia. The implementation of 33 CFR 100.508 also implements as special anchorage areas the spectator anchorages designated in that section for use by vessels during the event. Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30, 33 U.S.C. 2030(g).

Bay Days, Inc. has submitted an application to hold the Hampton Bay Days Festival on the Hampton River, in and around downtown Hampton, Virginia on September 9, 10, and 11, 1988. The event will consist of a parade of boats, water ski shows, various type boat races, and a fireworks display. The event will be regulated by 33 CFR 100.508.

Since these regulations were specifically established for the Hampton Bay Days Festival, to enhance the safety of the participants and spectators viewing the event, the regulations are hereby implemented.

This implementation also will be published in the Local Notice to Mariners.

Date: August 30, 1988.

W.J. Ecker,

Acting Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-20545 Filed 9-8-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 367

Independent Living Services for Older Blind Individuals

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends Part 367 to display and codify the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements contained in the regulations. The Department must display and codify the control numbers to comply with applicable statutory and regulatory requirements. Publication of these control numbers informs the public that OMB has approved the information collection requirements and that they have taken effect.

EFFECTIVE DATE: September 9, 1988.

FOR FURTHER INFORMATION CONTACT: Yvonne Neal, Rehabilitation Services Administration, U.S. Department of Education, Room 3328, Mail Stop 2312, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202. Telephone (202) 732-1410.

SUPPLEMENTARY INFORMATION: Final regulations for Part 367 were published in the **Federal Register** on July 15, 1988 (53 FR 26976). At the time of publication of the regulations, it was noted that §§ 367.20 and 367.21 contained information collection requirements under review by the Office of Management and Budget (OMB), and those sections would become effective after approval by OMB under the Paperwork Reduction Act of 1980.

On August 9, 1988, OMB approved the information collection requirements in §§ 367.20 and 367.21 under control number 1820-0018.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, because this amendment is technical and will not have a substantive impact, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations contain only technical amendments and would not have a significant impact on any entities.

List of Subjects in 34 CFR Part 367

Education, Independent living services, Older blind individuals, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.177, Independent Living Services for Older Blind Individuals Program)

Dated: August 16, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 367 of Title 34 of the Code of Federal Regulations as follows:

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

1. The authority citation for Part 367 continues to read as follows:

Authority: 29 U.S.C. 796f, unless otherwise noted.

§§ 37.20 and 37.21 [Amended]

2. Sections 367.20 and 367.21 are amended by adding:

"(Approved by the Office of Management and Budget under control number 1820-0018)" following the authority citation for each section.

[FR Doc. 88-20520 Filed 9-8-88; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3442-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving revisions to the Vehicle Inspection and Maintenance (I/M) portion of Wisconsin's Carbon Monoxide (CO) and Ozone, State Implementation Plan (SIP). The State of Wisconsin submitted a revised Table 1 for Natural Resources (NR) 485.04, Wisconsin Administrative Code [1]. The State has subsequently recodified its environmental regulations into the Wisconsin Administrative Code NR 485.04 (formerly 154.17). USEPA is reviewing Wisconsin's recodified volatile organic compound (VOC) rules and will rulemake on the recodified VOC Rules in the near future.

Operating statistics from the first year of the program show that some model years are carrying a greater burden for achieving emission reductions, as demonstrated by the relatively high failure rates for particular model year vehicles, as compared to other model year vehicles. The intent of the submitted SIP is to revise the emission standards to distribute more evenly the derived emission reduction among the model years.

EFFECTIVE DATE: This action will be effective November 8, 1988 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

Copies of this revision to the Wisconsin SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

ADDRESSES: Copies of the SIP revision, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 353-3849 before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Public comments to be considered, must be received by 30 days from date of publication.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 353-3849.

SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA), as amended in

[1] Wisconsin Administrative Code NR 485.04 (formerly NR 154.17)

1977, requires the States to submit SIPs by January 1, 1979, that would demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) through adopted emission control strategies. SIPs were required to demonstrate compliance with the primary ozone and carbon monoxide (Ozone/CO) NAAQS by December 31, 1982. The CAA provided for the extension of the deadline to December 31, 1987, for ozone and CO attainment if the States could show the NAAQS could not be met by the end of 1982, despite the implementation of all reasonably available control measures. In order to receive an extension, States were required to submit revised Ozone/CO SIPs that included commitments to implement a vehicle (I/M) program on an expeditious schedule but no later than December 31, 1982. The 1982 Ozone/CO SIP approval policy published on January 22, 1981 (46 FR 7182), discusses the 1982 Ozone/CO SIP approval requirements. Wisconsin requested and received the 5-year extension of the Ozone/CO deadline for Southeastern Wisconsin. USEPA approved the Wisconsin CO 1982 SIP on March 9, 1984 (49 FR 8920), its 1982 Ozone SIP on March 9, 1984 (49 FR 8920), and the I/M SIP on February 25, 1985 (50 FR 7593).

On November 20, 1986, the State of Wisconsin submitted a revision to the I/M portion of its Ozone/CO SIP. This was a revised NR 485.04, Wisconsin Administrative Code, plus State SIP Revision Certification (certifying that a public hearing was held).

The SIP design projected a failure rate for the federally approved Wisconsin I/M program of 20 percent (%). Although, the program's actual failure rate was 20.4%, some model years were bearing a greater burden of the emission reductions than others. For instance, operating statistics for the first part of the program show that the 1978 model year vehicles have a 33.1% failure rate, while the 1977 model year had a 26.3% failure rate. The State requested the following changes to the emission standards portion of the I/M SIP, so as to eliminate the disparity in the percentage of pre-1981 vehicles that fail, respective to any particular model year. It should be noted that the Wisconsin I/M program covers vehicles from the last 20 model years. Therefore, the 1968–1969 model year category has been eliminated in the proposed emission standards.

MAXIMUM EMISSION CONCENTRATION—LIGHT DUTY VEHICLES

Model year	Cutpoints used before Nov. 1, 1986 (previous SIP)		Cutpoints used after Nov. 1, 1986 (being approved today)	
	HC (ppm)	CO (%)	HC (ppm)	CO (%)
1968–1969	800	8.0	.....	.....
1970–1971	800	8.0	800	8.0
1972–1974	700	7.0	550	7.0
1975–1977	600	6.0	450	5.5
1978	400	4.0	350	4.0
1979	400	4.0	275	3.0
1980	275	2.5	230	2.0
1981–1989	220	1.2	220	1.2

MAXIMUM EMISSION CONCENTRATION—LIGHT DUTY TRUCKS (6,000 LBS. OR LESS)

Model year	Cutpoints used before Nov. 1, 1986 (previous SIP)		Cutpoints used after Nov. 1, 1986, (Being approved today)	
	HC (ppm)	CO (%)	HC (ppm)	CO (%)
1968–1969	800	8.0	.....	.....
1970–1971	800	8.0	800	8.0
1972–1974	700	7.0	700	7.0
1975–1977	600	6.0	500	6.0
1978	600	6.0	450	5.0
1979	400	4.0	300	3.0
1980	400	4.0	275	2.5
1981–1984	400	4.0	250	2.0
1985+	220	1.2	220	1.2

MAXIMUM EMISSION CONCENTRATION—LIGHT DUTY TRUCKS (6,001 TO 8,000 LBS.)

Model year	Cutpoints used before Nov. 1, 1986 (previous SIP)		Cutpoints used after Nov. 1, 1986 (being approved today)	
	HC (ppm)	CO (%)	HC (ppm)	CO (%)
1968–1969	1,450	9.0	.....	.....
1970–1971	800	8.0	800	8.0
1972	800	8.0	700	7.0
1973–1974	700	7.0	700	7.0
1975–1977	700	7.0	550	6.5
1978	700	7.0	450	5.0
1979	400	4.0	300	3.0
1980	400	4.0	275	2.5
1981–1984	400	4.0	250	2.0
1985+	220	1.2	220	1.2

Conclusion

USEPA approves the revised emissions standards in the SIP, because they should lead to greater emissions reductions, while at the same time distributing more evenly the emissions reductions by model year. USEPA determined that no further emission reduction analysis was necessary because the State had already met the emission reduction requirements with the 20.4% existing emission standards.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 8, 1988. However, if we receive notice by October 11, 1988 that someone wishes to submit critical comments, *then* USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this actions must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

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

Dated: August 11, 1988.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Authority: 42 U.S.C. 7401–7642.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(50) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(50) On November 20, 1986, the State of Wisconsin submitted a revision to the Vehicle Inspection and Maintenance program (I/M) portion of its ozone/CO SIP. This was a revised rule Table 1 for NR 485.04, Wisconsin Administrative Code, plus State SIP Revision Certification.

(i) Incorporation by reference.

(A) Wisconsin revised rule NR 485.04, Wisconsin Administrative Code, effective November 1, 1986.

[FR Doc. 88-20240 Filed 9-8-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86-01; Notice 6]

RIN: 2127 AC32

Insurer Reporting Requirements; List of Insurers Required To File Reports in October 1988

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

ACTION: Final rule.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires each passenger motor vehicle insurer to file annual reports with this agency, unless the insurer is exempted by this agency from filing such reports. This law stipulates that NHTSA can exempt those insurance companies whose market share is below certain percentages in each individual State and for the nation as a whole. To carry out these statutory provisions, the agency has exempted those insurance companies that are lawfully eligible to be exempted and has also published a listing of those insurance companies subject to the reporting requirements of Title VI of the Motor Vehicle Information and Cost Savings Act.

The list of insurance companies required to file reports may differ annually since a company's eligibility for exemption from the reporting requirements may change, as its national and State-by-State market shares change. To properly address this situation, NHTSA publishes annual updates listing the insurance companies that are required to file these reports each year. The updated list is based on the most current market share information available to the agency. Those insurance companies included on the list at the end of this rule are required to file reports for the 1987 calendar year not later than October 25, 1988. Any insurance company omitted from this list is *not* required to file a report for the 1987 calendar year.

EFFECTIVE DATES: The final rule on this subject will be effective October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washingon, DC 20590 (202) 366-4808.

SUPPLEMENTARY INFORMATION:

Background

Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, which consists of two broad groups of entities. One of these groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that, for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and are not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this rule.

The other broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the report, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this defintion of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such an insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurer's market shares nationally and in each State. The A.M. Best data base was chosen because it is both accurate and timely, and because its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on two separate considerations. First, NHTSA determined that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis. Second, NHTSA determined that the report data to be provided by insurance companies who were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and an Appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59), and updated these appendices annually. The 20 insurance companies listed in the January 2, 1987, Appendix A had premiums that accounted for 1 percent or more of all motor vehicle insurance premiums paid nationally. Therefore, those companies were required to report on their operations for every State in which they did business. The eleven insurance companies listed in the January 2, 1987, Appendix B had premiums that accounted for 10 percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for 10 percent or more of the total premiums.

The market shares for each of the insurance companies listed in the January 2, 1987, final rule were derived from the A.M. Best data for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. Since that time, A.M. Best data for more recent calendar years have become available. In its January 2, 1987, final rule, NHTSA stated that "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies" (52 FR 62).

Accordingly, the agency published a Notice of Proposed Rulemaking (NPRM) on January 21, 1988, (53 FR 1641), proposing an updated listing of subject insurance companies that must provide annual insurer reports to the agency for the 1987 calendar year. That NPRM used the most current A.M. Best data to determine which insurance companies are statutorily required to file reports by October 25, 1988. That notice proposed that all insurance companies that were statutorily eligible for an exemption from these reporting requirements should be exempted.

No comments were received on the proposed rule. For the reasons set forth above and in the NPRM, this final rule adopts the proposed listings for both Appendix A and Appendix B.

This rule is effective 30 days after publication in the **Federal Register**. As noted earlier in this preamble, section 612 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers that were not exempted from these reporting requirements to file a report for the 1987 calendar year no later than October 25, 1988.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule, reflecting more current A.M. Best data, affects the impacts described in the final regulatory evaluation prepared for 49 CFR Part 544. Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the final regulatory evaluation for Part 544, the agency estimates that it will cost the five insurance companies added to Appendix A about $100,000 each to file an initial report, while saving about $50,000 each for the three companies deleted from Appendix A. The company that is deleted from Appendix B will save about $20,000. Therefore, the net total impact of these changes is estimated to be a cost increase of approximately $330,000 for insurance companies. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing 49 CFR Part 544. Interested persons may wish to examine that evaluation in connection with this rule. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling at (202) 366-4949.

2. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through July 31, 1990 (OMB approval number 2127-0547).

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Section 612(a)(5)(C) defines "small insurer" in part as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. None of the 27 companies listed in Appendices A or B is a self-insured motor vehicle rental or leasing company and all these companies exceed the "small insurer" standards outlined in section 612(a)(5)(C). Therefore, I certify that the final rule will not have a significant economic impact on a substantial number of small entities.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for Part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to Part 544 is revised to read as follows:

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
Hartford Insurance Group
USAA Group
United States F&G Group
Geico Corporation Group
American International Group
CIGNA Group
Continental Group
Fireman's Fund Group
CNA Insurance Group
California State Auto Association
American Family Group
Progressive Group
Crum & Forster Companies

3. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alabama Farm Bureau Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
Commercial Union Assurance Group (Maine)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)

Issue Date: September 6, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-20564 Filed 9-8-88; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 87-04; Notice 4]
RIN: 2127-AC 73

Federal Motor Vehicle Safety Standards; Air Brake Systems

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

ACTION: Final rule; partial response to petitions for reconsideration; delay of effective date.

SUMMARY: In a final rule published in the **Federal Register** (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, *Air Brake Systems*, to clarify the standard's parking brake requirements. The amendments permitted manufacturers to comply with the new requirements as an option to complying with the requirements being superseded effective April 11, 1988, and required mandatory compliance with those requirements effective September 7, 1988 (180 days after publication). In partial response to two petitions for reconsideration, this notice amends the standard by extending for one year (i.e., until September 7, 1989) the period for which manufacturers may comply with either the earlier or new requirements. The agency will later provide a further response to the two petitions for reconsideration.

DATE: The amendments made by this rule are effective September 9, 1988. Petitions for reconsideration must be received by October 11, 1988.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, *Air Brake Systems*, to clarify the standard's parking brake requirements. The amendments required actuation of a mechanical means for holding the parking brakes, within three seconds after operation of the parking brake control. (For trailers, such actuation was required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles were required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also required that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation. The amendments required mandatory compliance effective September 7, 1988 (180 days after publication), while permitting manufacturers to comply with the new requirements as an option to complying with the requirements being superseded effective April 11, 1988.

The agency stated in the March 1988 notice that it believed all parking brakes currently being sold complied with the amendments being adopted. The agency also stated its belief that since any necessary certification could be accomplished by engineering analysis and simple tests, 180 days provided a sufficient time for that purpose.

NHTSA received two petitions for reconsideration. One of the petitioners, Volvo GM Heavy Truck Corporation, requested that the agency rescind the application of the timing amendment to tandem trucks with spring brakes, and that one of the specified conditions for the timing tests (initial reservoir system pressure of 100 psi) be removed. That company asserted that compliance with the standard as amended is not practicable and is unreasonable. Volvo GM suggested that NHTSA was generally correct in stating that the rule did not affect parking brakes currently being sold, but that the agency had overlooked a significant segment of the vehicle population, heavy tandem trucks. That company submitted test results for two heavy trucks. According to Volvo GM, "one exceeds the limit and the other does not contain compliance margins sufficient to accommodate manufacturing tolerances." That company also argued that the test condition which specifies initial reservoir system pressure of 100 psi is design restrictive.

The other petitioner, Navistar International Transportation Corporation, stated that it has confirmed that in its parking brake systems the air pressure drops to zero within the allotted time. That company stated that based upon this fact and the agency's statements in the preamble, it believes that its vehicles comply with the timing requirements of the final rule. Navistar International added, however, that after actuation of the control knob, experience has shown that as much as one revolution of the braked wheels may be necessary to permit the brake shoes to be sufficiently energize to reach peak torque. That company stated that this "wrap up" process can take several seconds, depending on brake characteristics and driver finesse. Navistar International stated that should this "wrap up" movement not be considered permissible by the agency, it requested that its submission be considered a petition for reconsideration of the final rule, to permit the "wrap up" movement.

As is clear from the preamble to the March 1988 final rule, NHTSA did not believe that the amendments would require changes in any parking brakes currently being sold. The agency has not completed its analysis of the two petitions for rulemaking, given the complexity of the issues. However, NHTSA is concerned that the petitions raise the possibility that, contrary to the agency's belief in establishing the March 1988 final rule, some current parking brakes may not comply with the amendments that become effective, on a mandatory basis, on September 7, 1988.

Accordingly, in partial response to the two petitions for reconsideration, NHTSA has decided to delay, for one year, the time the amendments become effective on a mandatory basis. This delay in effective date will permit the agency to complete its analysis of the arguments made by the petitioners, and provide a further response to the petitions. Thus, manufacturers may continue to comply with either the March 1988 requirements or the requirements that were superseded by that notice, until September 7, 1989.

NHTSA finds for good cause that it is in the public interest to establish an immediate effective date for the amendments made by this notice. In the absence of an immediate effective date, manufacturers might be unable to certify that some of their vehicles currently being produced comply with Standard No. 121. The amendments impose no new requirements but instead increase manufacturer flexibility by extending the time they may comply with the alternative parking brake requirements. As discussed above, the new September 7, 1989 effective date will give sufficient time for the agency to complete its analysis of the arguments made by the petitioners, and provide a further response to the petitions.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. Since the amendments impose no new requirements but simply add compliance alternatives until September

7, 1989, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. For the reasons discussed above, the only impacts of the amendments will be in the nature of slight, nonquantifiable cost savings. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

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

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

S 571.121 [Amended]

2. S 5.6.3 of S 571.121 is revised to read as follows:

S 5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S 5.6.3.1 through S 5.6.3.4, except that, at the option of the manufacturer, vehicles manufactured before September 7, 1989 may meet the requirements specified in S 5.6.3.5.

S 5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S 5.6.1 or S 5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing).

S 5.6.3.2 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time of actuation of the parking brake control, the parking brake system shall achieve the minimum parking retardation performance specified in S 5.6.3.1. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the parking brake system shall achieve the minimum retardation performance specified in S 5.6.3.1.

S 5.6.3.3 A mechanical means shall be provided which is capable, with zero air pressure and zero fluid pressure in the vehicle and without electrical power, of holding the parking brake application at a level meeting the minimum parking retardation performance specified in S 5.6.3.1.

S 5.6.3.4 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of operation of the parking brake control, the mechanical means referred to in S 5.6.3.3 shall be actuated. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the mechanical means referred to in S 5.6.3.3 shall be actuated.

S 5.6.3.5 *(Optional requirement for vehicles manufactured before September 7, 1989)* The parking brake system shall be capable of achieving the minimum performance specified either in S 5.6.1 or S 5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

Issued on September 6, 1988.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 88-20551 Filed 9-6-88; 4:11 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Helonias bullata (Swamp Pink) to be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Helonias bullata* to be a threatened species and thereby provides the species needed protection under the authority contained in the Endangered Species Act of 1973, as amended. Approximately 75 populations are known to occur throughout the species' range from New Jersey to Georgia. Thirty-five of the known populations occur in the freshwater wetlands of New Jersey's coastal plain. Sixteen populations are known in Virginia; North Carolina has seven; Delaware has six; and Maryland has four populations. Georgia and South Carolina each have one known population, and the plant is believed extirpated from New York. The species is threatened by the filling and draining of its wetland habitats and by private collecting. Critical habitat is not being determined.

DATE: The effective date of this rule is October 11, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal hours at the U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Anne Hecht at the above address or by telephone (617-965-5100 or FTS 829-9316).

SUPPLEMENTARY INFORMATION:

Background

The swamp pink (*Helonias bullata*) represents a monotypic genus in the lily family (Liliaceae), which historically occurred along small streams and in swamps, bogs, and other wetlands from New York to northern Georgia. Although the first collection of the plant is uncertain, it probably occurred in the Philadelphia area in the mid-1700's by

Swedish naturalist Peter Kalm. Based on Kalm's collections, the plant was described by Linnaeus in the first edition of *Species Plantarum* (Brown 1910).

This perennial species is strikingly attractive and very distinctive. It has many smooth, lance-shaped, evergreen leaves, which grow in a basal rosette from a tuberous rhizome. The stout, hollow stem is 1–2 feet (3–6 decimeters) tall and is topped by a short, dense raceme of pink or purplish flowers that appear in April or early May. The species inhabits a variety of freshwater wetlands including spring seepages, swamps, bogs, meadows, and margins of meandering small streams.

The most significant threat to *Helonias bullata* is the direct loss or alteration of its wetland habitats. Many eastern States have lost a significant percentage of their wetlands since the mid-1900's (Tiner 1986). Ditching and draining of lowlands for agricultural purposes and logging of hardwood swamps are continuing, but the greatest ongoing threat is the direct filling or alteration of inland wetlands due to expanding urbanization. Loss of swamp pink habitat can be attributed to channelization for flood control, ditching and draining for increased agriculture, and filling for housing projects, industrial developments, and highways. The quality of wetlands has also been degraded by sedimentation, water pollution and waste disposal. Several New Jersey populations of *Helonias bullata* have been completely destroyed or severely depleted by erosion and siltation from housing project construction activities.

Approximately 100 populations were known to exist historically in the State of New Jersey, but only 35–40 populations remain there today. Most of the historical sites are presumed to have been lost to filling, draining, and development of wetland habitats. A few populations were found during recent intensive field surveys, but these new populations are small and usually in the vicinity of a previously known colony. Some protection from development is provided to populations within the Pinelands National Reserve (Reserve). These colonies are small, however. Virtually all of the State's largest populations are on private land outside of the Reserve and are therefore vulnerable to expanding urbanization (pers. comm. from D. Snyder, cited in Rawinski and Cassin 1986).

Extensive surveys in Virginia located sixteen occurrences of *Helonias bullata*. All but one of these populations occur within a small area (less than 10 miles across) on the western slopes of the central Blue Ridge Mountains. Ten of the known locations are on the George Washington National Forest. The Forest Service has designated this species as Sensitive, and agency policy protects the plants and their habitat from disturbance. One population is on the Blue Ridge Parkway, and the National Park Service is also committed to the species' protection. Another site is located on a State natural area. The Virginia Natural Heritage Program reports that the completeness of past survey efforts in Virginia makes the discovery of additional populations unlikely. *Helonias bullata* is identified by the Virginia Heritage Program as a strong candidate for State listing, and the Virginia Department of Agriculture and Consumer Services has stated that, "Virginia will probably pursue State listing in the near future."

Seven populations are known to occur in North Carolina, the largest of which is on the Pisgah National Forest. The remaining colonies are on private land. In North Carolina, the plants are found exclusively in mountain bogs. This type of habitat is very rare in the State, and local experts have thoroughly searched most areas where the swamp pink could potentially occur (Sutter 1984). *Helonias bullata* is listed as a threatened species under North Carolina's Plant Protection and Conservation Act of 1979.

Destruction of swamp pink habitat due to agricultural drainage and urbanization has been particularly severe in Delaware. Five colonies are known to have been lost to development, and only six populations remain in the State. Some potential habitat remains to be surveyed, but the possibilities of finding any significant populations are remote. The Delaware Department of Natural Resources and Environmental Control is working to protect the most significant colonies.

One Maryland population straddles land parcels owned by the State and a private party; the other three sites are located entirely on private land. None of these four populations is secure, although the State Natural Heritage Program is working with the landowners to alleviate threats from on-going and planned activities on or adjacent to these sites. A known historical population in Maryland was destroyed by ditching and draining of wetland habitat for agricultural purposes. Maryland lists the swamp pink as a State Endangered plant.

The swamp pink occurs in high mountain bogs in Georgia and South Carolina, each of which has one known population. The scarcity of this habitat type in both States leads local experts to believe there is little chance of discovering additional populations. The Georgia plants occur on private land, and the South Carolina plants are located on State Heritage Trust Land that was recently purchased to protect the site.

The northern limit of the swamp pink's historic range is southern New York. The New York plants were reported to occur on Staten Island and were last seen in the late 1800's. Unsuccessful surveys conducted in other potential habitats suggest that the plant is extirpated from the State. Previous records of the plant's occurrence in Pennsylvania are considered erroneous.

Helonias bullata was recognized by the U.S. Fish and Wildlife Service (Service) as a "Category 2" candidate for Federal listing as a threatened or endangered species in the comprehensive **Federal Register** notice of December 15, 1980 (45 FR 82480) and again in the 1985 updated notice (50 FR 39526). Category 2 candidates are taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on those species, including *Helonias bullata*, was October 13, 1983. In October of 1983, 1984, 1985, 1986, and 1987, the petition finding was made that listing *Helonias bullata* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(iii) of the Act. Such findings require a yearly recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act.

In the fall of 1986 the Service completed a project with the Eastern Regional Office of The Nature Conservancy that assessed the range-wide status of 32 plant candidates including *Helonias bullata*. Extensive field searches were conducted in each State throughout the species' range under direction of the State Natural Heritage Programs. As a result of these investigations, the Conservancy recommended that *Helonias bullata* merited Federal protection under the Endangered Species Act as a threatened species. On February 25, 1988 the Service published a proposed rule (53 FR 5740–5743) finding that listing as a threatened species was warranted and proposing to implement the action in accordance with section 4(b)(3)(B)(ii) of the Endangered Species Act.

Summary of Comments and Recommendations

In the February 25, 1988 proposed rule and associated notifications, all interested parties were requested to submit factual information that might contribute to the development of a final rule. Appropriate State resource agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Notices inviting public comment were published in newspapers of general circulation in each area where *Helonias bullata* is known to occur. Sixteen written comments were received; all supported the proposed rule. Comments updating the data presented in the Background or Summary of Factors Affecting the Species are incorporated in those sections of this final rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helonias bullata* Linnaeus are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The most significant threat to *Helonias bullata* is the direct loss or alteration of its wetland habitats. The plant has been extirpated from many sites in the mid-Atlantic States due to expanding residential, commercial and industrial developments. Increased development has directly destroyed important wetland habitats, and pollution and sedimentation associated with urban and agricultural runoff have rendered many remaining habitats unsuitable for the species.

Ditching and draining of lowland areas to improve or create additional agricultural land have altered the groundwater table of swamp pink habitats. Alteration of the water table adversely affects swamp pink populations by creating unfavorable conditions for the species. Furthermore, changes in the water table modify vegetative succession, encouraging establishment of other more aggressive or non-native plants that then compete with the swamp pink

Many historic swamp pink populations in New Jersey are believed to have been destroyed by filling, draining, or sedimentation of habitat (D. Snyder, cited in Rawinski and Cassin 1986). The North Carolina Division of Parks and Recreation (letter of March 24, 1988) states that, "Wetlands of the type favored by this plant have been eliminated at a very high rate, with over 90% having been destroyed by agricultural drainage, road-building, and urbanization." The Maryland Natural Heritage Program reports that all four populations in that State are threatened by current or proposed activities that could adversely modify their habitat, although all the landowners are presently cooperating with the State and The Nature Conservancy to secure the sites (pers. comm. D. Boone, Maryland Heritage Project, 1988).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Several wildflower books and field guides refer to *Helonias bullata* as one of the most beautiful plants in the eastern United States. Its striking beauty has caused the plant to be sought by garden hobbyists and curiosity seekers. Many plants have also been taken for scientific purposes in documenting the species' range and distribution. Plants have been frequently taken from the single Georgia population by botanists and private collectors without the knowledge and consent of the landowner. The plant is also known as a highly desirable species for home wildflower gardens. A popular wildflower garden guide. *How to Grow Wildflowers, Wild Shrubs and Trees in Your Own Garden,* identifies the desirability of the swamp pink and recommends the plant for private gardens. Commercial collecting and selling of wild plants, however, does not appear to be significant at this time. A few commercial nurseries or gardens do sell plants cultivated from seed.

C. Disease or Predation

Disease is not known to be a threat to existing populations. Deer have extensively browsed some swamp pink colonies, but the specific role deer may play in the life history and ecology of the plant has not been determined.

D. The Inadequacy of Existing Regulatory Mechanisms

Helonias bullata is afforded legal protection in North Carolina by North Carolina General Statute 19B, 202.12–202.19, which protects State listed species by banning intra state trade (without a permit), providing for monitoring and management, and prohibiting taking without written permission of the landowner. The Georgia Wild Flower Preservation Act of 1973 prohibits digging, removal, or sale of State listed plants from public lands without the approval of the Georgia Department of Natural Resources; the single Georgia population, however, is on private land. In 1987, Maryland added the swamp pink to its list of endangered plants. Maryland law prohibits taking of listed plants from private land without the landowner's written permission and from State land without a permit. Maryland also forbids trade and possession of State endangered species. New Jersey Administrative Code 7:50–1 *et seq.* prohibits developments in the vicinity of threatened or endangered plants, including *Helonias bullata*, but only within the boundary of the Pinelands National Reserve. No State laws or regulations currently protect this species in Delaware, Virginia, or South Carolina.

Except within the New Jersey Pinelands, no State law or regulation affords this species protection from the habitat modification activities that pose the most significant threat (as described under factor A, above) to the plant. The North Carolina Plant Protection and Conservation Act specifically states that incidental disturbance of protected plants during agriculture, forestry or development operations is not illegal as long as the plants are not collected for sale or commercial use.

Section 404 of the Clean Water Act provides some controls on modification of wetland habitats. However, many *Helonias bullata* populations are located in headwater or isolated wetlands that may be eliminated by the placement of up to 10 acres of fill under Nationwide Permit No. 26 (33 CFR 330.5(a)(26)). Listing of the species will exempt wetlands where the plants are found from the Nationwide Permit and subject them to individual permit requirements, including consultation under Section 7 of the Endangered Species Act.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

In the southern portion of the species' range, swamp pink populations are frequently associated with plant communities typical of more northern areas. In these areas, groundwater-influenced soils help maintain the perennial cool temperature regimes required by this species. Ditching and draining of adjacent lands for agricultural purposes, suburban

development, industrial parks, etc., or the withdrawal of groundwater for public water supply that could alter the groundwater regime may adversely modify the temperature as well as the moisture level in the plant's habitat.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Helonias bullata* as threatened. Due to the small number of populations and the threats to its wetland habitats the plant is in need of protection. In addition, the protection of the specific areas where the plants occur may not provide sufficient protection if development projects or other actions in the watershed significantly affect the local groundwater regime. A better understanding of the species and its habitat requirements, which may be acquired through recovery-related research, is needed to aid in the conservation of this plant.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent, because no benefit to the taxon can be identified that would outweigh the potential threat of collection, which might be caused by the publication of a detailed critical habitat description and map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies, private conservation organizations, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Some on-going and potential recovery actions and other conservation measures, including required protection efforts by Federal agencies and prohibitions against taking are discussed, in part, below.

The Nature Conservancy and State natural resource agencies are actively working with landowners to protect the sites of several populations. The single South Carolina population was purchased to protect the area as State Heritage Trust Land under auspices of the South Carolina Wildlife and Marine Resources Department. Eleven of the known swamp pink populations occur on U.S. Forest Service land and one on National Park Service property. Both Federal agencies supported the proposed rule and are taking action to protect the species and its habitat. Several populations are being considered for inclusion within the acquisition boundary of the proposed Cape May National Wildlife Refuge in New Jersey. The New Jersey Freshwater Wetlands Act regulates development in a 150 foot upland buffer around wetlands that are documented habitat for species listed pursuant to the U.S. Endangered Species Act.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act, are codified at 50 CFR Part 402. After a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. The Baltimore-Washington International Airport is conducting preliminary planning for several projects, subject to Federal Aviation Administration approvals, that could indirectly affect a known population. It is presently anticipated that these projects can be designed to protect the plants. The Service recently requested that the U.S. Army Corps of Engineers (Philadelphia District of the North Atlantic Division) confer informally about an application for a permit under section 404 of the Clean Water Act that may adversely affect a population in New Jersey.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Helonias bullata* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 would apply. With certain exceptions, these prohibitions make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.71 and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Commercial trade in wild *Helonias bullata* is not known to exist at this time, although plants grown in cultivation from seed are known to be sold by a few private nurseries. The Service, therefore, anticipates a few requests for permits. Requests for copies of the regulation on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Brown, S. 1910. *Helonias bullata* L. in New Jersey Bartonia 3:1–6.

Rawinski, T., and J.C. Cassin. 1986. Status report on *Helonias bullata*. Unpublished report prepared for U.S. Fish and Wildlife Service.

Snyder, D.B., and V.E. Vivian. 1981. Rare and endangered vascular plant species in New Jersey, U.S. Fish and Wildlife Service, Newton Corner, Massachusetts.

Sutter, R.D. 1984. The Status of *Helonias bullata* L. (Liliaceae) in the southern Appalachians. Castanea 49:9–16.

Tiner, R.W., and J.T. Finn. 1986. Status and recent trends of wetlands in the five mid-Atlantic States. U.S. Fish and Wildlife Service, Newton Corner, Massachusetts.

Author

The primary author of this rule is Anne Hecht (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Liliaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and Threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Liliaceae—Lily family:						
•	•	•	•	•	•	
Helonias bullata	Swamp pink	U.S.A. (DE, GA, MD, NC, NJ, NY, SC, VA).	T	326	NA	NA
•	•	•	•	•	•	

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–20496 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 80630–8130]

High Seas Salmon Fishery off Alaska

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA issues this notice to (1) reopen for several days most of the U.S. Exclusive Economic Zone off Southeastern Alaska north of Cape Spencer to commercial fishing for all species but chinook salmon, and, (2) maintain the closure of all commercial salmon fishing south of Cape Spencer. This action is necessary to allow a controlled harvest of coho salmon by the commercial troll fishery and is intended to ensure that weak coho salmon stocks are not overharvested.

DATE: This notice is effective at 0001 hours Alaska Daylight Time (ADT), Sunday, September 4, 1988. Public comments are invited until October 4, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the Treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks subject to the treaty. The coho stocks being protected by this action are stocks subject to the Treaty (article I (6) and 1988 amendment of annex IV, chapter 5).

The troll fishery opened on July 1 for all salmon species (53 FR 25492, July 7, 1988) and was closed for harvesting chinook salmon on July 12 because the chinook quota was taken (53 FR 26779, July 15, 1988). On July 26 the fishery was closed completely for 10 days to protect coho salmon (53 FR 28403, July 28, 1988). The troll fishery was closed again on August 14 for 10 days (53 FR 31010, August 17, 1988) to provide further protection for coho because all indicators showed the coho salmon in Southeast Alaska to be well below average abundance. The troll fishery for all salmon except chinook resumed on August 25 and the commercial fishery for all salmon species off southeast Alaska was closed again on August 31.

Indices of coho abundance have been obtained from the commercial troll, purse seine, and gillnet fisheries, from the sport fisheries, and from the spawning grounds. Overall, coho in the central and southern parts of Southeast Alaska continue to be well below average in abundance; however, coho destined for streams along the outer north coast of Southeast Alaska, particularly north of Cape Spencer, now appear to be abundant enough to allow some additional harvest.

Regulations implementing the FMP (at § 674.23(a)) provide that the Secretary may modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

After reviewing the presently available information on the coho stocks

and fisheries, including the effect of overall fishing effort, the catch per unit of effort, and the rate of harvest throughout the management area, the Secretary has determined that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has determined to reopen most of the EEZ fishery north of the latitude of the Cape Spencer Light (58°11.9'N, 136°38.3'W) for commercial troll salmon fishing as follows:

(1) the EEZ between the latitude of the Cape Spencer Light (58°11.9'N, 136°38.3'W) and a line running southwest (235° true) from Cape Fairweather (58°48.5'N, 137°56.8'W) will be open for commercial salmon trolling from 0001 hours ADT, Sunday, 4 September 1988 until 2359 hours ADT, Wednesday, September 7, 1988;

(2) the EEZ between a line running southwest (235° true) from Cape Fairweather and the longitude of Cape Suckling (143°53.5'W—the western boundary of the authorized troll fishing area (50 CFR 674.2 and 674.21(a)(2))) will be open for commercial salmon trolling from 0001 hours ADT, Sunday, 4 September 1988 until 2359 hours ADT, Saturday, 10 September 1988.

The Secretary is reopening these areas for these time periods in conjunction with similar actions by the Alaska Department of Fish and Game for certain State waters of Southeast Alaska. The small fishing areas in State and Federal waters closed earlier to protect chinook salmon (e.g., the Outer Fairweather Grounds in the EEZ, 53 FR 26779) will remain closed to commercial salmon fishing for all salmon species. The Secretary has also determined that these differences reasonably require a continuation of an earlier closure of the troll salmon fishery south of Cape Spencer, perhaps for the remainder of the 1988 salmon fishing season, if coho stocks are to be conserved and managed adequately.

These reopenings will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that these periods of reopening must be effective immediately in order for U.S. fishermen to utilize the resource consistent with the intent of section 9 of the Pacific Salmon Treaty Act of 1985 and the High Seas Salmon FMP. Giving due regard to the potential adverse economic effects of delaying this period of reopening, he finds that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553(b) and (c). However, § 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of notices like this one, which did not provide an opportunity for the public to comment before it became effective. The aggregated data upon which this closure is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and Recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: September 6, 1988.

[FR Doc. 88-20567 Filed 9-6-88; 4:54 pm]

BILLING CODE 3510-22-M

---

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustment and reopening.

SUMMARY: NOAA announces (1) the apportionment of amounts of pollock, yellowfin sole, other flatfish and Pacific cod to domestic fishermen delivering fish to foreign processors (JVP), from reserves and from amounts originally apportioned to domestic fishermen processing fish or delivering fish to domestic processors (DAP), (2) the reopening of the Bering Sea subarea to directed JVP fishing for pollock, and (3) the reopening of the Bering Sea and Aleutians Island Management Area (BSAI) to directed JVP fishing for yellowfin sole. These actions, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), assure optimum use of these groundfish by allowing JVP fishing in the BSAI to resume.

DATES: Effective September 6, 1988. Comments will be accepted through September 21, 1988.

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

FOR FURTHER INFORMATION CONTACT: Janet Smoker, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the U.S. exclusive economic zone under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675.

In 1988, 15 percent of the BSAI groundfish Total Allowable Catch (TAC) was placed in the non-specific reserve, the initial specifications for DAP were determined, and the remaining amounts were provided to domestic fishermen delivering fish to foreign processors (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because U.S. fishermen are able to harvest and/or process the TAC.

The following prior in-season actions during 1988 have apportioned amounts from the reserve to DAP and/or JVP, or amounts from DAP to JVP: April 14 (53 FR 12772, April 19, 1988), May 5 (53 FR 16552, May 10, 1988), May 20 (53 FR 19303, May 25, 1988), June 17 (53 FR 23402, June 22, 1988), July 11 (53 FR 26599, July 14, 1988), and July 22 (53 FR 28229, July 27, 1988), and August 25 (53 FR 33140, August 30, 1988).

Reapportionment to JVP

The Regional Director has determined from DAP catch-to-date and the NMFS DAP survey completed in August, 1988, that DAP will harvest and process 535,000 metric tons (mt) of pollock in the Bering Sea subarea, and 24,000 mt of yellowfin sole, 34,000 mt of "other flatfish", and 75,000 mt of Pacific cod in the BSAI by the end of the 1988. The current (mid-August) DAP catch of Bering Sea subarea pollock (229,309 mt) is 37 percent of its 614,162 mt quota, and for BSAI yellowfin sole (4,839 mt) is 18 percent of its 26,356 mt quota, "other flatfish" (23,853) is 66 percent of its 36,403 mt quota, and Pacific cod (44,367) is 54 percent of its 82,416 mt quota. For these reasons, the Regional Director has determined that the current DAP amounts of Bering sea subarea pollock,

yellowfin sole, "other flatfish", and Pacific cod are excess to DAP needs in 1988. Therefore, 78,000 mt of the DAP amount for Bering Sea subarea pollock, 2,000 mt of the DAP amount for yellowfin sole, 2,500 mt of the DAP amount for "other flatfish" and 7,000 mt of the DAP amount for Pacific cod are transferred to the analogous FVP categories. In addition, the following amounts of the BSAI non-specific reserve are also transferred: 12,000 mt to the JVP for Bering Sea subarea pollock, 4,000 mt to the JVP for yellowfin sole, and 1,000 mt to the JVP for "other flatfish".

These apportionments do not result in overfishing of pollock, yellowfin sole, "other flatfish" or Pacific cod stocks because the resulting species TACs do not exceed their respective allowable biological catches (Table 1).

Reopening

U.S. fishermen delivering to foreign processors were required by NMFS to cease directed fishing for pollock in the Bering Sea subarea on May 25 (53 FR 19303, May 27, 1988) and for yellowfin sole on June 3 (53 FR 21454, June 8, 1988) in order to leave sufficient quota to provide bycatch of those species in other JVP fisheries. This notice increases the JVP quotas for both species to amounts that may be taken in directed fisheries. Therefore, U.S. fishermen delivering to foreign processors may resume directed fishing for pollock in the Bering Sea subarea and directed fishing for yellowfin sole as of noon, ADT September 8, 1988. This notice rescinds closures to these directed fisheries (see 53 FR 19303, May 27, 1988; 53 FR 21454, June 8, 1988).

Classification

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

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice will allow JVP fishermen to begin directed fishing for BS pollock and BSAI yellowfin sole. Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i).

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 6, 1988.

Richard H. Schaefer,

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

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

		Current	This action	Revised
Pollock (Bering Sea subarea)	DAP	614,162	−78,000	536,162
	Reserve		−12,000	
TAC=1,312,000; ABC=1,500,000	JVP	685,838	+90,000	775,838
Yellowfin sole	DAP	26,356	−2,000	24,356
	Reserve		−4,000	
TAC=227,900; ABC=254,000	JVP	197,544	+6,000	203,544
Other flatfish	DAP	36,403	−2,500	33,903
	Reserve		−1,000	
TAC=150,664; ABC=331,900	JVP	113,261	+3,500	116,761
Pacific cod	DAP	82,416	−7,000	75,416
TAC=188,000; ABC=385,000	JVP	105,584	+7,000	112,584
TOTAL (TAC=2,000,000)	DAP	798,020	−89,500	708,520
	JVP	1,176,284	+106,500	1,282,784
	Reserve	25,696	−17,000	8,696

[FR Doc. 88-20568 Filed 9-6-88; 4:53 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 175
Friday, September 9, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program: Accountability

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: Recent audit and administrative review findings have identified a number of school food authorities which have improperly claimed reimbursement for meals served in the National School Lunch Program. This proposed rule is intended to clarify and standardize school food authority meal counting and claiming requirements to ensure that reimbursement is claimed for only those reimbursable meals served to eligible children at the correct rate of reimbursement for those meals. Additional changes are proposed to improve State agency monitoring of each school food authority's meal counting and claiming procedures. These revisions are expected to improve the accuracy of school meal counting and claiming procedures and school food authority internal controls.

DATE: To be assured of consideration, comments on this proposed rule must be postmarked on or before November 8, 1988.

ADDRESSES: Comments should be mailed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 515, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Eadie at the above address or phone (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will its result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act 9 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Act of 1980 (44 U.S.C. 3501 through 3520), the reporting and recordkeeping requirements that are included in §§ 210.5, 210.7, 210.8, and 210.18 of this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval. The OMB control number assigned to the existing reporting and recordkeeping requirements of 7 CFR Part 210 is OMB No. 0584-006. These requirements have been approved by OMB for use through June 30, 1990.

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983.)

Background

In 1978, significant questions were raised by the Department's Office of the Inpector General (OIG) regarding the effectiveness of reimbursement claiming procedures, monitoring systems, and corrective action activities in the National School Lunch Program. In response, the Department issued the Assessment, Improvement and Monitoring System (AIMS) regulation in September, 1980 (45 FR 64068). AIMS requires State agencies to review all school food authorities over a 4-year review period for compliance with four performance standards.

State agencies have had over 7 years experience in monitoring for compliance with the AIMS standards. Despite this level of AIMS activity, administrative reviews and recent OIG audits indicate that meal counting and claiming deficiencies continue to exist in the National School Lunch Program.

In a May 1987 report of OIG audits of school food service programs conducted in 13 school food authorities in six States over a period of 3 years, the OIG detected serious weaknesses in school food authority controls over schools' counting of meals served and claiming them for Federal reimbursement (Office of Inspector General Audit Report No. 27099-45-AT, May 3, 1987.) Specifically, (a) school food authorities had not established effective meal count procedures, (b) schools were not following the school food authorities' free and reduced price meal counting procedures, and (c) school food authorities were not effectively monitoring or enforcing compliance with program requirements. Meal counting and claiming problems were found in 280 of the 395 (71 percent) schools audited in 11 school food authorities and resulted in documented overclaims of over $1,900,000 of Federal reimbursement. OIG found that the AIMS reviews conducted by State agencies would not necessarily have disclosed the meal count and overclaim conditions since the AIMS performance standards do not require an evaluation of school food authority systems of internal controls and monitoring procedures over school meal counts.

The OIG findings were supported by the results of administrative reviews conducted by the FNS Mid-Atlantic Regional Office. In a series of reviews in five States involving 14 school food authorities, 57.1 percent of the reviewed school food authorities had counting and claiming problems.

The OIG audits showed that the School Breakfast Program was particularly vulnerable to abuse. Because of the program's low participation, schools often deviated

from normal meal count procedures for expediency, and inflated meal counts were not apparent because they were less than the number of approved free and reduced price applications. The auditors observed breakfast meal counts in 32 schools and found substantial overclaims in 15 schools in four school food authorities.

In response to these findings, FNS solicited State and local assistance in finding solutions to the problems. Regional meetings were held to discuss the various options for improving the accuracy of counting and claiming meals for reimbursement. The discussions were analyzed and the options were refined and presented in October 1987 at a national meeting of Regional, State and local staff, as well as representatives of the American School Food Service Association. This proposed rule was based on the discussions held at the national meeting. Every effort has been made to accommodate the concerns of the participants while addressing the internal control weaknesses identified by OIG.

Commenters will note that this rule addresses only the National School Lunch Program. The Department determined not to amend the breakfast program regulations until the proposed procedures have benefited from comments and implementation in the National School Lunch Program. State agencies are, however, strongly encouraged to apply the conceptual framework of this rule to the School Breakfast Program (SBP), and the Department requests comments on the feasibility of applying an AIMS type system to the SBP.

This preamble is separated into two sections. The first deals with proposed improvements to internal control at the school and school food authority level. The second section identifies proposed revisions to AIMS which are intended to ensure that the internal control weaknesses do not go unobserved by the State agency.

Improvements to Internal Controls at the Local Level

School Level Revisions

Since the inception of the program, it has been Congress' intent to provide Federal reimbursement for those lunches served to eligible children. Program regulations (7 CFR Parts 210 and 245) provided a framework within which a school food authority could devise its own system for counting and claiming the number of reimbursable lunches served. It is, perhaps, this flexibility that fostered a climate whereby some school food authorities claimed more lunches than actually served.

To ensure that no future misinterpretation exists, § 210.7 of this proposed rule reiterates that Claims for Reimbursement are to be limited to the number of free, reduced price and paid reimbursable lunches that are served to eligible children for each day of operation. Toward this end, § 210.7 requires all Claims for Reimbursement to be based on daily counts of the number of reimbursable lunches served, by reimbursement type, taken at the point of service. "Point of service" is defined in § 210.2 to mean that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

While meal counts taken at the point of service are generally the most effective method of identifying the number of reimbursable lunches served by reimbursement type, the Department recognizes that, in certain situations, an alternative counting system may yield the same results. For example, a list maintained by each teacher and submitted to the bookkeeper may be an effective method of identifying the number of reimbursable lunches served, by type, in a small elementary school where each teacher knows each student and accompanies their class through the serving line. To accommodate a situation such as this, § 210.7 authorizes the State agency to approve an alternative counting system on a case by case basis. Any request to use an alternative counting system is to be submitted in writing to the State agency for approval. Such requests must provide detail sufficient for the State agency to assess whether the proposed alternative would provide an accurate count of the number of reimbursable free, reduced price, and paid lunches served each day to eligible children. The details of each approved alternative system are to be maintained on file at the State agency for review by FNS.

The Department expects these revisions to immprove the accuracy of daily meal counts without increasing the workload at the school level. Clearly, point of service counts are inherent in the integrity of any meal counting system and cannot be replaced by tray counts, milk counts or other less precise methods.

School Food Authority Level Revisions

The Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, require school food authorities to establish and maintain a system of internal accounting and administrative controls. The objective of the system is to provide reasonable assurance that: (a) Resources are safeguarded against unauthorized, improper, or wasteful use or disposition; (b) resources are used economically and efficiently; (c) obligations and expenditures comply with funding legislation; (d) revenues, expenditures and all other funded transactions applicable to operations are properly managed, recorded, and accounted for; and (e) financial, statistical, and other reports which are necessary to maintain accountability and managerial control are accurate, timely, and reliable.

The recent OIG audits found that contrary to the requirements of 7 CFR Part 3015, many school food authorities had not developed effective systems of internal controls or monitoring procedures to ensure that claims for reimbursement are accurate. The control weaknesses detected by audits included: (a) Ineffective meal count procedures; (b) ineffective or inadequate monitoring or enforcing of compliance with program requirements; (c) inadequate reviewing of individual school claims to ensure that those claims are consistent with the number of eligible students participating by meal type; (d) a lack of corrective action when problems are disclosed.

In order to resolve these problems, this rule proposes to revise § 210.8, newly entitled *"Claims for Reimbursement"*, to require each school food authority to perform an on-site review of the meal counting and claiming practices of each school under its jurisdiction at least twice per school year. The Department proposes to require a school food authority to perform the first on-site review prior to December 1 of each school year. Further, if either of the on-site reviews discloses problems with the counting and claiming practices in a school, the school shall be required immediately to implement corrective action and the school food authority shall conduct an additional on-site review within 30 days to verify that the corrective action was successful. The Department further recommends that school food authorities conduct more than two annual on-site reviews, if necessary, to ensure that each school's claim is based on the counting system authorized for that school and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid lunches served to eligible children for each day of operation.

Prior to the submission of a monthly Claim for Reimbursement, § 210.8 proposes to require each school food

authority to compare each school's daily claim against data which will assist in the identification and correction of a claim in excess of the number of reimbursable lunches served to children eligible for free, reduced price and paid lunches for that day. Such comparison must be made against the number of currently approved free and reduced price children in that school and, for every month but September, the average daily free, reduced price and paid lunches served in the preceding month.

School food authorities are further required to compare claims against any other data readily available such as a school's average daily attendance, enrollment or membership data and a factor or formula which will account for the difference between enrollment and attendance at any given time. There are three options for complying with this requirement. First, the school food authority may develop a factor based on local circumstances. Local factors would be subject to State agency approval. Secondly, the State may develop an attendance factor for school food authorities to use. Finally, if no State or local factor is developed, the school food authority shall use a nationwide attendance factor developed by FNS. When taking the attendance factor into consideration, school food authorities shall assume that children eligible for free and reduced price meals attend school at the same rate as the general population. The data used in the claims review process must be retained at the school food authority, by school, for review by the State agency. In addition, the Department requests comments on the feasibility of and recommendations for methods that would take participation into account in addition to attendance.

To allow the State agency to perform a similar claims review, § 210.8(c) proposes to require each school food authority to include the number of approved free and reduced price children enrolled in that school food authority for October on the October Claim for Reimbursement. The Department is also concerned that changes in enrollment could render the October numbers obsolete, thereby denying the State agency accurate data for reviewing claims. Therefore, the Department is considering a future amendment to require school food authorities to report subsequent changes in the number of enrolled free and reduced price children to the State agency. The Department requests commenters to suggest what they believe would be an appropriate threshold for such reporting.

Section 210.9, *Agreement with State agency*, also is proposed to be revised to incorporate the required point of service counts and to specify that the school food authority official signing the monthly Claim for Reimbursement takes full responsibility for ensuring that claims accurately represent the number of lunches served by reimbursement type. The penalties for failure to submit accurate claims are summarized on the agreement to ensure that the school food authority is apprised of the serious nature of misrepresenting the number of lunches served.

Improvements to State Level Monitoring

State Level Revisions

The OIG audits noted several weaknesses in State agency monitoring of program activity at the local level. Notably, OIG indicated that the AIMS reviews conducted by State agencies would not necessarily disclose the meal count and overclaim conditions identified in the audited school food authorities. Specifically, the AIMS performance standards do not: (a) Require an evaluation of school food authority systems of internal controls and monitoring procedures over school meal counts; and (b) make prcise tests of the accuracy of sampled schools' meal claims.

This proposed rule makes a number of revisions to State level monitoring responsibilities to address these weaknesses. First and foremost, § 210.8(b) proposes to require State agencies to periodically review each school food authority's Claim for Reimbursement to assist in the identification and correction of claims in excess of the number of lunches served to eligible children. At a minimum, the State agency is to compare the number of free and reduced price meals claimed on each school food authority's monthly Claim for Reimbursement to the number of approved free and reduced price children enrolled in that school food authority for the claiming month times the days of operation. State agencies are further required to take into consideration the attendance factor for each school food authority as discussed above and shall assume that children eligible for free and reduced price meals attend school at the same rate as the general school population. Also, as described above, the Department requests comments on the feasibility of using participation as an additional factor which might be considered.

Since this data will be available to the State agency, the Department is proposing to require State agencies to report to FNS the number of approved free and reduced price children by category enrolled in the State for the month of October on the final Report of School Program Operations (FNS–10) for that month. This data will be used by the Department to assist in budget projections and to provide a more accurate representation of the National School Lunch Program operations to members of Congress and the general public.

Section 210.18, *Monitoring responsibilities*, is proposed to be substantially revised. The revisions affect performance standard 2, the scope of reviews, the selection of schools for AIMS reviews, the error tolerance level for performance standard 2, and fiscal action.

Performance Standard 2

The existing Performance Standard 2 states: "The number of free and reduced price meals claimed for reimbursement by each school for any review period are, in each case, less than or equal to the number of children in that school correctly approved for free and reduced price meals, respectively, for the review period, times the days of operation for the review period."

OIG audits found that some schools adjusted the number of meals claimed to reflect 100 percent free and reduced price participation for each day of operation. This approach is an abuse of Federal funds. Congress has provided funds on a per meal served basis. Schools which claim more free, reduced price, or paid meals than they serve are contravening the intent of Congress and misusing Federal funds.

To clarify the need for exact counts of the number of meals served by type, this proposed rule revises Performance Standard 2. The proposed revision states: "The numbers of free and reduced price meals claimed for reimbursement by each school for any period are, in each case, equal to the number of meals which are served to children who are correctly approved for free and for reduced price meals, respectively, during the period."

Failure to submit accurate claims will result in the recovery of an overclaim and may result in the withholding of payments, suspension or termination of the program as specified in § 210.24. Should failure to submit accurate claims reflect embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in § 210.25 will apply. Section 210.9, *Agreement with State agency*, is proposed to be revised to ensure that the school food authority is fully aware

of the consequences of the failure to submit accurate claims.

Scope of Reviews

Section 210.18(i)(1) is proposed to be revised to improve the accountability of the meal counting system. Specifically, the scope of review for Performance Standard 2 is revised to require the State agency to determine, for each school reviewed, whether the number of free and reduced price meals claimed for each day of the most recent month for which the school food authority has submitted a claim are equal to the number of meals served to children eligible for free and reduced price lunches for each day of that month. In order to make this determination, State agencies are directed to review the data required to be maintained by the school food authority as part of the claims review process specified in § 210.8(a) and observe the meal counting and claiming procedures employed by each school reviewed.

The scope of review for Performance Standard 3 is also revised. The State agency is currently required to ensure that each school reviewed has an adequate system for counting and claiming meals served by reimbursement type.

The proposed rule defines an adequate system as one which meets the following objectives: (a) Provides accurate counts of the number of reimbursable free, reduced price and paid meals served to eligible children on a daily basis; (b) accurately records and reports those counts to the school food authority; (c) prevents the overt identification of free and reduced price meal recipients in accordance with 7 CFR Part 245; and (d) is monitored by the school food authority in accordance with the § 210.8 to ensure that internal controls exist. State agencies are required to review each system to determine whether meal counts are taken at the point of service and whether the meal counting and claiming system, as implemented, meets these objectives. If an altenative system is employed, State agencies are to ensure that it achieves the desired objectives, is correctly implemented and is approved by the State agency. The State agency is also to ensure that the school food authority properly consolidates meal counts from its schools.

Selection of Schools and School Food Authorities

Section 210.18(i)(3) currently requires the State agency to select the required minimum number of schools to review on a proportionate basis from each type of attendance unit (elementary, middle and high school). Within those attendance unit groupings, schools are to be selected either randomly or by using State agency criteria. If using its own criteria, the State agency is required to ensure that some of the schools selected are chosen based on the likelihood of problems.

Since this proposed rule requires the identification of problem schools through the claims review process, the criteria for the selection of schools on both a first and second AIMS review is proposed to be revised. The proposal requires State agencies to select the required minimum number of schools from those which consistently claim that a high proportion of children eligible for free or reduced price meals have been served. If, however, the State agency has reason to believe that problem schools will not be selected for review, the State agency is directed to substitute schools where there is a strong likelihood of problems. In those situations, the state shall maintain a justification on file for FNS review.

A similar change is proposed for school food authorities subject to a second review as specified under § 210.8(i)(4). Currently, State agencies are required to conduct a second review of all large school food authorities found to exceed error tolerance levels on first reviews and at least 25 percent of the small school food authorities found to exceed such tolerance levels on the first review. This proposal requires that State agencies conduct a second review in those small school food authorities with the most serious problems.

Second Review Threshold

Readers will note that the term "error tolerance level" has been replaced by the term "second review threshold" throughout § 210.18. This change, while semantic in nature, corrects a misunderstanding. Some States and school food authorities believed AIMS had a tolerance for error. This was not intended; AIMS always required correction of any degree of error. Fiscal action was, for the most part, limited to the second review in an effort to allow schools to correct problem areas. An "error tolerance level" was created to limit the number of school food authorities which would receive a second review. Limiting the number of second reviews was a concession to the limited resources available to the States, and should not be considered as an acceptance of any degree of error.

To accommodate the previously discussed revisions to Performance Standard 2, the second review threshold (formerly error tolerance level) for this standard is proposed to be revised. A second review would be required when a number of schools reviewed in a school food authority claim reimbursement for more free or reduced price meals, respectively, than the number of children correctly approved for such meals for the review period times the days of operation times the attendance factor employed by the school food authority. The Department has left the decision of what constitutes an appropriate attendance factor to the discretion of the State agency. When taking the attendance factor into consideration, State agencies are directed to assume that children eligible for free and reduced price meals attend school at the same rate as the general population.

Fiscal Action

Section 210.19 currently states that, when a State agency conducts an AIMS review, "* * * fiscal action *may* be taken on a first review; except fiscal action *must* be taken when, under Performance Standard 3, the number of meals claimed for school food authority reimbursement has been incorrectly aggregated from individual school reports so that an excessive number of meals has been claimed." State agencies are required to take fiscal action on the second review for any degree of violation of AIMS Performance Standards 2, 3, and 4.

This proposed rule requires fiscal action on both the first and second AIMS reviews for *any* degree of violation of any performance standard. If a State agency chooses to develop its own compliance monitoring system as authorized under § 210.19(f), fiscal action is required to be taken for any degree of violation for any reviews. To ensure some uniformity of fiscal action, this proposal would revise § 210.19(c) to require State agencies to determine the amount of fiscal action on the basis of the severity and longevity of the problems the State agency would also be required to employ appropriate factors which accurately account for attendance and participation trends both for children who are determined eligible for free or reduced price meals and for children who are ineligible for free or reduced price meals. This means that children eligible for free or reduced price meals would be assumed to attend school at the same rate as paying children unless the school can demonstrate otherwise. By the same token, children erroneously determined eligible for free or reduced price meals would be considered to participate at the same rate as children properly approved for these benefits.

Overpayment Disregard

Finally, in order to relieve State agencies of the burden associated with collecting very small overpayments, the Department is proposing to amend § 210.19(d)(1) to increase the limit for disregards from $35 to $100. In addition to reducing paperwork, this proposal would recognize and account for the increase in costs since the original $35 limit was adopted in more than a decade ago. This change would also make the overpayment disregard for the National School Lunch Program consistent with the disregard for other child nutrition programs.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program. Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 210 is proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.2, a new definition "Point of Service" has been added in alphabetical order as follows:

§ 210.2 Definitions.

* * * * *

"Point of Service" means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

* * * * *

3. The title of Subpart B, "Assistance to States and School Food Authorities" is removed and the title, "Reimbursement Process for States and School Food Authorities" is added in its place.

4. In § 210.5, paragraph (d)(1) is amended by removing the second sentence and adding two new sentences in its place, as follows:

§ 210.5 Payment process to States.

* * * * *

(d) * * *

(1) * * * The final reports shall be limited to claims submitted in accordance with § 210.8 and, for the month of October, shall include the number of approved free and reduced price children by category *enrolled* in participating schools in the State. The final reports shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. * * *

* * * * *

5. In § 210.7:

a. Paragraph (a) is amended by removing the citation "§ 210.8(b) " from the second sentence and adding the citation " § 210.8(c) " in its place.

b. The fourth and fifth sentences of paragraph (a) are removed.

c. New paragraph (c) is added.

The addition reads as follows:

§ 210.7 Reimbursement for school food authorities.

* * * * *

(c) *Reimbursement limitations:* To be entitled to reimbursement under this part, each school food authority shall ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid reimbursable lunches that are served to children eligible for free, reduced price and paid lunches, respectively, for each day of operation. The school food authority shall not claim reimbursement for any excess lunches produced, as prohibited in § 210.10(b). Claims for Reimbursement shall be based on *daily* counts, at the point of service, which identify the number of free, reduced price and paid reimbursable lunches served, unless otherwise authorized by the State agency on a case by case basis. Any request to use an alternative counting system is to be submitted in writing to the State agency for approval. Such request shall provide detail sufficient for the State agency to assess whether the proposed alternative would provide an accurate count of the number of reimbursable lunches, by type, served each day to eligible children. The details of each approved alternative system are to be maintained on file at the State agency for review by FNS.

6. In § 210.8:

a. The title of § 210.8 "Method of reimbursement." is removed and new title "Claims for reimbursement." is added in its place.

b. Paragraphs (a) through (c) are redesignated as paragraphs (b) through (d), respectively, and a new paragraph (a) is added.

c. The reference to "paragraph (b)" in the first sentence of newly redesignated paragraph (b) is removed and the words "paragraph (c)" are added in its place.

d. Newly redesignated paragraph (b) is amended by adding three sentences between the fourth and fifth sentences.

e. Newly redesignated paragraph (c) is amended by adding a sentence between the first and second sentences.

f. The reference to "paragraph (a)" in the last sentence of newly redesignated paragraph (d) is removed and the words "paragraph (b)" are added in its place.

The additions and revisions specified above read as follows:

§ 210.8 Claims for reimbursement.

(a) *Claims review process.* (1) Every school year, each school food authority shall perform no less than two on-site reviews of each school under its jurisdiction. The intitial on-site review shall take place prior to December 1 of each school year. Further, if either review discloses problems with a school's meal counting or claiming procedures, the school food authority shall: Ensure that the school develops and implements a corrective action plan; and within 30 days, conduct a follow-up on-site review to determine that the corrective action resolved the problems. Any such follow-up reviews shall be in addition to the two required reviews. Each on-site review shall ensure that the school's claim is based on the counting system authorized under § 210.7(c) and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid lunches served for each day of operation.

(2) Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall compare each school's daily claim against data which will assist in the identification and correction of claims for reimbursement in excess of the number of reimbursable free, reduced price and paid lunches actually served to children eligible for such lunches for that day. Such data shall, at a minimum, include the number of children currently approved for free and reduced price lunches in that school, and, for every month except September, the average daily free, reduced price and paid lunches served for the preceding month.

(3) School food authorities shall also compare claims against any other data available to the school food authority, such as a school's average daily attendance, enrollment or membership data, and a factor which accurately accounts for the difference between enrollment and attendance at any given time. This attendance factor may be developed annually by the school food authority subject to State agency approval or may be developed annually by the State agency. In the absence of a local or State attendance factor, the school food authority shall use an

attendance factor develolped by FNS. When taking the attendance factor into consideration, school food authorities shall assume that children eligible for free and reduced price meals attend school at the same rate as the general population. School food authorities shall maintain on file, each month's Claim for Reimbursement and all data used in the claims review process, by school.

(4) School food authorities shall make this information available to the State agency upon request.

(b) * * * The State agency shall periodically review each school food authority's Claim for Reimbursement to assist in the identification and correction of claims in excess of the number of lunches served, by type, to eligible children. The State agency shall, at a minimum, compare the number of free and reduced price meals claimed on each school food authority's monthly Claim for Reimbursement to the number of approved free and reduced price children enrolled in that school food authority for the claiming month times the days of operation. In making that comparison, State agencies shall take into consideration the attendance factor employed by each school food authority in accordance with § 210.18(a); provided that, such attendance factor assumes that children eligible for free and reduced price meals attend school at the same rate as the general school population. * * *

(c) * * * Such data shall include, at a minimum, the number of free, reduced price and paid lunches served to eligible children and, for the month of October, the number of approved free and reduced price children enrolled in that school food authority. * * *

7. In § 210.9:

a. Paragraph (b)(8) is revised.

b. Paragraphs (b)(9) through (b)(18) are redesignated as paragraphs (b)(10) through (b)(19) respectively, and a new paragraph (b)(9) is added.

c. Newly redesignated paragraph (b)(19) is amended by removing the reference to "paragraph (b)(16)" and adding the reference "paragraph (b)(17)" in its place.

The additions and revisions read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid lunches served to eligible children in accordance with 7 CFR Part 210. The school food authority official signing the monthly Claim for Reimbursement shall take full responsibility for ensuring that claims represent the accurate number of reimbursable meals served to eligible children in accordance with the provisions of 7 CFR Parts 210 and 245. Failure to submit accurate claims will result in the recovery of any overclaim and may result in the withholding of payments, suspension or termination of the program as specified in § 210.24. Should failure to submit accurate claims reflect embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in § 210.25 shall apply;

(9) Count the number of free, reduced price and paid reimbursable meals served to eligible children at the point of service, or through another counting system if approved by the State agency.

* * * * *

§ 210.15 [Amended]

8. In § 210.15, paragraph (a)(4) is amended by removing the words "error tolerances" and adding in their place "second review thresholds" and paragraph (b)(1) is amended by removing the citation "§ 210.8(b)" and adding in its place "§ 210.8(a) and (c)".

9. In § 210.18:

a. Paragraph (n)(5) is revised.

b. Paragraph (g)(2) is removed and paragraphs (g)(3) through (g)(6) are redesignated as (g)(2) through (g)(5).

c. Newly redesignated paragraph (g)(2)(ii) is revised and new paragraph (g)(6) is added.

d. Introductory paragraph (i) is amended by removing the words "error tolerances" in the third sentence and adding in their place "second review thresholds".

e. Paragraphs (i)(1)(ii) and (iii) are revised.

f. Paragraph (i)(3)(i), introductory paragraph (i)(6) and paragraph (i)(6)(iv) are amended by removing the words "error tolerance levels" wherever they appear and adding in their place "second review thresholds".

g. Paragraph (i)(3)(ii), introductory paragraph (i)(4) and paragraph (i)(4)(ii) are revised.

h. Paragraph (i)(5) is amended by removing the word "tolerances" from the title and adding in its place the word "thresholds" and removing the words "error tolerance levels" from the text and adding "second review thresholds" in their place.

i. Paragraph (i)(7) and introductory paragraph (l) are amended by removing the words "error tolerance level" from the second sentence and first sentence, respectively, and adding in their place "second review threshold".

j. Paragraph (l)(1) is amended by removing the words "if the selection is not random;" and replacing the comma at the end of this paragraph with a semicolon.

The additions and revisions read as follows:

§ 210.18 Monitoring responsibilities.

* * * * *

(g) * * *

(2) * * *

(ii) Performance Standard 2-The numbers of free and reduced price meals claimed for reimbursement by each school for any period are, in each case, equal to the number of meals which are served to children who are correctly approved for free and for reduced price meals, respectively, during the period.

* * * * *

(6) "Second review thresholds" means the degree of error of an AIMS performance standard as specified in paragraph (i)(4) of this section which, if exceeded in a reviewed school food authority, triggers a second AIMS review in all large school food authorities and in at least 25 percent of those small school food authorities which exceed second review thresholds on a first review.

* * * * *

(i) * * *

(1) * * *

(ii) The State agency shall determine that, for each school reviewed, the number of free and reduced price meals claimed for each day of the most recent month for which the school food authority has submitted a claim are equal to the number of meals served to eligible children for that claiming month. In order to make this determination, State agencies shall review the data required to be maintained by the school food authority under § 210.8(a) and observe the meal counting and claiming procedures employed by each school reviewed.

(iii) The State agency shall ensure that each school reviewed has an adequate system for counting and claiming meals served by reimbursement type. An adequate system is one which meets the following objectives: (A) Provides accurate counts of the number of reimbursable free, reduced price and paid meals served to eligible children on a daily basis; (B) accurately records and reports those counts to the school food authority; (C) prevents the overt identification of free and reduced price meal recipients in accordance with 7 CFR Part 245; and (D) is monitored by the school food authority in accordance with § 210.8(a) to ensure that internal controls exist. State agencies shall review each system to determine whether counts are taken at the point of service and whether the counting and

claiming system, as implemented, meets these objectives. If an alternative counting system is employed, State agencies shall ensure that it achieves the desired objectives, is correctly implemented and is approved by the State agency. The State agency shall also ensure that the school food authority properly consdolidates meal counts from its schools.

* * * * *

(3) * * *

(ii) On a review of a school food authority, the State agency shall select the required minimum number of schools to review from those which consistently claim that a high proportion of children eligible for free or reduced price meals have been served. However, if the State agency has reason to believe that this criterion will not lead to a review of problem schools, the State agency shall substitute schools with the likelihood of problems. The State's justifications for substitution shall be kept on file at the State agency and will be subject to review by FNSRO.

(4) *Second review thresholds.* State agencies shall ensure that corrective action plans are completed by all school food authorities which are found on first reviews to exceed the second review thresholds described below. Further, State agencies shall conduct second reviews of: (1) All large school food authorities found to exceed the second review thresholds on first reviews; and (2) at least 25 percent of small school food authorities found to exceed those thresholds on first reviews. In determining which small school food authorities to include in the second review sample, State agencies shall, at a minimum, select those school food authorities which have the most serious problems on the first review. A second review is required when:

* * * * *

(ii) For AIMS Performance Standard 2, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (i) (5) of this section, claim reimbursement for more free or more reduced price meals, respectively, than the number of children correctly approved for such meals for the review period times the days of operation times the attendance factor used by the school food authority under § 210.8(a); and or

* * * * *

(n) * * *

(5) Require that fiscal action is taken on any reviews where deficiencies are found and set forth the State agency's criteria for taking fiscal action.

* * * * *

10. In § 210.19:

a. The fifth sentence of paragraph (c) introductory text is revised;

b. Paragraph (c)(1) is revised;

c. Paragraph (d)(1) is amended by removing $35 from the first sentence and adding $100 in its place.

The revisions read as follows:

§ 210.19 [Amended]

* * * * *

(c) * * * The State agency shall determine the extent of fiscal action based on the severity and longevity of the problems and shall employ appropriate factors which accurately account for attendance and participation trends for both children who are determined eligible for free or recuced price meals and children who are ineligible for free or reduced price meals. * * *

(1) *AIMS.* When a State agency chooses to conduct AIMS reviews, as described in § 210.18(i) of this part, fiscal action shall be taken on both first and second reviews for any degree of violation of AIMS Performance Standards 2, 3, and 4. When a State agency chooses to conduct AIMS audits, as described in § 210.18(j) of this part, fiscal action shall be assessed for any degree of violation of Performance Standards 2, 3, and 4. When a State agency develops its own compliance monitoring system in accordance with § 210.18(f), fiscal action shall be taken for any degree of violation of any AIMS Performance Standard.

* * * * *

Date: September 1, 1988.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 88-20335 Filed 9-8-88; 8:45 am]

BILLING CODE 3410-30-M

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 86-049P]

Labeling of Meat Food Products, Under Certain Circumstances, That Contain Mechanically Separated (Species)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat inspection regulations by adding a new exception to the requirement that the list of ingredients on the labels of meat food products show the common or usual names of the ingredients. The exception would apply to the use of Mechanically Separated (Species) (MS(S)) at levels no greater than ten percent of the livestock and poultry product portion of a finished meat food product, provided that the label of such product bears a declaration of the calcium content of the meat food product as part of any nutrition information or as a prominent statement contiguous to the ingredients list. This action is the result of petition submitted to the Food Safety and Inspection Service by several members of the meat industry to amend the labeling requirements, under certain circumstances, for meat food products containing MS(S).

DATES: Comments must be received by: November 8, 1988.

ADDRESS: Written comments to: Policy Office, Attn. Linda Carey, FSIS Hearing Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3171-S, South Agriculture Building, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more. There would be no major increase in costs or prices to consumers; individual industries; Federal, State or local government agencies; or geographic regions. The proposed rule would not have a significant adverse effect 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 proposed rule would provide an optional labeling scheme. Any costs incurred by industry would be strictly voluntary and would entail a minimal expense of developing and printing new labeling. In addition, packers have contended that the declaration of MS(S) on ingredient lists of labels of meat food products as the species from which it is derived, will result in greater use of MS(S). They have asserted that the current declaration of this ingredient (as Mechanically Separated (Species)) has resulted in minimal production and therefore waste of MS(S), despite the fact that it is a safe and wholesome product. Further, the

packers have contended that substantial sums have been invested in deboning equipment that now sits idle and that numerous economic benefits would result from the use of MS(S).

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. l. 96–354 (5 U.S.C. 601 *et seq.*). This proposed rule would provide a labeling option for Federally-inspected establishments producing meat food products containing MS(S) at levels no greater than 10 percent of the livestock and poultry product portion of the meat food product when the calcium content of such products, irrespective of amount, is stated on the label. Those establishments opting to label such product as set forth in the proposal would incur minimal costs associated with developing and printing new labeling to comply with the proposed rule. Those establishments opting not to label such product as set forth in the proposal would incur no costs as a result of the proposed rule. Packers have contended that the proposed rule would result in greater utilization of livestock resources and greater makretability of products containing MS(S).

Comments

Interested parties are invited to submit comments concerning this proposed rule. Written comments should be sent in duplicate to the Policy Office and should reference Docket Number 86–049P. All comments submitted pursuant to the proposed rule will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Documents referenced in this proposed rule are available for public inspection in the office of the FSIS Hearing Clerk.

In 1976, the Department issued an interim regulation that included standards for the use of mechanically deboned meat (MDM) (41 FR 17535), and a notice of proposed rulemaking concerning, among other things, the definition and manufacture of three types of product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle (41 FR 17560). There were more than 1,100 public comments on the proposal, a number of which raised various health and safety questions. The interim rule was challenged by a coalition of various consumer-oriented public interest groups, state officials, and a Member of Congress in *Community Nutrition Institute, et al. v. Butz (CNI v. Butz)*, 420 F. Supp. 751 (D.D.C. 1976).

The Court, in *CNI v. Butz*, held that the promulgation of the interim regulation was in violation of the Administrative Procedure Act and issued a preliminary injunction enjoining the Secretary from giving further effect to the interim regulation with respect to MDM. In the Court's opinion, MDM was not "meat" as traditionally defined because of its bone particle content. The Court concluded that these bone particles must be regarded as a substance added during mechanical processing, and that the Secretary had not adequately considered the health effects of MDM. The Court indicated that until these health questions were adequately assessed, MDM had to be considered as a substance which may injure health and, therefore, adulterated and an adulterant. In addition, it appeared to the Court that the interim regulation, which did not require MDM to be declared on the label, permitted misbranding because a product that contained MDM would have a higher calcium content than a comparable product without MDM. Because the public expects the "usual product", the Court indicated it would be misled by the labeling permitted by the regulation. The Court felt that this could prove especially harmful to persons on calcium-restricted diets, who would be misled into thinking that the product contained no more than the usual amount of calcium.

In order to respond to the health and safety questions raised by the Court, the Department initiated an analytical program to develop data on the amounts of nutrients and substances of concern which might be present in MDM and assigned a panel to evaluate the findings from the analytical program, and pertinent information and data gathered from other sources. The panel concluded, among other things, that a slight nutritional benefit is to be expected for most people from the calcium in MDM, especially for persons whose customary intake of calcium falls below the Recommended Dietary Allowance. It was also concluded that the amount of calcium, which would be added to the diet by MDM, would not be so great in amount as to pose a hazard to the health of most people except for those persons who were hyperabsorbers of calcium and who were likely already to be under medical supervision to limit their calcium intake. It was suggested that there be appropriate labeling of meat food products to indicate they contained calcium so that the small percentage of the population which might require a low calcium intake for medical reasons would have the choice to avoid purchasing such products. The Panel agreed that MDM contained in food products should be labeled in the ingredients statement so that persons who must stringently restrict calcium intake could avoid these products. (See Panel Reports: Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volumes I and II.)

As a result of the conclusions and recommendations of the panel, *CNI v. Butz*, and the widespread public interest in an concern about MDM, the Department published a proposed regulation in 1977 (42 FR 54437). The proposal provided, among other things, that the product be named "Tissue from Ground Bone" (TFGB); that the product be labeled "Tissue from Ground (Species) Bone" in the ingredients statement of a meat food product in which it is used; that the name of the meat food product in which it is used be qualified by the term "Tissue from Ground Bone Added," and that the product be classified as a meat food product rather than as a class of meat. As a result of the rulemaking proceeding, the Administrator concluded, among other things, that the product should be named "Mechanically Processed (Species) Product" or MP(S)P. The Administrator agreed with public comments that the proposed name "Tissue from Ground Bone" (TFGB) could be misleading, as the product contained meat, bone, and bone marrow, and "TFGB" would incorrectly indicate it is made wholly from part of bone. The Administrator determined not to adopt the name "Mechanically Deboned Meat" for the product because "deboned" would incorrectly represent that the product did not contain bone or bone marrow and "meat" would incorrectly represent that the product consisted solely of "meat." The Administrator also concluded that a qualifying statement should be added to finished product names to indicate the presence of MP(S)P, since MP(S)P is unique and would not be an expected ingredient; that finished product names should bear the additional qualifying statement, "Contains Up To ____% Powdered Bone" because the need of some individuals to limit their intake of calcium is an important consideration; and that MP(S)P should be listed separately from "meat" in its order of predominance by weight in the ingredients statement of finished

products because MP(S)P is not meat and it would be a standardized product following publication of the rule.

On June 20, 1978, regulations were published concerning the production and use of MP(S)P and the labeling of products in which MP(S)P may be used (43 FR 26416). However, very little of this product was produced after these regulations became effective. Members of the red meat industry contended that its failure to market products containing MP(S)P was due to regulatory requirements which they believed went beyond what was necessary to protect the public, and they asked the Department to reconsider these requirements. In particular, in April 1979, the Pacific Coast Meat Association (PCMA) petitioned the Department to amend various labeling and compositional requirements of the MP(S)P regulations. The Department denied this petition in May 1979, but indicated it was open to resubmission of PCMA's arguments if additional information in various areas was presented. In June 1979, PCMA resubmitted its request along with a further explanation of its position. The resubmitted petition was denied in September 1979. Thereafter, in February 1981, the PCMA and the American Meat Institute (AMI) submitted a petition stating that their members "are effectively precluded from producing or marketing mechanically deboned beef, pork or veal or lamb by the misleading labeling and the unreasonable compositional standards imposed by the regulations." A consumer focus group (Market Research Services) report concerning consumer attitudes toward various types of meat food product labeling and an analysis of the economic impacts of the 1978 regulations were submitted in support of their petition.

Following additional reviews and analysis, the Department issued a proposed rule on July 31, 1981 (46 FR 39274). Based on comments received and further evaluation of relevant information, in 1982 the Department promulgated a final rule which amended the Federal meat inspection regulations by, among other things, modifying the definition and standard for product defined by regulation in 1978 as Mechanically Processed (Species) Product (MP(S)P), by modifying the labeling requirements for meat food products in which it may be used, and by establishing labeling requirements for the product itself (47 FR 28214). The name of the product was changed from "Mechanically Processed (Species) Product" to "Mechanically Separated (Species)" in order to provide a more meaningful and concise description of its characteristics. A labeling requirement for the product was established in order to ensure that the product was used in accordance with regulatory requirements. The requirement that the names of meat food products be qualified to indicate the presence of this product as an ingredient was deleted as unnecessary. Further, the requirement that the names of meat food products be further qualified to indicate the percentage of powdered bone they contained was replaced by a requirement that their labels declare, in certain circumstances, calcium content either as part of nutrition labeling information or, if the meat food product does not bear nutrition labeling information, in a prominent statement in immediate conjunction with the ingredients list. This declaration must be stated on the label of a meat food product containing MS(S) whenever MS(S) contributes 20 mg or more of calcium to a serving of such meat food product, unless the amount that would be declared would not differ from the amount that would be declared if the meat food product contained only hand deboned ingredients or unless the calcium content of a serving of the meat food product would be 20 percent of the U.S. RDA or more if the meat food product contained only hand deboned ingredients. The Department concluded that the calcium content approach was preferable because it would respond to the needs of calcium-sensitive individuals without having unwarranted, negative effects on the general population's evaluation of meat food products containing MS(S).

A definition and standard of identity for this product was retained, since as the Department noted in its proposal, the consistency of this product and its content of bone, bone marrow, and certain minerals, as well as muscle tissue, are materially different from those of meat. The requirement that the name of the product be listed in its proper order of predominance in the ingredients statement on the label of a meat food product in which it is used, which is consistent with the general requirements for declaring ingredients in meat food products, was also retained. The product's distinctive character and separate regulatory standard were the basis for the ingredient declaration requirement, and not the product's wholesomeness or fitness for consumption or the level or particular meat food product in which it would be included as an ingredient.

The 1982 rule was challenged in *Community Nutrition Institute, et al., v. Block*, Civil Action No. 82–2009 (D.D.C. decided December 1, 1982). The plaintiffs, among other things, challenged the amended regulations contending that they permitted the sale of misbranded meat food products because of the product name change to MS(S) and the elimination from the labeling of meat food products in which MS(S) may be used, of the statements that qualified the name of the meat food product by indicating the presence of MS(S) and the percentage of powdered bone. The plaintiffs contended that the labeling required by the amended regulations, i.e., listing of MS(S) in the ingredients statement and the calcium declaration under certain circumstances, was insufficient under the Federal Meat Inspection Act. The United States District Court upheld the regulations, and the plaintiffs appealed. The United States Court of Appeals for the District of Columbia upheld the regulations in *Community Nutrition Institute, et al., v. Block, et al.*, 749 F.2d 50 (D.C. Cir. 1984).

In November 1986, the Department was petitioned on behalf of Bob Evans Farms, Inc., Columbus, Ohio, Odom Sausage Company, Madison, Tennessee, Sara Lee Corporation, Memphis, Tennessee, and Owens Country Sausage, Inc., Richardson, Texas, to amend the Federal meat inspection regulations, under certain circumstances, in regard to the labeling of meat food products that contain MS(S). The petitioners requested that when Mechanically Separated (Species) is used as an ingredient in a meat food product, it be permitted to be designated in the list of ingredients on the label of a meat food product as the species from which it was derived (e.g., beef) (a) if the calcium content of the meat food product, irrespective of amount, is stated on the label as part of any nutrition information on the label or in immediate conjunction with the list of ingredients or otherwise conspicuously on the label; and (b) if the Mechanically Separated (Species) constitutes no more than 10 percent of the livestock and poultry product portion of the meat food product.

The petitioners asserted that to their knowledge no meat processor was presently commercially producing MS(S) and that this product was not being produced despite the fact that it was safe and wholesome. The petitioners also indicated that they believed that the unwarranted negative connotations of the term MS(S) which is required on labels of finished products containing this ingredient would cause consumers to refrain from purchasing such products. The petitioners asserted that

the labeling requirements imposed on products containing MS(S) have effectively thwarted its use.

The petitioners also asserted that the focal point of the regulatory scheme for MS(S), especially in the 1982 rulemaking, was the increased amount of calcium in mechanically separated (species) as compared to hand separated meat. The petitioners requested a reevaluation of the labeling requirements in the context of the concerns addressed by the Department in the 1982 rulemaking proceeding and by the Courts in reviewing the 1982 amendments.

FSIS published this petition in the Federal Register on April 3, 1987 (52 FR 10766), to solicit information and comments concerning the action requested and, in particular, answers to the following questions:

1. Would the labeling of a meat food product containing "Mechanically Separated (Species)" be false or misleading if the ingredients statement on the labeling did not include "Mechanically Separated (Species)"?

2. Would an optional labeling statement, such as proposed in the petition, be a sufficient substitute for listing "Mechanically Separated (Species)" in the ingredients statement on the labeling of a meat food product in which it is used?

3. Is the 10 percent use limitation for Mechanically Separated (Species), proposed by the petition, a reasonable amount for triggering the optional calcium content labeling statement provided for by the petition?

4. Are there any other options, other than the one proposed in the petition, to accomplish the objective of the petitioners?

Comments

FSIS received a total of 134 written comments. Ninty-five were from consumers, 20 from industry representatives, 9 from trade associations, 2 from State or local governments, 3 from university professors, 2 from equipment manufacturers, 1 from a United States Congressman, 1 from a United States Senator, and 1 from a consumer advocacy group. There were 123 comments in support of the petition, 9 comments opposing the petition, and 2 comments neither supported nor opposed the petition.

Most of the comments simply stated that the same rules should apply to MS(S) as apply to poultry product or fishery product made by mechanical separation. These commenters contended that MS(S) is as safe and wholesome as the species from which it is derived, and that the process of mechanical separation does not change this fact. These commenters believed that granting the petition would result in more food being available, and further believed that the small amount of calcium contributed by MS(S) to a meat food product in which it is used would benefit American diets, particularly diets of women. The Agency agrees that MS(S) is as safe and wholesome as the species from which it is derived, that granting the petition would result in more food being made available, and that the small amount of calcium contributed to a meat food product by MS(S) would benefit American diets, particularly diets of women.

Several commenters expressed the opinion that the petition should be denied. Many of these commenters expressed the opinion that MS(S) should not be permitted to be used, but if it were used in products, they at least wanted to be able to determine which products contained MS(S) so they could avoid purchasing these products. FSIS believes that the labeling scheme outlined in the petition is neither false nor misleading, and would provide sufficient labeling for meat food products containing MS(S).

One commenter, Oscar Mayer Foods Corporation, suggested that labeling requirements for products that contain MS(S) as an ingredient should be the same as for products containing mechanically separated poultry product, if the characteristics of the mechanically separated products are similar. Further, Oscar Mayer Foods suggested that the labeling provisions in the petition should apply only to MS(S) that has been produced with more than a 50 percent yield (at least a 1:1 ratio of muscle tissue to bone in ingoing materials) and that contains less than 0.25 percent calcium, which criteria Oscar Mayer believes are characteristic of mechanically separated poultry product.

FSIS believes that the criteria Oscar Mayer Foods has suggested as an alternative to the petition may not be practical or beneficial. The composition of mechanically separated poultry product can vary, and the Agency is not convinced that all or most mechanically separated poultry product meets and will continue to meet the characteristics described by Oscar Mayer Foods. Oscar Mayer Foods did not provide data to support its assertions about the composition of mechanically separated poultry product, and these assertions are not supported by information collected by FSIS on the composition of mechanically separated poultry product. In addition, the fact that most mechanically separated poultry product contains substantial amounts of poultry skin, while MS(S) does not, was not addressed. Even if Oscar Mayer Foods' assertions could be verified, the Agency does not believe it would be practical for meat processors to leave sufficient meat on bones after hand deboning to meet the criterion for ingoing materials.

Another commenter, Public Voice for Food and Health Policy, contended that the petitioners' main goal is to obscure the fact that ground bone is the source of added calcium for meat products containing MS(S). Public Voice further expressed the belief that it would be false and misleading if labeling for a meat food product containing MS(S) did not include the phrase "Mechanically Separated (Species)," in the ingredients statement, and that the calcium content declaration alone would not be a sufficient substitute for the MS(S) listing. Public Voice also stated that consumer organizations have a long record of involvement in this issue and have consistently argued for full disclosure of MS(S) when it is used, and Public Voice believes that the petition should be denied. However, for the reasons specified in the petition, FSIS believes that the labeling scheme proposed by the petitioners would not be false or misleading.

Public Voice further stated that a calcium content declaration without the presence of at least macronutrient content information could imply that the product is particularly healthful, when, in fact, it might contain high fat or sodium amounts. This concern is not unique to the labeling scheme proposed by the petitioners, but could be asserted of the existing regulation concerning the labeling of MS(S) (9 CFR 317.2(j)(13)(ii)). The Agency believes that the existing regulation has not resulted in false or misleading labeling, and has no reason to believe this would change under the petitioners' labeling scheme.

FSIS agrees with the petitioners that the additional calcium that may be present in products containing MS(S) as an ingredient is one of the health or safety related concerns about the use of MS(S). The Penal assigned in 1976 to develop data on the amounts of nutrients and substances of concern in mechanically deboned meat concluded, among other things, that a slight nutritional benefit is to be expected for most people from consuming the calcium in mechanically deboned meat, especially for persons whose customary intake of calcium falls below the Recommended Dietary Allowance. It was also concluded that the amount of calcium, which would be added to the diet by the mechanically deboned meat,

would not be so great in amount as to pose a hazard to the health of most people except for those persons who were hyperabsorbers of calcium and who were likely already to be under medical supervision to limit their calcium intake.

The petitioners assert that for consumers on calcium-restricted diets it would be even more informative than the current labeling scheme, to state on the labels of all products containing MS(S) the amount of calcium in those products, even if it is less than 20 mg per serving. If that were done, the petitioners assert that there would be no reason to list MS(S) as such in the ingredients statement of labels for meat food products in which MS(S) is used as an ingredient.

The petitioners propose that MS(S) constitute no more than 10 percent of the livestock and poultry product portion of a finished meat food product when the ingredient statement on labels for such product does not list MS(S) as such. This limitation on the amount of MS(S) would not only reduce the amount of calcium contributed to the product by MS(S), but would, in the petitioners' view, reduce to negligible levels the overall amount of MS(S) in the finished product. The petitioners state that at this level, there simply is no rational justification for separate identification of MS(S) in the ingredients list ln labels of meat food products in which it is used as an ingredient.

FSIS believes that there is merit in the petitioners' arguments, and that the labeling scheme proposed by the petitioners would not be false or misleading. Based on the comments received on the Petition for Rulemaking, FSIS believes that there is support for granting the petition. The public response to the petition has convinced FSIS to reconsider the issue of labeling of MS(S), under certain circumstances, when it is used as an ingredient in meat food products. Therefore, the Agency is issuing this proposed rule.

However, the Agency believes the specific change in the regulations proposed by the petitioners, *i.e.*, amending the label requirements for MS(S) in 9 CFR 317.2(j)(13)(ii), would be insufficient to achieve what FSIS believes is the intent of the petition. The Agency believes that granting the intent of the petition would also require an amendment to § 317.2(f)(1) of the Federal meat inspection regulations (9 CFR 317.2(f)(1)) to provide a new exception to the requirement that on the label of products "the list of ingredients shall show the common or usual names of the ingredients * * *" "Mechanically Separated (Species)" is the name prescribed in the standard for MS(S) (9 CFR 319.5), and as such, is the name that would be required to appear in the ingredients statement of meat food products in which it is used.

Therefore, in addition to amending the labeling requirements for MS(S) in 9 CFR 317.2(j)(13)(ii), the Agency is proposing to add a new exception to the requirement in § 317.2(f)(1) of the Federal meat inspection regulations (9 CFR 317.2(f)(1)), that ingredient lists on labels declare each ingredient by its common or usual name, when MS(S) is used at not more than 10 percent of the livestock and poultry product portion of a meat food product and the label of the meat food product bears a declaration of the percent of the U.S. RDA of calcium in a serving of the meat food product, irrespective of amount, as part of nutrition labeling or as part of a prominent statement in immediate conjunction with the list of ingredients.

For the reasons set forth in the preamble, Title 9, Part 317, of the Code of Federal Regualtions would be amended as set forth below.

List of Subjects in 9 CFR Part 317

Food labeling, Meat Inspection.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 would continue to read as follows:

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.*, 33 U.S.C. 1254.

2. Section 317.2 would be amended by adding paragraph (f)(1)(vi) and by adding a new proviso to the end of paragraph (j)(13)(ii) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f) * * *

(1) * * *

(vi) When a meat food product contains "Mechanically Separated (Species)", as defined in § 319.5 of this subchapter, at a level no greater than 10 percent of the livestock and poultry product portion of such product, the "Mechanically Separated (Species)" may be listed as the species of livestock from which it is derived: Provided, That the labeling of the meat food product bears a declaration of the percentage of the U.S. Recommended Daily Allowance for calcium contained in a serving of the meat food product in accordance with § 317.2(j)(13)(ii) of this subchapter.

* * * * *

(j) * * *

(13) * * *

(ii) * * * *Provided further however, That,* in the circumstances where mechanically separated (species) is (*a*) used as an ingredient of a meat food product, (*b*) constitutes no more than 10 percent of the livestock and poultry product portion of such meat food product, and (*c*) is listed in the ingredients statement of said meat food product as the species of livestock from which it is derived, the actual calcium content of said meat food product, irrespective of amount, shall always be determined and expressed as the percentage of the U.S. Recommended Daily Allowance (U.S. RDA) in a serving, in accordance with the definition of serving and U.S. RDA for calcium, as provided in 21 CFR 101.9(b)(1), and (c)(7)(iv), as part of any nutrition information included on the label of such meat food product, or if the meat food product does not bear nutrition labeling information, as part of a prominent statement in immediate conjunction with the list of ingredients, as follows: "A _____ serving contains ____ % of the U.S. RDA of calcium", with the blanks to be filled in, respectively, with the quantity of such product that constitutes a serving and the amount of calcium provided by such serving.

* * * * *

Done at Washington, DC, on: April 26, 1988.

Ronald J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 88-20497 Filed 9-8-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 71

[Notice No. 670; Ref: Notice No. 661]

Requests or Demands for Disclosure of Information in Testimony and in Related Matters

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

ACTION: Extension of comment period.

SUMMARY: This notice extends, for an additional 60 days, the comment period for Notice No. 661, a notice of proposed rulemaking (NPRM) regarding requests or demands for disclosure of information in testimony and in related matters published in the **Federal Register** on July 11, 1988 (53 FR 26088). ATF has received

several requests for an extension of the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the NPRM.

DATE: Written comments must be received on or before November 8, 1988.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 ATTN: Notice No. 661. Copies of the proposed regulation and the written comments will be available for public inspection during normal business hours at the ATF Reading Room, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Ave. NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1988, ATF published Notice No. 661, which proposed an amendment to the regulation governing requests and demands for disclosure of information in court testimony and related matters. The amendment would require an affidavit to be filed whenever the testimony of an ATF officer or employee is sought on behalf of a party other than the Federal Government or a State.

Several members of the alcoholic beverage industry expressed concern and desired to present their views, but conflicts in schedules prevented them from consulting with each other on the issues raised in the proposal. They found themselves without sufficient time to prepare their comments before the close of the comment period.

ATF considers this to be a valid reason for extension of the comment period. Accordingly, the comment period will be extended until November 8, 1988.

Drafting Information

The author of this document is Mr. Steve Simon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: September 2, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88–20415 Filed 9–8–88; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–88–15]

Drawbridge Operation Regulations; Tchefuncta River, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development and the Town of Madisonville, Louisiana, the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on State Route 22 across the Tchefuncta River, mile 2.5 at Madisonville, St. Tammany Parish, Louisiana, by permitting the draw to open only on the hour and half-hour between 5 a.m. and 8 p.m., and to open on signal at all other times. This proposal is being made to relieve vehicular traffic congestion. The opening of the draw on a regulated basis will allow motorists to plan crossings in conjuction with the regulated openings and will impose very little inconvenience to vessel traffic.

DATE: Comments must be received on or before October 24, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130–3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eight Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 6.2 feet above mean high water at the west rest pier fender and 1.5 feet above mean high water at the pivot pier fender. Navigation through the bridge consists mainly of recreational craft, and an occasional commercial vessel.

Extensive residential development in the Madisonville area has significantly increased the amount of both vehicular traffic and vessel traffic that use the bridge. During the 1987 peak boating season on the waterway (May through October), the bridge averaged 487 openings per month. Of these, 216 occurred on the weekends. The vehicular traffic count taken in June 1988 by the highway department shows that during the proposed regulated period for bridge openings (5 a.m. to 8 p.m.), the average daily traffic crossing the bridge is 1462 vehicles per day on weekdays and 1429 vehicles per day on weekends. The predominant waterway users of this drawbridge are recreational boaters. While the operators of these boats may be slightly inconvenienced by the regulated openings, they will still have the opportunity to pass through the bridge almost at will with knowledge of the schedule for openings and with minimal planning. The draw will open on signal at any time for a vessel in distress, or for an emergency aboard the vessel. Most recreational boat owners that use the bridge for vessel passage also use the bridge for vehicular passage. Therefore, they too will benefit from regulated bridge openings.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that, as stated above, with some planning by vessel operators that use the waterway, openings on a regulated basis will cause only minimal delay, or no delay, for

boaters. Since the economic impact of this proposal is expeced to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.500 is added to read as follows:

§ 117.500 Tchefuncta River.

The draw of the State Route 22 bridge, mile 2.5 at Madisonvile, shall open on signal; except that, from 5 a.m. to 8 p.m., the draw need open only on the hour and half-hour. The draw shall open on signal at any time for a vessel in distress or for an emergency aboard the vessel.

Dated: August 19, 1988.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 88–20547 Filed 9–8–88; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 160

[CGD 86–055]
RIN 2115–AC58

Notifications of Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the advance notice of arrival and departure regulations by adding notification requirements for each foreign vessel of less than 1600 gross tons that is not a public vessel and is bound for a part or place in the Miami Captain of the Port Zone. In addition, it is proposed to add the vessel's call sign or official number to advance arrival and departure notifications of vessels carrying certain dangerous cargoes. This action was requested by the Commander of the Seventh Coast Guard District because of the number of vessels arriving without notice in unsafe conditions and with improper manning. Some vessels lack complete vessel documentation and either are missing or have deficiently operating marine sanitation devices. If adopted, these proposals will enhance safety and security in the port of Miami.

DATE: Comments must be received on or before October 24, 1988.

ADDRESSES: Comments should be submitted to Commandant (G–LRA 2/21)(CGD 86–055), U.S. Coast Guard, Washington, DC 20593–0001. Comments will be available for inspection and copying at the Marine Safety Council (G–LRA 2/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1477. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Copies of the Draft Regulatory Evaluation and Categorical Exclusion from the National Environmental Policy Act (NEPA) may also be inspected and copied at the same address.

Persons desiring to comment on the information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lt. James H. McDowell, Office of Marine Safety, Security, and Environmental Protection, (202) 267–0491.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 86–055) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. If an acknowledgement is desired, a stamped, self-addressed postcard should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice in the **Federal Register** if written requests for a hearing are received from interested persons raising valid issues and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking procedure.

Discussion of the Proposed Regulations

The Ports and Waterways Safety Act of 1972 (86 Stat. 424), as amended by the Port and Tanker Safety Act of 1978 (92 Stat. 1471), is the authority for these regulations. Among the duties delegated under this law as amended, is the authority to require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the U.S., in sufficient time to permit advance vessel traffic planning prior to port entry. This includes any information which is not already a matter of record and which the Secretary determines necessary for the control of the vessel and the safety of the port or the marine environment.

Under the existing regulations in 33 CFR 160.207, vessels of 1600 gross tons or more must provide the Captain of the Port (COTP) with an advance notice 24 hours prior to arrival. The required notice provides the COTP with a list of vessels and cargoes entering and departing ports. This information enables the COTP to effectively exercise his authority to monitor and control the movement of vessels and to deny entry to vessels because they have previously been identified as posing a threat to the safety, security or environment of U.S. ports. It is the only reliable and accurate way for the COTP to determine what vessels are or will be in port.

Without the advance notice of arrival information, a vessel that poses a threat could transit U.S. waters and enter a port and moor before being identified by the COTP as a threat. By that time, it is possible that some harm may already have occurred. Without advance notice of arrival, Coast Guard personnel would constantly have to patrol the entire port area by boat and vehicle to determine what vessels were in port and what cargoes were being handled in the port. The Coast Guard would have to rely on voluntary advance notification and those vessels desiring to evade Coast Guard enforcement activity would most likely not report. Although requiring advance notification of arrival does not guarantee that all vessels will report, it is relatively easy to detect those which have failed to do so and to focus further investigation on those in violation.

Under the existing regulations in 33 CFR 160.207, vessels of less than 1600 gross tons are excepted from the requirement to provide notification. Due to the proximity of COTP Miami's Zone to the Bahamas, to other islands in the Caribbean and to South America, many smaller oceangoing vessels arrive in that port. Over 48 percent of all vessels entering the Miami COTP Zone are foreign vessels of less than 1600 gross tons. The Coast Guard frequently finds these vessels improperly manned and overloaded with cargo and passengers. Incompatible cargoes are often stowed together aboard these vessels. Some

lack complete vessel documentation and either are missing or have deficiently operating marine sanitation devices.

In 1985, COTP Miami boarded 615 vessels and found 211 violations of the navigation safety, pollution prevention, hazardous materials and marine sanitation device regulations. Over 42 percent of the total boardings were on vessels less than 1600 gross tons. These vessels accounted for two-thirds of the total violations discovered. Violations were found in over 33 percent of those vessels boarded that were less than 1600 gross tons. Violations were found in only six percent of those vessels boarded that were 1600 gross tons or greater. COTP personnel also found 17 vessels of less than 1600 gross tons arriving in port loaded in excess of that permitted by their load lines. The stability of these overloaded vessels was questionable, and they were at risk of capsizing. There were five groundings and one potential sinking of small foreign flag cargo vessels in 1985. Random boardings of these vessels identified repeated deficiencies in cargo stowage, loading, and cargo compatibility. Many vessels entered the port with no International Oil Pollution Prevention Certificate, Load Line Certificate, Certificate of Financial Responsibility, or SOLAS Certificate. Vessels have also been found with an insufficient number of licensed deck and engineering personnel onboard.

This proposal would require all foreign vessels entering the Miami COTP Zone to provide advance notification. If adopted, this proposed regulation would provide the COTP with sufficient notification that these vessels will be in port. The COTP could then target potential problem vessels for inspection. These inspections will ensure that problems relating to manning, stability, cargo compatibility, improper documentation and inoperative or missing marine sanitation devices are detected and corrected. These measures should result in fewer collisions, groundings and overloaded vessels in the Miami COTP Zone.

Coast Guard Headquarters' staff contacted COTP's in the Seventh and Eighth Coast Guard districts and COTP San Diego to determine whether vessels under 1600 GT present similar problems in other COTP zones. San Juan was the only COTP to indicate it was experiencing problems and requested similar regulations for the San Juan Zone. This project will be evaluated and final action taken at a future date.

The Coast Guard also considered setting a lower tonnage limit for notification. The lower tonnage limits for existing laws and regulations, e.g., IOPP, FMC, etc. were considered. However, because these lower limits are so varied, it was decided not to set a lower limit in this case.

In addition, it is proposed to add the vessel's call sign or official number to all the notifications in Subpart C of Part 160. Although included in § 160.201(c)(3)(i), this information was inadvertently omitted in §§ 160.207 through 160.213 of the present regulations. The vessel's call sign or official number is needed by the COTP to verify the identity of the vessel. This proposal would also update the material in § 160.201(b).

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Regulatory Evaluation

According to COTP Miami records, there are approximately 4,200 arrivals of foreign commercial vessels of less than 1600 gross tons in the Miami COTP Zone every year. Each report of vessel arrival takes the vessel owner or operator approximately ten minutes or 0.166 hours to collect and transmit to the Coast Guard. This would amount to 697.2 hours per year to comply with the advance notice requirements. At $16.22 per hour for clerical time, this would result in a cost to the public of $11,308.58 per year.

The Coast Guard uses five minutes or 0.083 hours to receive and review each report of vessel arrival. That would result in the use of 348.6 hours per year to administer the advance notification rules. At $20.00 per hour for enlisted personnel time, the cost to the Federal Government would be $6,972.00 a year. The inclusion of a vessel's call sign or official number, in reports already required will have no measurable impact.

These proposed regulations are non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. Copies of the regulatory evaluation may be obtained as indicated under **FOR FURTHER INFORMATION CONTACT** and may be inspected or copied as indicated under **ADDRESSES.**

Regulatory Flexibility Act

This proposed rule would apply to small entities, i.e., those operating vessels less than 1600 gross tons. The costs are proportionately lower for small entities than for larger ones because a small entity will have fewer ships and fewer port calls requiring advance notifications. Since these costs are so low, the cost to any individual small entity will be minimal. Therefore, the Coast Guard certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule would increase the information reporting requirements of 33 CFR Part 160 by adding requirements that all foreign commercial vessels of less than 1600 gross tons bound for ports or places in the Miami Captain of the Port Zone provide an advance notice under 33 CFR 160.207. The information reporting requirements have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on the information collection requirements should submit their comments to OMB as indicated under **ADDRESSES.** Persons submitting comments to OMB are also requested to submit a copy of their comments to the U.S. Coast Guard as indicated under **ADDRESSES.**

Environmental Analysis

The Coast Guard has determined that this rulemaking is categorically excluded from detailed environmental evaluation. The Categorical Exclusion Determination is available in the docket for examination and copying as indicated under **ADDRESSES.**

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (Water), Vessels, Waterways.

In consideration of the foregoing, the Coast Guard proposes to amend Part 160

of Subchapter P of Chapter I, Title 33, Code of Federal Regulations, as follows:

PART 160—[AMENDED]

1. The authority citation for Part 160 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46

2. By amending § 160.201 by revising paragraphs (b) and (c)(1) to read as follows:

§ 160.201 Applicability and exceptions to applicability.

* * * * *

(b) This part does not apply to recreational vessels under 46 U.S.C. 4301 *et seq.* and, except § 160.215, does not apply to passenger and supply vessels when they are employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.

(c) * * *

(1) Each vessel of less than 1600 gross tons, except foreign vessels of less than 1600 gross tons entering ports or places in the Miami Captain of the Port Zone as described in § 3.35–10(b) of this chapter.

* * * * *

3. By amending § 160.207 by revising paragraph (c)(1) to read as follows:

§ 160.207 Notice of Arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

(1) The name, country of registry, and call sign or official number of the vessel;

* * * * *

4. By amending § 160.211 by revising paragraph (a)(1) to read as follows:

§ 160.211 Notice of Arrival: Vessels carrying certain dangerous cargo.

(a) * * *

(1) The name, country of registry, and call sign or official number of the vessel;

* * * * *

5. By amending § 160.213 by revising paragraph (a)(1) to read as follows:

§ 160.213 Notice of Departure: Vessels carrying certain dangerous cargo.

(a) * * *

(1) The name, country of registry, and call sign or official number of the vessel;

* * * * *

July 6, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–20549 Filed 9–8–88; 8:45 am]

BILLING CODE 491–014–M

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Denial of petition for rulemaking.

SUMMARY: NHTSA denies a petition from David Cameron requesting an amendment of the Federal motor vehicle safety standard on lighting. The petition asked for changes to the standard for an alternative rear-lighting system which would (1) allow use of the color red on rear lamps only to indicate braking, and (2) require that both taillamps and turn signal lamps be amber in color. According to the petitioner, such a change would result in the stop lamp message being more clearly perceived and lead to rear-end crash reduction. The agency denies the petition on the bases that no data exist indicating amber taillamps would provide a level of safety equivalent to red ones, that substitution of this color might cause confusion in drivers following, and that it would result in an increase in vehicle and component cost without any concomitant safety benefits.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202–366–5271).

SUPPLEMENTARY INFORMATION: On July 31, 1986, David Cameron of Port Orange, Florida, petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment,* to change the color and operation of certain rear lamps. Under Standard No. 108 stop lamps and taillamps must be red, while turn signal lamps may be amber or red. Mr. Cameron believes that the prevalence of red-colored lamps of varying intensities "causes ambiguity that delays perception of the brake signal," and that this can be cured by the lighting system he recommends. Under this system, taillamps and turn signal lamps would be amber, and if illuminated would be extinguished immediately upon application of the brake pedal. Stop lamps would continue to be red, as under the present standard. If a turn signal lamp had been flashing at the time the brake was applied, the stop lamp on the same side of the vehicle would flash. Release of the brake pedal would return the rear lighting system to its prior state. Mr. Cameron asked that his system be allowed as an alternative to the one currently specified by Standard No. 108.

Standard No. 108 has for many years established a standardized color scheme for the rear lighting systems of passenger cars, deviating only in allowing use of amber as an option for turn signals. Because of the lack of data to support a change to amber taillamps, and the magnitude of the change in rear lighting systems contemplated by the petition, the agency believes that full implementation of Mr. Cameron's suggestions has the potential for increasing driver confusion and would require a considerable change in driver orientation to the new alternative rear lighting systems.

The general concepts associated with possible enhancements to the rear lighting of motor vehicles are well established, such as separation of function through further color coding or spatial separation. The potential exists for further application of these concepts to vehicle lighting. However, the agency believes that if a proposal for new rear lighting systems were to be considered, it should first gather additional data, through research and/or field studies, so that net benefits can be reasonably projected. At the end of its current technical review, pursuant to 49 CFR 552.8, NHTSA has concluded that there is not a reasonable possibility that an order of the nature requested would be issued at the conclusion of a rulemaking proceeding, and the petition is denied.

(15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on September 6, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–20563 Filed 9–8–88; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 571

[Docket No. 88–17; Notice 1]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to Federal Motor Vehicle Safety Standard No. 108 that would incorporate by reference the current SAE Standards for stoplamps and turn signal lamps, thereby granting a petition for rulemaking filed by the Truck Safety

Equipment Institute. The principal substantive effect of the proposal would be to require vehicles whose overall width is 80 inches or more to be equipped with stoplamps and rear turn signal lamps with a minimum luminous lens area of 12 square inches, which is presently required only if those lamps are spaced less than 22 inches apart.

DATES: Comment closing date for the proposal is October 24, 1988. Effective date of the amendment would be 6 months after publication of the final rule. Any request for an extension of time in which to comment must be received not later than 10 days before the published expiration date of the comment period (49 CFR 553.19).

ADDRESS: Comments should refer to the docket number and notice number of the notice, and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202–366–5271).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. *Lamps, Reflective Devices, and Associated Equipment* incorporates by 108 reference SAE Standard J586c *Stop Lamps*, August 1970, and SAE Standard J588e *Turn Signal Lamps*, September 1970, as the basic requirements for those items of motor vehicle lighting equipment. On April 7, 1986, Truck Safety Equipment Institute (TSEI) petitioned the agency for rulemaking to amend Standard No. 108 to substitute updated SAE standards. These are: SAE J586 *Stop Lamps for Use on Motor Vehicle Less Than 2032 mm in Overall Width*, SAE J588 NOV84 *Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width*, SAE J1395 APR85 *Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width*, and SAE J1398 MAY85 *Stop Lamps for Use on Motor Vehicles 2032 mm Or More in Overall Width*. In its new standards the SAE distinguishes between vehicles whose overall width is less than 80 inches (2032 mm), and vehicles of greater width, a distinction made from the beginning by Standard No. 108 in its Tables. TSEI supported its request with the argument that the Society of Automotive Engineers had determined that it was desirable to separate standards for certain devices when used on wider vehicles, which because of their size should be more conspicuous and better delineated with lighting devices than smaller vehicles.

The agency has completed its technical review of the petition, and has concluded that there is a reasonable possibility that amendments responsive to major aspects of the petition will be issued at the end of this proceeding. To that extent, NHTSA grants TSEI's petition.

The principal regulatory differences between Standard No. 108 and the updated SAE references are these. Photometric compliance is determined through sums of test points within a group, rather than at individual test points. Because this is an option currently permitted by paragraph S4.1.1.12 of Standard No. 108 its adoption will make the option the mandatory requirement. The new SAE standards reduce the minimum lens area for rear turn signal lamps and stoplamps on vehicles whose overall width is less than 80 inches from 8 square inches to 6 square inches; NHTSA does not concur, and in the interest of safety is proposing an exception that retains the current minimum. In addition, there is currently a proposal within the Working Party on the Construction of Vehicles (WP 29) of the Economic Commission of Europe (ECE) for the introduction of a minimum lens area of 8 square inches for brighter turn signal and stop lamps. If this proposal is adopted it will be consistent with the existing requirement in Standard No. 108 but would not be consistent with a change to 6 square inches. On wider vehicles the minimum lens area for these lamps is 12 square inches, currently required only if the lamps are mounted less than 22 inches apart. NHTSA accepts the SAE rationale that the increase in lens area for all wider vehicles is necessary regardless of lamp spacing because they are susceptible to build up of grime. An increase in lens area should enhance vehicle conspicuity and contribute to safety.

An additional difference between the new SAE turn signal specifications and the ones specified in Standard No. 108 concerns intensity. If a turn signal lamp is closer than 4 inches (100 mm) to a low beam headlamp, it must have 2½ times the intensity otherwise required. The SAE would apply the factor of 2½ only if the turn signal were closer to the low beam headlamp than 60 mm. The agency does not believe that this modification is in the interest of safety and proposes to retain the current requirement. A further difference concerns the vibration test equipment; the new SAE standards reference SAE J575 JUL83 which specifies a test environment and a "shaker type" vibration machine that differ from those specified in SAE Standard J575, July 1970, currently applicable in Standard No. 108 to vibration tests for turn signal lamps, stop lamps, and other types of lighting equipment. The agency sees no safety purpose served by introduction of a different vibration test requiring different test protocols for turn signal lamps and stop lamps, depending upon whether they were manufactured as original or replacement equipment, and therefore proposes that the 1970 requirements be retained for equipment covered by the 1985 SAE standards. Companion amendments of several paragraphs of Standard No. 108 are also proposed in order to harmonize them with the proposed adoption of the new SAE standards and the exceptions to them that the agency deems desirable. In accordance with past practice, replacement stoplamps and turn signal lamps may continue to be designed to conform with the same versions of the SAE standards as the equipment they replace, and an appropriate amendment is proposed for paragraph S4.1.1.11. Tables I and III would be amended by replacing the references to the old SAE standards for turn signal lamps and stop lamps with the new ones.

Finally, there is an issue upon which the agency requests comment. The new SAE standards used the term "functional lighted area" rather than "effective projected luminous lens area" presently used in Standard No. 108. NHTSA seeks comment with supporting data or arguments on whether it is more desirable to require compliance with the "projected area" or with the actual lens area as in the new SAE standards. Does the new language eliminate or reduce problems of interpretation associated with such phrases as "barely lighted perimeter area" and "beads and rims"? Or is it more appropriate to use a proposed ECE definition of "illuminating surface": "the orthogonal projection of the lamp in a plane perpendicular to its axis of reference and in contact with the exterior light-emitting surface of the lamp, this projection being bounded by the edges of screens situated in this plane, each allowing only 98 percent of the total luminous intensity of the light to persist in the direction of the axis of reference. To determine the lower, upper, and lateral limits of the illuminating surface, only screens with horizontal or vertical edges shall be used." (TRANS/SC1/WP29/R.388, Proposed Revision of Regulation No. 48). Or does it make any real difference which is used?

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and

procedures. The proposal would require larger rear turn signal and stop lamps on vehicles whose overall width exceeds 80 inches if the lamps are spaced more than 22 inches apart. According to the petitioner, vehicles 80 inches and wider have traditionally been equipped with the larger lamps that already meet the proposed requirement. The agency estimates that the incremental cost of using a lamp with a minimum lens area of 12 square inches, rather than one of 8 square inches, would be minimal. Therefore a regulatory evaluation is not necessary.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal may have a small effect upon the human environment since the quantity of materials used in the manufacture of some stoplamps might be increased.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles and replacement lighting equipment will be minimally impacted.

Finally, the agency has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has tentatively concluded that the proposed rule has no federalism implications. The proposal would not establish a new area of Federal regulation but simply change the specifications of a system that has been Federally regulated since 1968. Under 15 U.S.C. 1392(d) a State may not establish or continue in effect a standard that differs from a Federal motor vehicle safety standard. The agency's examination of a sample of motor vehicle lighting laws of the larger States, did not reveal any State standard which might be preempted by the proposal. However, NHTSA requests comments from States and other interested persons on whether the proposal would have any significant effect on state regulations.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and lawyer primarily responsible for this rule are Kevin Cavey and Taylor Vinson respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 and § 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

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

§ 571.108 [Amended]

2. Paragraph S3 *Definitions* would be amended by adding the following definitions in alphabetical order:

"Functional lighted area" means that part of the lens optical system that directs light to the photometric test pattern and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light small areas (½ deg. radius).

"Multiple compartment lamp" means a device which gives its indication by two or more separately lighted areas which are joined by one or more common parts, such as a housing or lens.

"Multiple lamp arrangement" means an array of two or more separate lamps on each side of the vehicle which operate together to give a signal.

3. The first sentence of S4.1.1.11 would be revised to read:

S4.1.1.11 A parking lamp, taillamp, stop lamp manufactured to replace a stop lamp designed to conform to SAE Standard J586c, *Stop Lamps,* August 1970, or turn signal lamp manufactured to replace a turn signal lamp that was designed to conform to SAE Standard J588e, *Turn Signal Lamps,* September 1970, shall meet the minimum percentage specified in Figure 1a of the corresponding minimum allowable value specified in Figure 1b.

4. S4.1.1.12 would be revised to read:

S4.1.1.12 A parking lamp, taillamp, stop lamp manufactured to replace a stop lamp designed to conform to SAE Standard J586c *Stop Lamps,* August 1970, or turn signal lamp manufactured to replace a turn signal lamp manufactured to conform to SAE Standard J588e, *Turn Signal Lamps,* September 1970, is not required to meet the minimum photometric value at each test point specified in this standard if the sum of the percentages of the minimum candlepower measured at the test points is not less than that specified for each group listed in Figure 1c.

5. S4.1.1.32 would be revised to read:

S4.1.1.32 Each stop lamp manufactured to replace a stop lamp designed to conform to SAE Standard J586c, *Stop Lamps,* August 1970, may also be designed to conform to SAE Standard J586c. Each turn signal lamp manufactured to replace a turn signal lamp designed to conform to SAE Standard J588e, *Turn Signal Lamps,* September 1970, may also be designed to conform to SAE Standard J588e. Note

6 of Table 1 of SAE Standard J588e does not apply. A stop lamp that is not optically combined with a turn signal lamp shall remain activated when the turn signal is flashing.

6. New paragraph S4.1.1.30 would be added to read:

S4.1.1.30 In paragraph 5.3.2 and 5.3.3 of SAE Standard J586 FEB84 *Stop Lamps for Use or Motor Vehicles Less Than 2032 mm in Overall Width*, and SAE Standard J588 NOV84 *Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width* the figure "37.5 square centimeters" is replaced by "50 square centimeters".

7. S4.3.1.7 would be revised to read:

S4.3.1.7 Instead of the Multipliers in Table 2 of SAE Standard J588 NOV84 *Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width*, and SAE J1395 APR85 *Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width* for front turn signal lamps that are less than 100 mm from the lighted edge of low beam headlamps, the multiplier of Table 1 and 3 values to obtain the required minimum luminous intensities shall be 2.5.

8. In S5.1 the exception clause of the first sentence would be revised to read:

S5.1 * * *, except that the SAE Standard referred to as "J575" is J575e, *Tests for Motor Vehicle Lighting Devices and Components*, August 1970, for stop lamps designed to conform to SAE Standards J586c, J586 FEB84, and J1398 MAY85, for taillamps designed to conform to SAE Standards J585d and J585e, for turn signal lamps designed to conform to SAE Standards J588e, J588 NOV84, and J1395, APR85, and for high-mounted stop lamps designed to conform to SAE Recommended Practice J186a.

9. In Table I the applicable SAE Standard (final column) for stop lamps would be revised to read "SAE J1398 MAY85" and for turn signal lamps "SAE J1395 APR85".

10. In Table III the applicable SAE Standard (final column) for stop lamps would be revised to read "SAE J586 FEB84" and for turn signal lamps "SAE J588 NOV84".

11. In Tables I and III, in the first column, the number "2" referencing footnote 2 would be deleted from "Stoplamps" and "Turn signal lamps".

Issued on September 6, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-20565 Filed 9-8-88; 8:45 am]

BILLING CODE 4910-49-M

Notices

Federal Register
Vol. 53, No. 175
Friday, September 9, 1988

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 2, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W, Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revisions

- Farmers Home Administration.

7 CFR Part 1942–A, Community Facility Loans
440–11, –24; 442–2, –3, –7, –20, –21, –22, –28, –30, –46; 1942–8, –9, –19, –47
Recordkeeping, On occasion, Quarterly, Annually
State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations; 105,428 responses; 232,307 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–20500 Filed 9–8–88; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

[Docket No. FV–88–123]

Agency Information Collection Activities under OMB; Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of request made to OMB regarding emergency processing and approval of reporting (collection of information) and recordkeeping requirements.

SUMMARY: This is notice of a request made to the Office of Information and Regulatory Affairs (OIRA) for emergency review and processing of a new reporting requirement. The requirement is needed in connection with nomination of industry members for the Navel Orange Administration Committee (committee) under Federal Marketing Order 907.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 447–8139.

SUPPLEMENTARY INFORMATION: An industry amendatory referendum which was recently conducted resulted in a restructuring of the committee and a change in committee nomination procedures. The change includes a requirement that handlers in the industry furnish additional information to the United States Department of Agriculture. Members of the industry, and others who may be affected by the new rules, are aware of the additional reporting requirements which are part of the amendments to the marketing order. These amendments were passed in a referendum conducted June 21 through July 8, 1988.

Because committee members must be nominated and selected by October 1, 1988, as required by the marketing order (7 CFR Part 907.21), we are requesting emergency review and processing so the additional reporting requirements may be used in selecting the committee. The committee selection process takes approximately six weeks. We have requested OMB to provide us with their determination by August 10, 1988, in order to allow time to complete industry nominations by the October 1, 1988 deadline. The majority of the information collection requirements needed to accomplish the nomination process are currently authorized by OMB under OMB No. 0581–0116 for Marketing Order 907, Navel Oranges Grown in Arizona and Designated Part of California.

Following is a copy of APHIS Form 71 reflecting the burden changes:

BILLING CODE 3410–02–M

INSTRUCTIONS: Use this form when a single information collection document involves multiple reporting and recordkeeping requirements. The totals of the figures in cols. (D), (F), (H), (I) and (K) should be entered in items 17 & 18 of SF 83. For cols. (E), (G), and (J), the averages of the totals shall be computed, as follows, and then entered on the SF 83:

(F) Total / (D) Total = (E) Average (H) Total / (F) Total = (G) Average (K) Total / (I) Total = (J) Average

TITLE OF INFORMATION COLLECTION DOCUMENT: Navel Oranges Grown in Arizona and Designated Part of California, Marketing Order 907

OMB NO. 0581- 0116

DATE PREPARED: August 1988

PAGE 1 OF 1

IDENTIFICATION OF REPORTING OR RECORDKEEPING REQUIREMENT			ANNUAL BURDEN							
			REPORTS					RECORDS		
SECTION OF REGS. (A)	DESCRIPTION (B)	FORM NO(S). (If "none", so state) (C)	NO. OF RESPONDENTS (D)	NO. OF RESPONSES PER RESPONDENT (E)	TOTAL ANNUAL RESPONSES (Col. D x E) (F)	HOURS PER RESPONSE (G)	TOTAL HOURS (Col. F x G) (H)	NO. OF RECORDKEEPERS (I)	ANNUAL HOURS PER RECORDKEEPER (J)	TOTAL RECORDKEEPING HOURS (Col. I x J) (K)
907.22(a)(2) .102(a)(1)	Nominations	None	10	1 ea two-yr period	10	.083	.8			
	Handlers will be requested to notify the Secretary of the formation of their coalition of handlers; and a growers list will be requested from handlers by the Secretary for purposes of mail balloting.									
907.22(a)(1)(2) .102(a)(2)		None Ltr	10	1 ea two-yr period	10	.083	.8			
	Secretary will request handler coalitions to submit a slate of candidates for nomination to the Secretary for ratification by growers and/or boards of directors of cooperatives.									
907.22(g) .102(a)(3)(4)(5)		None Ballot	4000	1	4000	.05	200			
	Increase in burden due to increase in number of growers who could potentially vote for committee nominees. There is no change in the type of information being requested on this form.									

APHIS FORM 71 (AUG 83) SUMMARY OF INFORMATION COLLECTIONS USDA-APHIS

BILLING CODE 3410-02-C

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

Dated: August 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–19937 Filed 9–8–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket No. 88–128]

Selection of Members for the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice that the Secretary of Agriculture intends to solicit nominations for membership on the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

DATE: Written comments must be received or postmarked on or before October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Lonnie J. King, Deputy Administrator, VS, APHIS, USDA, Room 320–E, Administration Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 447–5193.

SUPPLEMENTARY INFORMATION: We are giving notice that the Secretary of Agriculture hereby solicits nominations for membership on the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee). The purpose of the Committee is to advise the Secretary of Agriculture on means to prevent, suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry disease, in the event these diseases should enter the United States.

We are soliciting nominations for the Committee from interested organizations and individuals. An organization may nominate individuals from within or outside its membership. However, the Secretary's selection of members to the Committee will not be limited to these nominations. It is a policy of the USDA that no person shall be discriminated against on grounds of race, color, religion, sex, national origin, age, or handicap. This will enable the Secretary to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act and USDA Departmental Regulation 1043.

Information concerning the nomination process can be obtained from Dr. Lonnie J. King at the address and telephone number listed in this document.

Done in Washington, DC, this 2nd day of September 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–20498 Filed 9–8–88; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Lake Bradford Land Exchange; Revised Notice of Intent to Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of due date for comments concerning the scope of the analysis for the proposed Lake Bradford Land Exchange.

SUMMARY: A large amount of interest has been expressed in the analysis for the proposed Lake Bradford Land Exchange, Wakulla Ranger District, Apalachicola National Forest, Leon County, Florida; therefore, the due date for comments concerning the scope of the analysis is being extended to provide additional time for interested and affected persons to provide their input.

DATES: The due date for comments published in the **Federal Register** of August 5, 1988 (53 FR 29504) is being extended to September 20, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond K. Mason, Planning Staff Officer, National Forests in Florida, Tallahassee, Florida 32301, phone 904–681–7265.

Date: August 29, 1988.

John E. Alcock,

Regional Forester.

[FR Doc. 88–20495 Filed 9–8–88; 8:45 am]

BILLING CODE 3410–11–M

Land and Resource Management Plan; Stanislaus National Forest; Alpine, Calaveras, Mariposa and Tuolumne Counties; CA; Reissuance of Draft Environmental Impact Statement

The Stanislaus National Forest Land and Resource Management Plan and Draft Environmental Impact Statement will be reissued. The plan and draft statement issued November 29, 1985 is hereby withdrawn.

All comments received during the formal comment period on the withdrawn draft (November 29, 1985 through April 7, 1986) have been analyzed and will be used in developing the new documents. Additional written comments may be sent to: Stanislaus National Forest, Attn: LMP, 19777 Greenley Road, Sonora, CA 95370.

The dates for issuing the new draft documents, and for the public comment period, will be announced in the **Federal Register** at a later time.

Date: September 1, 1988.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 88–20479 Filed 9–8–88; 8:45 am]

BILLING CODE 3410–11–M

Supplements to Draft Environmental Impact Statements for Land and Resource Management Plans of the Deschutes, Ochoco, Okanogan, Olympic, Siuslaw, and Wenatchee National Forests of Pacific Northwest Region; Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of inten to prepare supplements to draft environmental impact statements for six national forests in Oregon and Washington.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare supplements to the draft environmental impact statements (EISs) on Land and Resource Management Plans for the Deschutes, Ochoco, Okanogan, Olympic, Siuslaw, and Wenatchee National Forests in Pacific Northwest Region (Oregon and Washington). The purpose of these supplements is to present for public review and comment additional information that was not included in the draft EISs and proposed plans. The agency invites written comments on the scope of these supplemental analyses. In addition, the agency gives notice of these analyses that will occur so that interested and affected people are aware of how they may participate and contribute to the final decision.

FOR FURTHER INFORMATION CONTACT: Questions and comments about these supplements should be directed to Tom Nygren, Director of Planning, P.O. Box 3623, Portland, OR 97208; Phone (503) 221–2387.

SUPPLEMENTARY INFORMATION: Supplements to these six National Forests are expected to be published in September 1988. The information to be presented in each supplement includes a "No Change Alternative" and the background and analysis of management requirements used in developing the alternatives. The information was developed because of needs identified since the draft EISs were published and in response to decisions regarding two administrative

appeals by the Northwest Forest Resource Council.

(1) Filed on May 19, 1986 centered on direction by the Regional Forester to require inclusion of management requirements for protection and management of natural resources such as wildlife habitat, in the No Action Alternative for each forest plan.

(2) Filed on September 18, 1986 centered on direction from Regional Forester to incorporate management requirements into forest plan alternatives. In addition, some supplements may contain information on other topics, such as wild and scenic river candidates.

Date: August 30, 1988.

Neal B. Opsal,

Acting Regional Forester.

[FR Doc. 88-20513 Filed 9-8-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Okatoma Creek Watershed, Mississippi; Intent to Deauthorize Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Okatoma Creek Watershed project, Covington, Forrest, Jones, Simpson, and Smith Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: A determination has been made by L. Pete Heard that the proposed works of improvement for the Okatoma Creek Watershed project will not be installed. This project was approved for construction in September of 1978; however, the Sponsors have been unable to fulfill their responsibility so that construction could be started. Information regarding this determination may be obtained from L. Pete Heard, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

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

Date: August 31, 1988.

L. Pete Heard,

State Conservationist.

[FR Doc. 88-20489 Filed 9-8-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Marine Animal Productions, Inc. (1081)

On February 5, 1988, notice was published in the **Federal Register** (53 FR 3418) that an application had been filed by Marine Animal Productions, Inc., P.O. Box 4078, Gulfport, Mississippi 39502-4078, to take Atlantic bottlenose dolphins (*Tursiops Truncatus*) for public display.

Notice is hereby given that on August 25, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), The National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following office(s):

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

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

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: August 3, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-20581 Filed 9-8-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

DATES: Comments must be received on or before October 11, 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: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) 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.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Cabinet, Storage

7125-00-693-4352.

Services

File Maintenance

U.S. Treasury, Bureau of Public Debt, Parkersburg, West Virginia.

Microfilming Service

Internal Revenue Service Center, Cincinnati, Ohio.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 88-20522 Filed 9-8-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board; Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs Ad Hoc Committee; Meeting

September 2, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet on October 4–6, 1988, from 8:00 a.m. to 5:00 p.m., at the McDonnell Douglas Aircraft Company, Long Beach, California and Los Angeles area vendor facilities.

The purpose of this meeting is to gather information on how the McDonnell Douglas Aircraft Company handles the problems associated with "crud parts" and how they and their suppliers control the production quality control of these parts. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–20516 Filed 9–8–88; 8:45 am]

BILLING CODE 3910–01–M

Scientific Advisory Board; Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs Ad Hoc Committee; Meeting

September 2, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet on October 21, 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Washington, DC, Room 5D982.

The purpose of this meeting is to deliberate on the study's findings to date. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–20517 Filed 9–8–88; 8:45 am]

BILLING CODE 3910–01–M

Scientific Advisory Board; Hypersonic Test Facilities Ad Hoc Committee; Meeting

September 2, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypersonic Test Facilities will meet on 14–15 October 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Washington, DC, Room 5D982.

The purpose of this meeting is to review the status of the study's final report. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–20515 Filed 9–8–88; 8:45 am]

BILLING CODE 3910–01–M

Scientific Advisory Board; Munitions Effectiveness Ad Hoc Committee; Meeting

August 31, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Munitions Effectiveness will meet on 11–12 October 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430. This meeting was previously announced for 5–6 October 1988 and is rescheduled from those dates.

The purposes of this meeting are to assess the changes in the threat over the past ten years and to study how to take full advantage of potential improvements in munitions that were not possible ten years ago. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–20514 Filed 9–8–88; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

[3710–HV]

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Reevaluation of the West Des Moines; Des Moines, Iowa, Des Moines River Basin, Local Flood Protection Project

AGENCY: Army Corps of Enginers, DoD.

ACTION: Notice of intent.

SUMMARY: A draft SEIS will be prepared to address the reevaluation of the West Des Moines—Des Moines, Iowa, Des Moines River Basin, Local Flood Protection project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be answered by: Bob Vanderjack; 309/788–6361, Ext. 385; Commander, U.S. Army Engineer District, Rock Island, ATTN: CENCR–PD–E, Clock Tower Building—P.O. Box 2004, Rock Island, Illinois 61204–2004.

SUPPLEMENTARY INFORMATION: The West Des Moines—Des Moines, Iowa, Des Moines River Basin, Local Flood Protection project was authorized by the U.S. Congress in the Water Resources Development Act of 1986. Information will be presented to supplement the original Environmental Impact Statement (EIS) prepared in 1977.

1. Flood protection is to be provided to the cities of West Des Moines and Des Moines near the confluence of the Raccoon River and Walnut Creek, Polk County, Iowa. The project will protect an area of approximately 927 acres. Project elements include raising an existing levee and constructing new levees along the north bank of the Raccoon River, the west bank of Walnut Creek, and the north bank of Jordan Creek, within the city limits of the cities being protected. Ponding areas to relieve interior drainage problems and a borrow area have been designated.

2. Alternatives which have been considered include: No Additional Action; Evacuation; Floodproofing; Reservoir; Levees and Floodwalls; Various Levee Alignments; and, Channel Modification.

3. No public meetings are planned. Project plans are being coordinated with

interested agencies and the draft and final SEIS will be reviewed by the public. No significant issues or areas of controversy have been identified.

4. No scoping meeting will be held.

5. It is anticipated that the draft SEIS will be made available to the public in December 1988.

Date: August 24, 1988.

Neil A. Smart,

Colonel, EN Commanding.

[FR Doc. 88-20459 Filed 9-8-88; 8:45 am]

BILLING CODE 3710-HV-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023C]

Extension of Closing Date for Transmittal of Applications for New Awards Under the Research in Education of the Handicapped Program; Fiscal Year 1989

Deadline for Transmittal of Applications: The closing date for applications is extended from October 17, 1988 to November 10, 1988.

On August 23, 1988, a notice was published that established the closing date for transmittal of applications for the fiscal year 1989 Field-Initiated Research Projects competition under the Research in Education of the Handicapped Program (53 FR 32095-32096). Detailed information concerning this competition was included in that notice. The purpose of this notice is to extend the closing date for transmittal of applications to allow potential applicants additional time to develop their proposals.

For Applications or Further Information Contact: Linda Glidewell, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and Development, 400 Maryland Avenue, SW., (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

Program Authority: 20 U.S.C. 1441-1444.

Dated: September 6, 1988.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Note: An additional correction to this document is published elsewhere in the Corrections Section of this issue of the **Federal Register.**

[FR Doc. 88-20526 Filed 9-8-88; 8:45 am]

BILLING CODE 4000-01-M

National Council on Indian Education; Executive Committee Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of executive committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed Executive Committee meeting of the National Advisory Council on Indian Education. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2. This document is intended to notify the general public of their opportunity to partially attend.

DATE: September 24-25, 1988, 8:30 a.m. until conclusion of business.

ADDRESS: LaQuinta Hotel—Airport, 3975 Peoria Way, Colorado 80239 (303/371-5650) or (800/531-5900).

FOR FURTHER INFORMATION CONTACT: Gloria Duus, Acting Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Switzer Building, Washington, DC 20202-7556 (202/732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). Among other things, the Council is established to assist the Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Executive Committee will meet in closed session beginning at 8:30 a.m. on September 24, 1988 to interview intitial candidates for the permanent, NACIE Executive Director and will discuss personnel matters that will reflect confidential information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-049; 5 U.S.C. 552b(c)(6)). The closed session will continue until close of business at 5:00 p.m. on September 24th and will continue on September 25, 1988 until approximately 11:00 a.m. The open portion of the meeting will start at the conclusion of the closed meeting at approximately 11:00 a.m. on September 25th to discuss other NACIE business matters and will end at the conclusion of business.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b, shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., Room 4072, Switzer Bldg., Washington, DC 20202-7556 (202/732-1353).

Date: September 6, 1988.

Signed at Washington, DC.

Gloria Duus,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88-20557 Filed 9-8-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(EU)-55, of the transfer from France to the Institutt for Energiteknikk, Kjeller, Norway of 23 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235 for fabrication of test fuel elements for the Halden research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: September 2, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-20560 Filed 9-8-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order: Kaiser International Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Kaiser International Corp. (KIC), successor in interest to Kaiser Aluminum International Corp. (KAIC). The agreement proposes to resolve matters relating to KAIC's compliance with Federal petroleum price regulations for the period August 17, 1973 through January 27, 1981. If this Consent Order is approved, within thirty days of the effective date KIC will pay to the DOE $1,950,000.

ERA will then petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR, Subpart V, in which any person who claims to have suffered an injury from KAIC's alleged overcharges would have an opportunity to submit a claim.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Order, or renegotiate the agreement and, if successful, issue the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-32, 1000 Independence Avenue SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or by calling this office at (202) 586-1699.

SUPPLEMENTARY INFORMATION: During the period when the Mandatory Petroleum Price Regulations were in effect, KAIC was engaged in purchasing crude oil and reselling it, without changing its form, to purchasers other than ultimate consumers. Accordingly, KAIC was a "reseller" of crude oil, as defined in 10 CFR 212.31, and was therefore subject to the regulations governing resales of crude oil in 10 CFR Part 212, Subpart L.

ERA conducted an audit to determine KAIC's compliance with the federal petroleum price regulations during the period covered by the proposed Consent Order. As a result of the audit, disputes arose betrween KAIC and ERA concerning KAIC's compliance with applicable DOE regulations.

In a Proposed Remedial Order (PRO) issued to KAIC on May 3, 1983, ERA charged that, during the period May, 1978, through December, 1980, KAIC violated, *inter alia*, the anti-layering regulation at 10 CFR 212.186 by charging prices in the resale of crude oil in excess of the acquisition cost without providing any service or function traditionally and historically associated with crude oil resales. As a result, KAIC overcharged its customers by $2,399,552.61, according to the PRO. The PRO proposed that KAIC make restitution of this amount, plus interest.

During the PRO enforcement proceedings before OHA, it was learned for the first time that KAIC had merged with a wholly-owned subsidiary, Kaiser International Corp. (KIC), and that, as a result, KIC has assumed all of KAIC's obligations. Accordingly, ERA moved to join KIC as a party liable for the overcharges alleged in the PRO.

After extensive briefing and oral argument, OHA issued a decision and order on November 10, 1986, in which it upheld the charges of violation of § 212.186 and issued the PRO, with minor modifications, as a Remedial Order (RO). The RO requires both KAIC and KIC (hereinafter collectively Kaiser) to make restitution to DOE of $2,399,552.61, plus interest. *Kaiser Aluminum International Corp.*, 15 DOE Par. 83,007 (1986). Kaiser's appeal of the Remedial Order is pending before the Federal Energy Regulatory Commission.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the audit, and appropriate settlement compromises related to those issues. In evaluating the total settlement amount for KAIC's alleged regulatory violations, ERA took into consideration, in addition to the analysis of litigation risks, such factors as the number and complexity of the legal and factual issues, and the time and expense required for the government to fully litigate every issue in order to obtain any recovery. Based on all of these considerations, ERA concludes that the resolution of these matters for $1.95 million is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, Kaiser will pay to DOE $1,950,000 within 30 days of the effective date of the Consent Order in full settlement of all DOE claims. If the Consent Order is made final, ERA will peititon OHA to implement a Special Refund Proceeding, under the provisions of 10 CFR Part 205, Subpart V. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount in accordance with DOE's Modified Statement of Restitutionary Policy as set forth at 51 FR. 27899 (August 4, 1986).

Submission Of Written Comments:

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to Kaiser International Consent Order Comments, RG-32, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effected by publication of a notice in the **Federal Register**.

Issued in Washington, DC on September 2, 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88-20558 Filed 9-8-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Proposed Establishment of a Federally Funded Research and Development Center; Inhalation Toxicology Research Institute, Albuquerque, NM

AGENCY: Department of Energy.

ACTION: Notice No. 3 of proposed establishment of a Federally Funded Research and Development Center (FFRDC).

SUMMARY: In accordance with paragraph 6.b.(2) of Office of Federal Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Inhalation Toxicology Research Institute (ITRI) located in Albuquerque, New Mexico, as an FFRDC. Early programs at ITRI concentrated on the study of radionuclide toxicity problems associated with the development, manufacture, testing and potential use of nuclear weapons, particularly the study of inhaled fission products. Today, the programs at ITRI include: (1) The physical and chemical characterization of airborne toxicants; (2) the disposition of inhaled materials within the body; (3) development of improved understanding of dose-response relationships for inhaled radionuclides; (4) studies of dose-response relationships for inhaled chemical toxicants; (5) studies on human health risks from combined exposure to radiation sources and industrial chemicals; and (6) studies on the biological factors that influence responses to inhaled materials.

The nature of the research requires specialized facilities to conduct the integrated program of inhalation toxicology research needed to examine these issues. The ITRI facilities include three major inhalation exposure laboratory suites designed for the safe use and control of highly radioactive or potentially carcinogenic materials as well as specialized aerosol research laboratories. ITRI also has modern facilities for the care and housing of 10,000 contaminated and control animals, hospital facilities for specialized medical evaluation and treatment of laboratory animals and extensive pathology facilities. Based upon the long-term multidisciplinary research programs of this laboratory which are supportive of DOE's mission, the Department has determined that ITRI should be designated as an FFRDC.

DATE: Any comments on this proposed action must be received on or before October 11, 1988.

ADDRESSES: Comments should be addressed to Kristine Forsberg, Deputy Director, Acquisition and Assistance Management, Office of Energy Research, ER-64, U.S. Department of Energy, Washington, DC 20545.

Issued in Washington, DC on September 10, 1988.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research

[FR Doc. 88-20559 Filed 9-8-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Application Filed With the Commission; Arkansas Electric Cooperative Corp.

September 2, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 3043-010.

c. *Date filed:* August 22, 1988.

d. *Applicant:* Arkansas Electric Cooperative Corporation.

e. *Name of Project:* Arkansas River Lock and Dam No. 13 Hydropower.

f. *Location:* On the Arkansas River near Van Burean and Fort Smith, in Crawford County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Robert M. Lyford, P.O. Box 9469, Little Rock, AR 72219, (501) 570-2268.

i. *FERC Contact;* C.T. Raabe (202) 376-9778.

j. *Comment Date:* September 27, 1988.

k. *Description of Transfer:* Arkansas Electric Cooperative Corporation, in order to facilitate financing of the project which is under construction, proposes to add Meridian Trust Company as co-licensee. The license was issued October 18, 1983, and would expire September 30, 2033.

l. *This notice also consists of the following standard paragraphs:* B, C, D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title *"Comments," "Recommendations for Terms and Conditions," "Notice of Intent To File Competing Application," "Competing Applications," "Protests"* or *"Motion To Intervene,"* as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites Federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20540 Filed 9-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2388-001]

City of Holyoke, Massachusetts, Gas and Electric Department; Availability of Environmental Assessment

September 2, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory

Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Number 3 Hydro Unit and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20537 Filed 9-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2387-001]

City of Holyoke, Massachusetts, Gas and Electric Department; Availability of Environmental Assessment

September 2, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Number 2 Hydro Unit and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20538 Filed 9-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10489-000]

City of River Falls; Availability of Environmental Assessment

September 2, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the unlicensed River Falls Project and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action signficantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20539 Filed 9-8-88 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3444-7]

Availability of Environmental Impact Statements Filed August 29 Through September 2, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 880285, Final, AFS, CA, Shasta and Trinity Units, Revised Operation and Development Plan, Whiskeytown-Shasta-Trinity National Recreation Area, Implementation, Shasta and Trinity National Forests, Shasta and Trinity Counties, CA, Due: October 11, 1988, Contact: Kristy Hern (916) 275-1587.

EIS No. 880286, DSuppl, AFS, AK, 1981-86 and 1986-90 Alaska Pulp Long-Term Timber Sale Operating Plan, Updated Information and Reanalysis of Alternatives, Implementation, Coast Guard Bridge Permit, Section 10 and 404 Permits, Tongass National Forest, Juneau and Sitka Boroughs, AK, Due: October 24, 1988, Contact: James W. Pierce (907) 586-7887.

EIS No. 880287, DSuppl, AFS, OR, ID, Wallowa Whitman National Forest, Land and Resource Management Plan, Additional Alternative, Implementation, Baker, Union, Wallowa, Grant, Malheur and Umatilla Counties, OR and Adams, Nez Perce and Idaho Cos., Due: December 2, 1988, Contact: Bruce McMillan (503) 523-6319.

EIS No. 880288, DSuppl, COE, HI, Kaulana Bay Navigation Improvements, Reevaluation of Project, Implementation, South Point, Island of Hawaii, Hawaii County, HI, Due: October 24, 1988, Contact: James Maragos (808) 438-2263.

EIS No. 880289, Final, COE, IN, Fort Wayne and Vicinity Flood Control Project, Implementation, Allen County, IN, Due: October 11, 1988, Contact: Florence K. Bissell (313) 226-3510.

EIS No. 880290, Final, SFW, AK, Alaska Maritime National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, Implementation and Wilderness Recommendations, Forrester Island to near Barrow on the Arctic Ocean, AK, Due: October 24, 1988, Contact: William Knauer (907) 786-3399.

EIS No. 880291, Final, FHW, VA, VA-664 Construction, US 58 Interchange at Bowers Hill in the City of Chesapeake to US 17 in the City of Suffolk, Funding, Section 10 and 404 Permit, VA, Due: October 11, 1988, Contact: James M. Tumlin (804) 771-2371.

EIS No. 880292, Draft, AFS, UT, San Rafael Resource Area, Land and Resource Management Plan, Implementation, Emery County, UT, Due: December 7, 1988, Contact: Jim Dryden (801) 637-4584.

EIS No. 880293, Draft, COE, MS, Upper Yazoo Basin Fish and Wildlife Mitigation Study for Fish and Wildlife Losses in the Ascalmore Creek-Tippo Bayou Project, Big Sand Creek Projects and Panolo-Quitman Floodway East Bank Levee Project, Implementation, MS, Due: October 31, 1988, Contact: Marvin Cannon (601) 634-5437.

EIS No. 880294, Draft, BLM, CA, PLES I Geothermal Project, Geothermal Wellfield Development and Construction and Operation of a 10 MWe Powerplant, Approval, Bishop Resource Area, Mono County, CA, Due: October 24, 1988, Contact: Ed Hastey (619) 872-4881.

Dated: September 6, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-20582 Filed 9-8-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3444-4]

Rome Coal Tar Pit Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCIA), The Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Rome Coal Tar Pit Site, Rome, Georgia, with the Atlanta Gas Light Company, Atlanta, Georgia. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Etta Sheldon, Esq., Civil Investigator, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE. Atlanta, GA 30365, 404–347–5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Date: August 29, 1988.

Joe R. Franzmathes,

Acting Regional Administrator, U.S. EPA—Region IV.

[Fr Doc. 88–20511 Filed 9–8–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Advisors Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842 (c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 26, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Advisors Bancorp,* Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Advisors Bank & Trust, Boston, Massachusetts.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Heartland Bancorp,* Grove City, Ohio; to become a bank holding company by acquiring 69 percent of the voting shares of The Croton Bank Company, Johnstown, Ohio.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Thompson Financial, Ltd.,* Fort Worth, Texas; to acquire an additional 3.80 percent of the voting shares of Texas Security Bancshares, Inc., and thereby indirectly acquire Central Bank and Trust, and North Fort Worth Bank, all of Fort Worth, Texas, and First State Bank, Grand Prairie, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Western Bancshares, Inc.,* Coos Bay, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Western Bank, Coos, Bay, Oregon.

Board of Governors of the Federal Reserve System, September 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20461 Filed 9–8–88; 8:45 am]

BILLING CODE 6210–01–M

American Central Financial Group, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 30, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Central Financial Group, Inc.,* Springfield, Illinois; to acquire Meredosia Bancorporation, Inc., Springfield, Illinois, and thereby engage in originating conventional, F.H.A. and V.A. mortgage loans for immediate sale to third-party investors, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y, and originating consumer finance, mortgage, and commercial finance loans, pursuant to § 225.25(b)(1)(i), (iii) and (iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20462 Filed 9–8–88; 8:45 am]

BILLING CODE 6210–01–M

CB&T Banchshares, Inc.; Merger of Companies Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to merge its wholly owned subsidiary, CB&T Discount Broakerage, which engages in discount brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y, into its wholly owned subsidiary, Calumet Financial Associates, Inc., which engages in providing portfolio investment advice pursuant to § 225.25(b)(4) and in underwriting and dealing in obligations of the U.S., general obligations of states and political subdivisions, and other obligations in which state member banks are authorized to underwrite and deal pursuant to § 225.25(b)(16). The surviving corporation, Calumet Financial Associates, Inc., will continue to provide the services currently provided by CB&T Discount Brokerage and Calumet Financial Associates, Inc.

Board of Governors of the Federal Reserve System, September 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20463 Filed 9-8-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated, Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 30, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Edward W. Stevenson and Dorothy Ann Stevenson*, Mena, Arkansas; to acquire additional shares of Union Bankshares, Inc., Mena, Arkansas, and thereby indirectly acquire Union Bank of Mena, Mena, Arkansas, pursuant to a stock redemption.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice president) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John and Alexandria Daubert*, Omaha, Nebraska; to acquire an additional 0.55 percent of the voting shares of Nebraska Capital Corporation, Lincoln, Nebraska, and thereby indirectly acquire Havelock Bank, Lincoln, Nebraska.

Board of Governors of the Federal Reserve System, September 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20464 Filed 9-8-88; 8:45 am]

BILLING CODE 6210-01-M

Ventura County National Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulatory Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in effeciency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board Governors not later than September 30, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Gree, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ventura County National Bancorp*, Oxnard, California; to engage *de novo* through its subsidiary Western

Independent Collections, Oxnard, California, in operating a collection agency to collect overdue accounts receivable, either retail or commercial, for a flat fee or a contingent feed based on a specific percentage of the amount collected pursuant to § 225.25(b)(23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20465 Filed 9-8-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 2, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Report of Social Security Administration About Workers' Compensation—0960-0—This form collects information which will be used to determine if people who receive both worker's compensation payments and social security disability benefits are being paid correctly. The affected public consists of individuals who are receiving both kinds of benefits. Respondents: Individuals or households; Number of Respondents: 90,000; Frequency of Response: Every three years; Estimated Annual Burden: 7,500 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Cohort Study of Workers Exposed to Acrylonitrile (Smoking History Telephone Interview)—0925-0288—Studies of workers exposed to known or suspected carcinogens are of particular public health importance. This study presents a unique opportunity to evaluate the risk of acrylonitrile-induced cancer while controlling for the effects of smoking in a large, well-defined, exposed population. Respondents: Individuals or households; Number of Respondents: 2,667; Frequency of Response; Single-time study; Estimated Annual Burden; 273 hours.

2. Labeling Requirements For Sulfiting Agents in Standardized Food—NPRM—New—The FDA is proposing a regulation establishing criteria for requiring label declaration of the presence of sulfiting agents in foods subject to a standard of identity. Respondents: Business or other for-profit; Small businesses or organizations; Number of Respondents: 60; Frequency of Response: Other-Disclosure-Labeling; Estimated Annual Burden: 1,320 hours.

3. 1989 National Health Interview Survey—0920-0214—The National Health Interview Survey, an ongoing survey of the civilian non-institutionalized population, monitors the Nation's health. The 1989 NHIS will include supplements on "Dental", Diabetes", "Digestive Disorders", "Health Insurance", "Mental Health", and "Immunization". Respondents: Individuals or households; Number of Respondents: 48,500; Frequency of Response: On occasion; Estimated Annual Burden: 53,205.

4. 1988 National Maternal and Infant Health Survey—0902-0228—This survey provides data on maternal and infant health care, complications and birth outcome including live births, low birthweight, and fetal and infant death It is needed by Federal and State researchers to study these birth outcomes and assess program needs in maternal and infant health. Respondents: Individuals or households, Business or other for-profit; Number of Response: 19,824; Frequency of Response: On occasion; Estimated Annual Burden: 9,912 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:

PHS: 202-245-2100
HCFA: 301-966-2088
FSA: 202-245-0652
SSA: 301-965-4149
OS: 202-245-6511
OHDS: 202-472-4415

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: Shannah Koss-McCallum.

Date: September 2, 1988.

Kenneth Touloumes,

Acting Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88-20507 Filed 9-8-88; 8:45 am]

BILLING CODE 4110-60-M

Agency Forms Submitted to the Office of Management and Budget for Clearance.

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 2, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Administrative Detention and Banned Medical Devices—0910-0114—FDA uses the administrative detention and banned devices, regulations to protect the public health. Administrative detention is used if a device is adulterated and/or misbranded and immediate action is necessary to protect the device form reaching the consumer. FDA will ban a device once a determination has been made that it presents a substantial deception or an unreasonable risk of illness or injury. Recordkeeping and reporting are vital to these regulations. Respondents: Businesses or other for-profit, Small businesses or organizations; Number of Respondents: 4; Frequency of Response: As required by FDA; Estimated Annual Burden: 110 hours.

2. Informed Consent: Disclosure Requirements—0925-0228—The regulations governing use of human subjects in research (45 CFR Part 46) require that some but not all such research must be preceded by disclosure of information to enable subjects to consider whether or not to participate; in some instances consent must be documented. Respondents: State or local governments, Business or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations; Number of

Respondents: 1,000; Frequency of Response: Disclosure; Estimated Annual Burden: 25,000 hours.

3. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Due Diligence Recordkeeping and Reporting Requirements—9015–0094—This information is necessary to document that schools have exercised sound billing and collection procedures and to insure that Federal dollars are available to recycle for future HPSL and NSL awards. Respondents: Individuals or households, Non-profit institutions; Number of Respondents: 1100; Frequency of Response: On occasion; Estimated Annual Burden: 32,821 hours.

4. Cancer Prevention (Smoking) in Black Populations: Smoking Intervention With Headstart Mothers—New—A smoking cessation program for Black Mothers of Headstart children will be assessed for efficacy and effectiveness. The quasi-experimental design will be used with matched Headstart Schools in the City of Chicago. The Data will help guide NCI's National Cancer Prevention and Control program and provide needed information to assess a smoking cessation intervention in black HeadStart Mothers ages 18 to 40 where smoking seems to be a prevalent behavior. Respondents: Individuals or households; Number of Respondents: 2,855; Frequency of Response: Single-time study; Estimate Annual burden: 535 hours.

5. Piedmont Health Survey of the Elderly—0925–0267—This prospective epidemiologic study is comparing and contrasting the influences of physiological, behavioral, social, and health services for elderly blacks and whites. The participants are sampled from the five counties of Durham, Granville, Vance, Warren, and Franklin in North Carolina. Respondents: Individuals or households. Number of Respondents: 2,510; Frequency of Response: Single-time study; Estimated Annual Burden: 3,812 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:

PHS: 202–245–2100
HCFA: 301–966–2088
FSA: 202–245–0652
SSA: 301–965–4149
OS: 202–245–6511
OHDS: 202–472–4415

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: Shannah Koss-McCallum.

Date: September 2, 1988.

Kenneth Touloumes,

Acting Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88–20553 Filed 9–8–88; 8:45 am]

BILLING CODE 4110–60–M

Health Care Financing Administration

[HSQ–165–N]

Medicare Program; Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

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

ACTION: Notice.

SUMMARY: This notice announces the third meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The Panel was established as required by section 9305(h)(2) of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), Pub. L. 99–509. The meeting is open to the public.

Date: September 26–27, 1988.

Time: September 26, 8:00 a.m. to 5:00 p.m.; September 27, 8:00 a.m. to 5:00 p.m.

ADDRESS: Sheraton Towson Conference Hotel, 903 Dulaney Valley Road, Towson, Maryland 21204.

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (301) 966–6825.

SUPPLEMENTARY INFORMATION: .

Section 9305(c) of OBRA '86, in amending the Medicare definition of "hospital" in section 1861(e)(6) of the Social Security Act, and in enacting the new definition of "discharge planning process" in section 1861(ee), requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for discharge planning and improve determination of a patient's need for post-hospital services.

Section 9305(h) of OBRA '86 requires the Secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is to include experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries. The Secretary has named Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center as chairman of the panel and appointed 17 members to the panel.

The panel will have several meetings at which it plans to:

- Develop a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Construct the standard method so that it could be used by discharge planners, hospitals, nursing facilities, other health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluate the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for posthospital extended care services and home health services which are provided to Medicare beneficiaries.

The Secretary must report to Congress no later than January 1, 1989 his recommendations for the appropriate use of a uniform needs assessment instrument to determine a beneficiary's need for post-hospital extended care.

At this meeting, the Advisory Panel will continue its deliberations regarding the development of the standard method. Also considered will be issues related to the process of implementing a uniform needs assessment instrument, including the relationship of a uniform needs assessment to the discharge planning process, and other instruments used to assess care needs, methodological concerns regarding the preparation of the assesor, and the time frame in which the assessment would be conducted. The items of discussion are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.174, Medical Assistance Program; No. 13.773, Medicare—Hospital

Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–20554 Filed 9–8–88; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–920–08–4212; A–22271]

Realty Action; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the completion of a transfer of 4,681.80 acres of public land in Arizona to Apache County Board of Supervisors in accordance with section 5 of the Act of August 28, 1984 (98 Stat. 1533).

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: On July 19, 1988, the Bureau of Land Management transferred the following described land to Apache County Board of Supervisors under Patent No. 02–88–0039.

Gila and Salt River Meridian, Arizona

T. 10 N., R. 25 E.,
Sec. 18, lot 1, W½†NE¼†NW¼†, NW¼†SE¼†NW¼.
T. 11 N., R. 24 E.,
Sec. 26, NW¼†NE¼†, N½†NW¼†, SW¼†NW¼†, W½†SW¼†, SE¼†SW¼†, SE¼†SE¼.
T. 11 N., R. 28 E.,
Sec. 17, all;
Sec. 20, N½†, SW¼†, N½†SE¼†;
Sec. 28, SW¼†NE¼†, NW¼†NW¼†, S½†NW¼†, S½†;
Sec. 29, E½†, W½†W½†;
Sec. 33, all;
Sec. 34, NW¼†NW¼†, S½†SW¼†, SW¼†SE¼†.
T. 13 N., R. 28 E.,
Sec. 10, W½†NE¼†, SE¼†NE¼†, S½†N½†NW¼†, SE¼†NW¼†, NE¼†SW¼†;
Sec. 30, NE¼†SW¼†.
T. 13 N., R. 29 E.,
Sec. 6, lot 3;
Sec. 18, lots 1 to 4 incl., E½†, E½†W½†.

The areas described aggregate 4,315.40 acres.

On August 25, 1988, the Bureau of Land Management completed the transfer to Apache County Board of Supervisors under Patent No. 02–88–0041 for the following described land:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 28 E.,
Sec. 19, SE¼SE¼SE¼;
Sec. 26, W½NW¼.
T. 12 N., R. 29 E.,
Sec. 12, SE¼SW¼, S½SE¼.
T. 12 N., R. 30 E.,
Sec. 18, lot 1, N½NE¼, NE¼NW¼.

The areas described aggregate 366.40 acres.

The purpose of this notice is to inform the public and interested governmental officials of the transfer of Federal land.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–20492 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–08–4212–14; N–48113, et al]

Battle Mountain District; Tonopah Resource Area; NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction; realty action; competitive sale of Federal land in Nye County, Nevada.

SUMMARY: **Federal Register** Document 88–17242, appearing in 53 FR 28919 on August 1, 1988, contained an erroneous description of the land found suitable for sale. The legal description of said notice is hereby corrected to read:

Mount Diablo Meridian

T. 12 S., R. 47 E.,
Sec. 7,
N–48113 lot 53,
N–48560 lot 60,
N–48561 SW¼NE¼SE¼SW¼,
N–48562 SE¼NE¼SE¼SW¼,
N–48563 NW¼NW¼SE¼SW¼,
N–48564 SW¼NW¼SE¼SW¼,
N–48565 NE¼SW¼SE¼SW¼,
N–48566 SW¼SW¼SE¼SW¼,
N–48567 SW¼SE¼SE¼SW¼,
N–48568 SE¼SE¼SE¼SW¼.

Ten parcels of land, each containing 2.5 acres, for a total of 25 acres.

Publication of this correction in the **Federal Register** segregates the public lands described herein from all forms of appropriation under the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the **Federal Register** of a Notice of Termination or 270 days from the date of publication of this correction, whichever comes first.

With the exceptions of the legal description and the date of segregation, all other terms published in **Federal Register** Document 88–17242 remain unchanged.

Date: August 30, 1988.

Michael C. Mitchel,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 20550 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–HC–M

[CA–940–08–4520–12; Group 886]

Plat of Survey; Del Norte County, CA

August 29, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, Del Norte County

T. 16 N., R. 2 E. and T. 15 N., R. 2 E.

2. This plat representing the dependent resurvey of the Third Standard Parallel North along the south boundary of Township 16 North, Range 2 East, and a portion of the south boundary, the west boundary, and a portion of the subdivisional lines of Township 15 North, Range 2 East, Humboldt Meridian, California, under Group No. 886, California, was accepted August 18, 1988.

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 Six Rivers National Forest.

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. 88–20491 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4520–12; Group 963]

Plat of Survey; Placer County, CA

August 29, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Placer County

T. 15 N., R. 10 E.

2. These plat(s) representing the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, a portion of the

north and south center line of section 33, and certain tracts and mineral survey boundaries, and the survey of the subdivision of sections 31, 32, and 33, Township 15 North, Range 10 East, Mount Diablo Meridian, California, under Group No. 963, California, was accepted August 16, 1988.

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 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. 88-20490 Filed 9-8-88; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-08-4220-11; I-15362 et al.]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that 560.87 acres of land withdrawn for Public Water Reserve Nos. 107, 66, and 82, continue for an additional 20 years. The water involved would remain withdrawn and the lands would remain closed to surface entry, but would be opened to non-metalliferous mining through this action. The lands have been and will continue to be open to the mineral leasing laws and the location of metalliferous minerals.

DATE: Comments should be received by December 8, 1988.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 American Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 American Terrace, Boise, Idaho 83706, 208-334-1735.

The Bureau of Land Management proposes that portions of the withdrawals of Public Water Reserve Nos. 107, 66, and 82, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following-described land:

Boise Meridian

(I-15362)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 142
T. 11 S., R. 2 E.
Sec. 11, NE¼NW¼, NW¼SW¼.
(I-15360)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 177
T. 10 S., R. 1 E.
Sec. 11, S½SE¼;
Sec. 14, NW¼NE¼, N½NW¼.
T. 6 S., R. 4 W.
Sec. 13, S½SE¼.
(I-15593A)
Public Water Reserve No. 66
Executive Order dated August 15, 1919
T. 1 N., R. 5 E.
Sec. 4, lots 3 and 4.
(I-14533)
Public Water Reserve No. 82
Executive Order dated April 4, 1922
T. 11 S., R. 2 W.
Sec. 19, lots 1 and 2.
T. 11 S., R. 3 W.
Sec. 24, NE¼NE¼.

The areas described aggregate 560.87 acres in Owyhee and Elmore Counties.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of non-metalliferous minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to non-metalliferous mining location, only, through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: September 2, 1988.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 88-20474 Filed 9-8-88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-08-4220-11; I-15326 *et al.*]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that 1,726.73 acres of land withdrawn for Public Water Reserve Nos. 68, 87, 28 and 107, continue for an additional 20 years. The water involved would remain withdrawn and the lands would remain closed to surface entry, but would be opened to non-metalliferous mining through this action. The lands have been and will continue to be open to the mineral leasing laws and the location of metalliferous minerals.

DATE: Comments should be received by December 8, 1988.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 America Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The Bureau of Land Management proposes that portions of the withdrawals for Public Water Reserve Nos. 107, 68, 87, and 28, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following-described land:

Boise Meridian

(I-15326)
Public Water Reserve No. 68
Executive Order dated December 29, 1919
T. 11 S., R. 38 E.
Sec. 4, all;
Sec. 5, all;
Sec. 8, NW¼;
Sec. 9, E½SW¼, E½.
(I-15323)
Public Water Reserve No. 87
Executive Order dated November 9, 1913
T. 12 S., R. 4 W.
Sec. 20, NW¼NW¼.
(I-14544)
Public Water Reserve No. 28
Executive Ordedr dated May 31, 1915
T. 4 S., R. 5 E.
Sec. 29, SW¼NW¼.
T. 15 S., R. 13 E.
Sec. 22, NE¼;
Sec. 23, NW¼, N½SW¼, SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 26, NW¼NE¼, S½NE¼.
T. 16 S., R. 12 E.
Sec. 12, SE¼NE¼, E½SE¼;
Sec. 13, NE¼NE¼, S½NE¼, N½SE¼;
Sec. 24, NW¼NE¼, S½NE¼, N½SE¼, SE¼SE¼;

Sec. 25, NE¼NE¼.
T. 16 S., R. 13 E.
Sec. 5, S½SE¼;
Sec. 8, E½NE¼;
Sec. 11, S½;
Sec. 14, NE¼;
Sec. 21, E½NE¼, SE¼;
Sec. 28, lots 1, 2, 3, 4, N½S½.
(I–15371)
Public Water Reserve No. 107
GLO dated March 20, 1942
T. 5 S., R. 38 E.
Sec. 24, lot 8.
(I–15356A)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 160, dated April 8, 1932
T. 14 S., R. 41 E.
Sec. 19, E½SE¼.
(I–15363)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 251, dated March 8, 1939
T. 4 S., R. 6 W.
Sec. 13, E½SW¼.
(I–15368)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 123, dated March 13, 1930
T. 4 S., R. 5 W.
Sec. 19, W½NE¼.
(I–3788)
Public Water Reserve No. 107
BLM Order of Interpretation dated October 19, 1970
T. 14 N., R. 20 E.
Sec. 29, SW¼SW¼.

The areas described aggregate 4,726.73 acres in Custer, Owyhee, Franklin, Caribou, Twin Falls, and Bannock Counties.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of non-metalliferous minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to non-metalliferous mining location, only, through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 2, 1988.
William E. Ireland,
Chief, Realty Operations Section.
[FR Doc. 88–20475 Filed 9–8–88; 8:45 am]
BILLING CODE 4310–GG–M

[ID–943–08–4220–11; I–14545 *et al.*]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that 1,920 acres of land withdrawn for Public Water Reserve Nos. 105, 106, and 107, continue for an additional 20 years. The water involved would remain withdrawn and the lands would remain closed to surface entry, but would be opened to non-metalliferous mining through this action. The lands have been and will continue to be open to the mineral leasing laws and the location of metalliforous minerals.

DATE: Comments should be received by December 8, 1988.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The Bureau of Land Management proposes that the withdrawals for portions of Public Water Reserve Nos. 105, 106, and 107, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following-described land:

Boise Meridian
(I–25367)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 156
T. 9 S., R. 3 W.
Sec. 11, N½SE¼, SE¼SE¼.
(I–14545)
Public Water Reserve No. 105
T. 9 S., R. 5 W.
Sec. 21, W½NW¼, SE¼NW¼, E½SW¼;
Sec. 28, W½NW¼, NW¼SW¼;
Sec. 29, E½SE¼.
(I–14545)
Public Water Reserve No. 107
Secretarial Order of Interpretation No. 145
T. 9 S., R. 5 W.
Sec. 9, W½SE¼;
Sec. 14, NW¼NW¼;
Sec. 15, SE¼NE¼, NE¼SE¼, SW¼SE¼;
Sec. 22, W½NE¼, E½SW¼, SW¼SW¼, N½SE¼;
Sec. 23, SW¼NE¼, N½SW¼;
Sec. 27, NW¼NW¼;
Sec. 28, E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, NW¼SE¼.
(I–14546)
Public Water Reserve No. 106
T. 9 S., R. 4 W.
Sec. 20, W½SE¼;
Sec. 29, E½NW¼, E½SW¼, SW¼SW¼;
Sec. 31, SE¼NE¼, NW¼SE¼;
Sec. 32, W½NW¼.

The areas described aggregate 1,920 acres in Owyhee County.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of non-metalliferous minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to non-metalliferous mining location, only, through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 2, 1988.
William E. Ireland,
Chief, Realty Operations Section.
[FR Doc. 88–20476 Filed 4–8–88; 8:45 am]
BILLING CODE 4310–60–M

[(ID–943–08–4220–11; I–16851 et al.)]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that 576.07 acres of land withdrawn for Public Water Reserve Nos. 93, 47 and 107, continue for an additional 20 years. The water involved would remain withdrawn and the lands would remain closed to surface entry, but would be opened to non-metalliferous mining through this action. The lands have been and will

continue to be open to the mineral leasing laws and the location of metalliferous minerals.

DATE: Comments should be received by December 8, 1988.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

The Bureau of Land Management proposes that those portions of the withdrawals for Public Water Reserve Nos. 107, 47, and 93 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they effect the following-described land:

Boise Meridian

(I–2287)
Public Water Reserve No. 107
BLM Order of Interpretation dated January 9, 1968
T. 13 N., R. 23 E.
Sec. 33, NW¼SE¼, SE¼SE¼.
(I–15325A)
Public Water Reserve No. 47
Executive Order dated April 7, 1917
T. 16 S., R. 12 E.
Sec. 21, E½;
Sec. 27, SW¼SW;
Sec. 33, lots 1 and 2;
Sec. 34, lots 3 and 4.
(I–16851)
Public Water Reserve No. 93
Executive Order dated July 13, 1925
T. 13 N., R. 5 W.
Sec. 3, lot 1.

The areas described aggregate 576.07 acres in Custer, Washington and Owyhee Counties.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of non-metalliferous minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to non-metalliferous mining location, only, through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: August 31, 1988.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 88–20561 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

[Docket No. FES 88–29]

Availability of Final Environmental Impact Statement; Alaska Maritime National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a final environmental impact statement for the proposed Comprehensive Conservation Plan and Wilderness Review for the Alaska Maritime National Wildlife Refuge, Alaska.

SUMMARY: U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Wilderness Review, and Environmental Impact Statement (Plan) for the Alaska Maritime National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980; section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Plan describes three alternatives for managing the Refuge and the environmental consequences of implementing each alternative. The document also reviews wilderness designation and inclusion in the National Wilderness Preservation System.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: A summary of the Plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. In addition, copies of the summary will be sent to all persons who have requested them. Copies of the complete Plan will be sent to Federal and state agencies, regional and village Native corporations, local government, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the Plan are available at the office of the Regional Director, at the above address; at the Alaska Maritime National Wildlife Refuge Office, 202 West Pioneer Avenue, Homer, Alaska 99603; at the Office of the Aleutian Islands Unit, Naval Air Station Adak, P.O. Box 5251, FPO Seattle, WA 98791; and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th, and C Streets NW, Washington, DC 20240.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Fort Snelling, Twin Cities, MN 55111.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303.

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134, Union Boulevard, Lakewood, CO 80225.

Dated: September 2, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88–20477 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Permit Amendment Requests; County of San Mateo and City of Brisbane, CA

The following applicants have applied for amendments to their permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicants: County of San Mateo, CA, and City of Brisbane, CA, PART 2–9818.

The applicants request two amendments to their permit PRT 2–9818 which authorizes the incidental take of mission blue butterflies (*Icaricia icarioides missionensis*), San Bruno elfin butterflies (*Callophyrs mossii bayensis*) and San Francisco garter snakes (*Thamnophis sirtalis*

tetrataenia) on San Bruno Mountain, California, pursuant to a multi-party agreement (Agreement) which implements the San Bruno Mountain Area Habitat Conservation Plan (HCP). The permit was issued on March 4, 1983, under the authority of sections 10(a)(1)(B) and 10(a)(2) of the Endangered Species Act of 1973, as amended. The permit was previously amended on August 30, 1985 ("South Slope"), December 24, 1985 ("Rio Verde"), and June 19, 1986 ("County Park").

The "Northeast Ridge Land Exchange" amendment sought by the City of Brisbane, in consultation with the County of San Mateo as Plan Operator, is sponsored by developer Southwest Diversified, Inc. The amendment is requested pursuant to Section IX.A(3) (equivalent exchange) of the Agreement, and proposes to exchange land designated as Conserved Habitat in the Northeast Ridge parcel of Guadalupe Hills (Administrative Parcel No. 1–07) for land designated as Development Area. No grading has occurred on land designated as Conserved Habitat. The project plan has been refined and reduces the density in the project area from 1250 dwellings on four building sites to 632 residential units on three building sites.

Surveys reveal that the Northeast Ridge is utilized by 22–38 percent of the entire mission blue population and 12–50 percent of the San Bruno Mountain Callippee (*Speyeria callippe callippe*). The applicants contend that, it approved, the refined plan will enhance the biological values of Conserved Habitat areas compared to the values preserved in the initial plan.

The documents submitted by the City of Brisbane in support of amendment include (1) the Administrative Parcel on Guadalupe Hills which outlines the proposed modifications, and (2) the Report on the Impacts of Development Plans for the Northeast Ridge of San Bruno Mountain.

The "Transmission Lines" amendment sought by the County of San Mateo, as Plan Operator, is sponsored by the Pacific Gas and Electric Company. The amendment is requested pursuant to the provision of Section IX.B (3-year window amendment) of the Agreement, and proposes replacement and relocation of the 1929 natural gas pipeline (Main 101) which crosses San Bruno Mountain. This alternate alignment will reduce construction impacts on Conserved Habitat by making use of ridgelines rather than side slopes. Pacific Gas and Electric Company further proposes expansion of the HCP boundary to encompass the company's fee parcel known as "PG&E Hill" (5.75 acres) located south of Randolph Road in South San Francisco. Biological studies revealed the presence of eggs of the mission blue butterfly in this area.

The documents submitted in support of the amendment include (1) Landowner and Planning Responsibilities, (2) Administrative Parcel Modifications for Guadalupe Hill, and (3) Administrative Parcel Modifications for Southeast Ridge of San Bruno Mountain.

Copies of the amendment requests are on file at the following locations and are available for inspection by the public during normal business hours: U.S. Fish and Wildlife Service, Office of Management Authority, mailing address P.O. Box 27329, Washington, DC 20038–7329, street address Room 400 Hamilton Building, 1375 K Street, NW., Washington, DC 20005 (202/343–4955); U.S. Fish and Wildlife Service, Division, of Fish and Wildlife Enhancement, Lloyd 500 Building, Suite 1692, Portland, Oregon 97232 (503/231–6150); U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866); and, the County of San Mateo, County Government Center, Redwood City, California 94063 (415/363–4666).

Interested persons may comment on this application by submitting written data, views or arguments to the Chief, Office of Management Authority, mailing address P.O. Box 27329, Washington, DC 20038–7329; street address 400 Hamilton Building, 1375 K Street, NW., Washington, DC 20005 within 30 days of the date of this publication. Please refer to the San Bruno Incidental Take Permit PRT 2–9818 when submitting comments.

Date September 6, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88–20577 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–AN–M

Receipt of Applications for Permits; Lennane Investments, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Lennane Investments, Sacramento, CA, PRT–730836.

The applicant requests a permit for the incidental taking of valley elderberry longhorn beetles (*Desmoceros californicos dimorphus*) during the construction of commercial and residential buildings and related site improvements. Elderberry shrubs, both occupied and potentially occupied by this threatened species occur on portions of the 48 acre parcel and altogether occupy less than one-tenth of an acre.

Applicant: Rhyne Palombitt, Davis, CA, PRT–730847.

The applicant requests a permit to import serum and tissue samples salvaged from one wild male siamang (*Symphalangus syndactylis*) in Indonesia for the purpose of scientific research. The sample will be used to determine if cause of death was due to a disease contracted from humans.

Applicant: David Watkins, Dallas, TX, PRT–730849.

The applicant requests a permit to import one sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) taken from the captive herd of F. Bowker, Jr., Thornkloof, Grahamstown, Repubic of South Africa for the purpose of survival of the herd.

Applicant: Dwight A.J. Greenberg, Satellite Beach, FL, PRT–730330.

The applicant requests a permit to import one pair of captive-hatched scarlet-chested parakeets (*Neophema splendida*) from Mike Woodcock, Wiltshire, England, for captive breeding purposes.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–730859.

The applicant requests a permit to purchase four female Asian elephants (*Elephas maximus*) from Richard Garden, Frank Buck Bring 'em Back Alive, Inc., Sarasota, Florida, for conservation education purposes. The applicant intends to export are reimport these elephants and travel within the U.S. for performances that will serve to educate the public with regard to the species' ecological role and conservation needs.

Applicant: EG&G Energy Measurements, Inc., Goleta, CA, PRT–683011.

The applicant requests an amendment to their current permit to include live-trapping, handling, ear-tagging, releasing and salvaging of Tipton kangaroo rats (*Dipodomys n. nitratoides*) in California. These activities will be conducted as part of the applicant's ongoing study of the influence of petroleum field activities on endangered species.

Applicant: San Diego Zoological Society, San Diego, CA, PRT–730748.

The applicant requests a permit to export one pair of captive-born wood bisons (*Bison bison athabascae*) to Tierpark Berlin, East Berlin, German Democratic Republic, for the purpose of

introducing new genetic material to their breeding stock.

Applicant: J. Hanley Sayers, Nashville, TN, PRT–730755.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Robert E. Dunn, Monrovia, IN, PRT–730802.

The applicant requests a permit to import white-eared pheasants (*Crossoptilon crossoptilon*) and Mikado pheasants (*Syrmaticus mikado*) from Mr. H.J. Hardy, Southview Aviaries, Burnaby, British Columbia, Canada, for captive breeding purposes. The birds were hatched in captivity at Mr. Hardy's facility.

Applicant: William A. Carpluk, Central Islip, NY, PRT–730810.

The applicant requests a permit to import two pairs of captive-hatched Mikado pheasants (*Syrmaticus mikado*) from Mr. Bert Willemsen, Holland Aviaries, Surrey, British Columbia, Canada, for the purpose of enhancement of propagation of the species.

Applicant: Young-Morgan and Associates, Franklin, TN, PRT–730793.

The applicant requests a permit to take endangered fresh water mussels (*Conradilla caelata, Quadrula intermedia, Epioblasma walkeri, Epioblasma tugidula* and *Toxolasma cylindrella*) from the Duck River, Tennessee. The applicant proposes to survey the Duck River to review the status of endangered mussels. All live endangered mussels would be counted, photographed and returned to the stream substrate. Freshly dead mussels (valves) and relic specimens would be collected and archived. The purpose of collecting would be to insure the propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm), Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: September 1, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–20579 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–AN–M

Receipt of Applications for Permits; Rimrock Ranch Wildlife Conservancy et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Rimrock Ranch Wildlife Conservancy, Reedsburg, WI, PRT–727176.

The applicant requests a permit to take (harass) endangered species in the families Lemuridae and Felidae. The applicant wishes to develop new methods of artificial insemination for the purpose of enhancement of propagation.

Applicant: Los Angeles Zoo, Los Angeles, CA, PRT–731176.

The applicant requests a permit to import one pair of captive-born babirusa (*Babyrousa babyrussa*) from Antwerp Zoo, Belgium, for enhancement of propagation and exhibition.

Applicant: Los Angeles Zoo, Los Angeles, CA, PRT–731175.

The applicant requests a permit to import blood samples taken from one pair of babirusa (*Babyrousa babyrussa*) bred in captivity at Antwerp Zoo, Belgium for enhancement of propagation.

Applicant: National Zoo, Washington, DC.

The applicant requests permits to reexport up to 30 captive-born golden lion tamarins (*Leontopithecus rosalia*) from various institutions for reintroduction to the wild as part of a golden lion tamarin conservation program that will enhance the propagation and survival of the species in the wild. The permits requested are listed below:

—Reexport 3 males and 3 females and 1 young tamarin imported from Skansen Zoo, Stockholm, Sweden (PRT–731014)

—Reexport 3 males, 1 female and 1 young tamarin imported from Frankfort Zoological Gardens, Frankfurt Federal Republic of Germany (PRT–731010)

—Reexport 3 males and 4 female tamarins from imported Marwell Zoological Park, Colden Common, England (PRT–731012).

—Reexport 3 male and 3 female tarmarins imported from Penscynor Wildlife Park, Clifrew, Wales (PRT–731009).

Applicant: Donald Rogers, Darien, NY, PRT–729899.

The applicant requests a permit to import in foreign commerce two pairs of captive-bred Laysan ducks (*Anas laysanensis*) from Niska Wildlife Foundation, Wells, Ontario, Canada for enhancement of propagation and survival of the species.

Applicant: Kansas City Zoological Gardens, Kansas City, MO, PRT–730795.

The applicant requests a permit to export one male captive-born maned wolf (*Chrysocyon brachyurus*) to Halle Zoo, German Democratic Republic for propagation and survival of the species.

Applicant: Rio Grande Zoo, Albuquerque, NM, PRT–730971.

The applicant requests a permit to import four female captive born Round Island day geckos (*Phelsuma guentheri*) from the Reptile Breeding Foundation, Picton, Ontario, Canada, for the purpose of acquiring breeding stock to continue propagation efforts. The breeding stock and any progeny will remain under ownership of the Government of Mauritius.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority P.O. 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: September 2, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–20758 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–AN–M

Bureau of Land Management

[AK–967–4213–15; AA–8447–D]

Publication of Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native

Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Eyak Corporation for approximately 1,130 acres. The lands involved are in the vicinity of Eyak, Alaska.

T. 16 S., R. 1 W., Copper River Meridian, Alaska.
Secs. 2 and 11.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Cordova Times*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 11, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 88-20473 Filed 9-8-88; 8:45 am]

BILLING CODE 4310-JA-M

[NV-930-08-4211-09-NRFM]

Environmental Statements; Availability, etc.: Clark County Regional Flood Control District, NV

September 2, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement on and scoping for the Clark County Flood Control Master Plan.

SUMMARY: The Clark County Regional Flood Control District has developed a Master Plan which proposes the phased construction, operation and maintenance of flood control structures including channels, dikes, detention/retention basins, floodways, bridges, culverts, and debris basins. Flood control plans were developed to control the 100-year flood. The flood control master plan includes facilities that will provide flood protection for Southern Nevada under ultimate saturation development conditions. The Environmental Impact Statement (EIS) will analyze those interrelated components of the Master Plan which lie within the Las Vegas Valley, Henderson and Boulder City. Phase I facilities represent those projects that are critically needed to provide flood control protection against loss of life, and damage to public and private property. The Phase II facilities are considered necessary for the proper functioning of the overall flood control systems, but are logically linked with the long-term development of Clark County. The EIS will be two-tiered, addressing the regional "programmatic" environmental effects of the entire study area with a focused site-specific analysis of the individual facilities proposed in the 10-year construction program. Scoping will be conducted to gain input on the alternatives to be considered in the document and those issues to be analyzed.

DATES: Public participation in discussing the issues and alternatives to be analyzed in the EIS is invited at scoping meetings to be held at the following locations and times: City of Henderson Convention Center, 200 Water Street, Henderson Nevada, September 28, 1988, from 7:00 to 10:30 p.m. and at the Clark County School District Board Room, 2832 East Flamingo Road, Las Vegas, Nevada, September 29, 1988, for 7:00 to 10:30 p.m. Written comments on the issues and alternatives should be sent to the Area Manager, Stateline Resource Area, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

Written comments covering scoping will be accepted through October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Maxwell, Environmental Specialist, Las Vegas District, Bureau of Land Management, Las Vegas, Nevada 89126 or at (702) 646-8800 or FTS 598-5800.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-20508 Filed 9-8-88; 8:45 am]

BILLING CODE 4310-HC-M

[ID-050-08-4322-14]

Meeting; Shoshone District Grazing Advisory Board

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Friday, October 14, 1988, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: K Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2-B, Shoshone, ID 83352. Telephone (208) 886-2206 or FTS 554-6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Election of a new Grazing Advisory Board Chairman, (2) review of proposed range betterment projects (8100), (3) review of range improvement techniques, and (4) an update on District activities.

Operation and administration of the Board will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District by Wednesday, October 12, 1988. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K Lynn Bennet,

District Manager.

[FR Doc. 88-20519 Filed 9-8-88; 8:45 am]

BILLING CODE 4310-GG-M

[MR-020-08-4333-02]

Montana; Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that after a 30-day comment period and assuming that no adverse comments are received, the use of off-road vehicles is limited on public land within the Tilstra Special Management Area. This will be in effect during the bird and big game hunting season as established by Montana Department of Fish, Wildlife and Parks, Carbon County, Montana in accordance with the authority and rquirements of Executive Orders 11644 and 11989 and Regulations 43 CFR Part 8340.

DATES: This designation will only be in effect during the bird and deer hunting season established by the Montana Department of Fish, Wildlife and Parks.

SUPPLEMENTARY INFORMATION: The 3,100-acre Tilstra Special Management Area affected by the designation as described below is administered by the Bureau of Land Management, Billings Resource Area, Miles City District. This designation is the result of a cooperative effort between the Bureau of Land Management, Kenneth Tilstra, and the Department of Fish, Wildlife and Parks. The purpose of the designation is to prevent further damage to the soil and vegetative resources, open additional private lands to hunting, and reduce user conflicts to provide a higher quality hunt to the public user.

The Tilstra Special Management Area is located eight miles southeast of Bridger, Montana, along the Pryor Mountain Road which traverses the Management Area. The Management Area is broken into three distinct parts. North of the Pryor Mountain Road will be open to walk-in hunting, with landowner permission only. South of the Pryor Mountain Road will be open to walk-in hunting without permission. A safety zone will be established around ranch buildings. The safety zone will be closed to vehicular use and discharging of firearms, except for authorized use.

FOR FURTHER INFORMATION CONTACT:

Mat Millenbach, District Manager, Miles City District, P.O. Box 940 Miles City, MR 59301, Phone: (406) 232–4331.

Bill McIlvain, Area Manager, Billings Resource Area, 810 East Main, Billings, MR 59105.

Roger Fliger, Montana Department of Fish, Wildlife and Parks, 1125 Lake Elmo Rd., Billings, MT 59105.

Dated: September 1, 1988.

Mat Millenbach,

District Manager.

[FR Doc. 88–20481 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–DN–M

[WY–920–08–4111–15; W–92319]

Proposed Reinstatement of Terminated Oil and Gas Lease; Converse County, WY

August 31, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–92319 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–92319 effective June 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–20458 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–08–4111–15; W–109237]

Proposed Reinstatement of Terminated Oil and Gas Lease; Fremont County, WY

September 1, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–109237 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–109237 effective February 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–20469 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–08–4111–15; W–65616]

Proposed Reinstatement of Terminated Oil and Gas Lease, Fremont County, WY

September 1, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–65616 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals acruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–65616 effective February 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–20470 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–08–4111–15; W–86550]

Proposed Reinstatement of Terminated Oil and Gas Lease; Sweetwater County, WY

September 1, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–86550 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee have agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for

reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–86550 effective October 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–20471 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–08–4212–13; M–59614]

Conveyance and Order Providing for Opening of Public Land in Garfield County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice and order will open certain lands that were reconveyed to the United States in an exchange completed pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) to the operation of the public land laws. It will also inform the public and interested local governmental officials of the issuance of the patent.

EFFECTIVE DATE: 9 a.m. on November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was transferred to James J. Murnion and Betty Jean Murnion:

Principal Meridian, Montana

T. 19 N., R. 40 E.,
Sec. 20, SW¼SE¼;
Sec. 28, NW¼SE¼.
T. 18 N., R. 41 E.,
Sec. 6, lot 3;
Sec. 7, lot 1, NE¼NW¼.
T. 19 N., R. 41 E.,
Sec. 31, lot 1.
Aggregating 234.11 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate:

Principal Meridian, Montana

T. 19 N., R. 40 E.,
Sec. 24, S½NE¼;
Sec. 29, S½SW¼
T. 19 N., R. 41 E.,
Sec. 19, lots 2 and 3.
Aggregating 233.1 acres.

3. The values of the Federal public land were appraised at $6,620 and those of the non-Federal land were appraised at $6,100. A $520 cash equalization payment was made to the United States. No minerals were transferred by either party.

4. At 9 a.m. on November 2, 1988, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

August 31, 1988.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 88–20480 Filed 9–8–88; 8:45 am]

BILLING CODE 4310–DN–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Finding of No Significant Impact; International Agreement for Mexican Participation in the Expansion of the International Wastewater Treatment Plant at Nogales, AZ;

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality Final Regulations (40 CFR Parts 1500–1508); and the U.S. Section's operational procedures for implementing section 102 of NEPA, published in the **Federal Register**, September 2, 1981 (46 FR 44083–44094); the U.S. Section hereby gives final notice that an environmental impact statement is not being prepared for an international agreement for Mexican participation in the expansion of the Nogales Wastewater Treatment Plant (NIWWTP) at Nogales, Arizona. A notice of finding of no significant impact dated July 18, 1988 provided a thirty (30) day comment period before making the finding final. The Notice was published in the **Federal Register** on July 28, 1988 (53 FR 28452–28454).

FOR FURTHER INFORMATION CONTACT: Mr. M. R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, United States Section, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the United States Government enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission (Commission), to provide for Mexico's participation in the expansion of Nogales International Wastewater Treatment Plant (NIWWTP) now under consideration by the U.S. Section of the Commission and the City of Nogales, Arizona. The agreement provides for the Mexican Government to participate in the construction cost of the expansion of the existing international plant with a contribution of $1 million payable over a 10-year period beginning with the start of expanded plant operation in 1990. The agreement also provides that Mexico construct within its territory adequate sewage collection facilities to enable efficient conveyance of Nogales, Sonora's sewage to the international plant. Assurances by Mexico are provided in the agreement to prevent the discharge of untreated sewage into the natural drains that flow from Mexico into the United States, and to prevent the discharge of untreated industrial wastewater into the international plant.

Alternatives Considered

Three alternative were considered:

The Proposed Action Alternative provides for an agreement recommending that Mexico join in the expansion of the NIWWTP by purchasing a capacity of about 4.95 million gallons per day (mgd) over and above the existing capacity of 4.95 mgd now assigned to Mexico at the International plant. Mexico would pay a total of $1 million for the additional capacity in increments of $100,000 a year over a 10-year period beginning in 1990. The division of operations and maintenance costs of the additional capacity would be in accordance with the procedures established in Commission Minute No. 206 of January 13, 1958 and consistent with authorization of the Acts of Congress of August 19, 1935 and July 27, 1953. Further, the proposed agreement would request Mexico to undertake plans for rehabilitation and expansion of the sewage collection system of the City of Nogales, Sonora. The proposed agreement also provides a number of

measures to assure reliability and maintenance of the Mexican collection lines designed to prevent the pollution problems resulting from untreated wastewaters and from sever line breaks and unsewered areas in Nogales, Sonora discharging into natural drains and crossing the boundary. Also, it provides assurance against the discharge of untreated industrial wastewaters to the international plant. Finally, the agreement also provides a cooperative program through the Commission for early response to failures in the Mexican sewer system.

The No Action Alternative will result in no immediate provision by Mexico for treatment of its collected wastewater in excess of that treated at the international plant now operating at capacity. Since the terrain slopes from Mexico to the United States, there would be increased fugitive sewage discharges of untreated sewage crossing the boundary through the various drainages. The present risk of a serious public health hazard due to Mexican sewage crossing the boundary on the surface would be greatly increased. There would be no assurance that Mexico would undertake a program for rehabilitation and expansion of its sewage collection system thus contributing to the public health risk. There would be no prevention of untreated industrial wastewater discharges to the international plant.

The Disposal in Mexico Alternative requires pumping the excess sewage load southward for future treatment. This alternative carries the risk of serious breakdowns occurring in the several pumping stations necessary for this alternative. This increases the possibility of flows from Mexico discharging to the United States through several drainages.

Environmental Assessment

The U.S. Section completed the Final Environmental Assessment for the proposed agreement on August 26, 1988.

Findings of the Environmental Assessment

The Final Environmental Assessment finds that the proposed action does not constitute a major Federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The agreement would assure, to the extent possible, the prevention of discharges of untreated sewage into the United States associated with an inadequate collection system in Nogales, Sonora. It would prevent the future problem of even larger amounts of untreated sewage crossing the boundary into the United States due to both inadequate collection facilities and little or no treatment applied to the increasing quantities of sewage generated by the Mexican city in the future. It would prevent introduction of untreated industrial wastewaters into the central collector in Mexico and thus prevent a loss in treatment efficiency in the international plant. The attendant health hazards and odors associated with the untreated sewage crossing the boundary would be eliminated.

2. Detrimental economic effects associated with drops in the tourism industry that could be associated with a health and public nuisance problem related to the sewage spills would be avoided.

3. The well-being of people living and traveling in the Nogales, Arizona-Nogales, Sonora area would be improved.

4. Adverse impacts as have occurred would be prevented so that the improved water quality would benefit all wildlife in the area.

5. The rehabilitation and expansion of the sewage collection system in Mexico would not affect archaeological or historical sites in United States territory now on, or proposed for nomination to, the National Register of Historic Places, nor would it affect the United States properties listed on the National Registry of Natural Landmarks.

On the basis of the Final Environmental Assessment, the U.S. Section determines that an environmental impact statement is not required for the United States Government to enter into an agreement with the Government of Mexico to provide for their participation in the expansion of the Nogales International Wastewater Treatment Plant and hereby provides notice of a finding of no significant impact.

The Final Finding of No Significant Impact (FONSI) and Final Environmental Assessment (EA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the Final FONSI and Final EA are available to fill single copy requests at the above address.

Date: August 30, 1988.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 88-20562 Filed 9-8-88; 8:45 am]

BILLING CODE 4710-03-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-228]

Certain Fans With Brushless DC Motors; Issuance of Limited Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has issued a limited exclusion order under 19 U.S.C. 1337(d) to prevent unauthorized importation into the United States of brushless DC motors and fans with brushless DC motors manufactured abroad by or on behalf of Matsushita Electric Industrial Company, Ltd., or any related entity, that infringe claims 3, 9, 10, 11, or 12 of U.S. Letters Patent 4,494,028 (the " '028 patent").

ADDRESSES: Copies of the limited exclusion order, the Commission opinion on remedy, the public interest and bonding, and all other nonconfidential documents on the record in the above-captioned investigation are available for inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1061.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1103. Hearing imparied individuals are advised that information on the limited exclusion order and this investigation can be obtained by contacting the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: In *Rotron, Inc. v. U.S.I.T.C., et al.*, the U.S. Court of Appeals for the Federal Circuit ("CAFC") held that claims 3 and 9-12 of the '028 patent were valid, and that in light of the Commission's other findings respondents Matsushita Electric Industrial Company, Ltd. and Matsushita Electric Corporation of America violated section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as a matter of law. The CAFC remanded the investigation to the Commission for appropriate further proceedings. *See* 50 FR FR 41228 (Oct. 9, 1985) (institution of investigation); 51 FR 31729 (Sept. 4, 1986) (review and affirmance of initial determination); *Rotron, Inc. V. U.S.I.T.C.*, Appeal No. 87-1099 (Feb. 18,

1988) (unpublished) (reversing Commission finding of invalidity with respect to claims 3, 9–12 of the '028 patent, and remand to the Commission). The Commission accordingly solicited written comments from the parties to the investigation, other Federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding. 53 FR 17771 (May 18, 1988).

The only comments received were those submitted on behalf of complainant, respondents, and the Commission investigative attorney ("IA"). After reviewing these submissions and the record developed during this investigation, the Commission determined that the appropriate remedy for the violation of section 337 in this investigation is issuance of a limited exclusion order prohibiting, for the remaining term of the '028 patent, importation into the United States of infringing brushless DC motors and fans with infringing brushless DC motors manufactured abroad by or on behalf of Matsushita Electric Industrial Company, Ltd., or any related entity, except under license from the patent owner. The Commission determined that the public interest considerations listed in section 337(d) do not preclude issuance of a limited exclusion order and that while the order is under review by the President pursuant to section 337(g), the excluded articles will be entitled to enter into the United States under a bond in the amount of 22 percent of the entered value of such excluded articles.

The authority for these Commission determinations and the limited exclusion order is contained in subsections (d) and (g) of section 337, and in § 210.57 (b), (c), and (d) and 210.58(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.57(b)–(d), 210.58(a)).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 30, 1988.

[FR Doc. 88–20457 Filed 9–8–88; 8:45 am]

BILLING CODE 7020–02–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, address of principal office and state of incorporation: ConAgra, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation).

2. Wholly-owned subsidiaries which will participate in the operations, addresses of their respective principal offices and state of incorporation:

1. 1050 Sansome Corporation, 1050 Sansome St., Ste 600, San Francisco, CA 94111 (a California corporation)
2. Ag-Chem, Inc., Box 67, Girdletree, MD 21829 (a Maryland corporation)
3. AgriBasics Fertilizer Company, One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TN 37915 (a Delaware corporation)
4. Armour Food Express Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
5. Atwood Commodities, Inc., 876 Grain Exchange Building, Minneapolis, MN 55415 (a Nebraska corporation)
6. Atwood-Larson Company, 876 Grain Exchange Building, Minneapolis, MN 55415 (a Minnesota corporation)
7. BCF, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Texas corporation)
8. Balcom Chemicals, 4687–18th Street, Greeley, CO 80634 (a Colorado corporation)
9. Blue Star Foods, Inc., 1023 Fourth Street, Council Bluffs, IA 51501 (a Nebraska corporation)
10. CAG Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oklahoma corporation)
11. Caribbean Basic Foods Company, GPO Box G–1960, San Juan, PR 00936 (a Nebraska corporation)
12. Central Valley Chemicals, Inc., P.O. Box 446, Weslaco, TX 78596 (a Texas corporation)
13. ConAgra Fertilizer Company, One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TN 37915 (a Nebraska corporation)
14. ConAgra International Fertilizer Company, One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TN 37915 (a Delaware corporation)
15. ConAgra International Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
16. ConAgra International Netherlands, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
17. ConAgra Lonergan Corporation, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Nebraska corporation)
18. ConAgra Pet Products Company, 3902 Leavenworth Street, Omaha, NE 68105 (a Delaware corporation)
19. ConAgra Poultry Company, 422 N. Washington, Box 1997, El Dorado, AR 71730 (a Delaware corporation)
20. ConAgra Transportation, Inc., One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TX 37915 (an Oklahoma corporation)
21. CTC North America, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Delaware corporation)
22. Dixie Ag Supply, Inc., 1801 Old Montgomery Road, Selma, AL 36701 (an Alabama corporation)
23. E. A. Miller Inc., 410 North 200 West, Hyrum, UT 84319 (a Utah corporation)
24. GA AG Chem, Inc., Empire Expressway, P.O. Box 1260, Swainsboro, GA 30401 (a Georgia corporation)
25. Geldermann Futures Management Corp., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (an Illinois corporation)
26. Geldermann, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (an Illinois corporation)
27. Geldermann Securities, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
28. Grower Service Corporation (New York), 16713 Industrial Parkway, P.O. Box 18037. Lansing MI 48901 (a New York corporation)
29. Heinold Asset Management, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
30. Heinold Asset Management Service Corp., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
31. Heinhold Commodities, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
32. Hess & Clark, Inc., 7th & Orange Street, Ashland, OH 44805 (an Ohio corporation)
33. HACO, Inc., 537 Atlas Avenue, Madison, WI 53714 (an Illinois corporation)
34. Interstate Feeders, Inc., P.O. Box 626, Malta, ID 83342 (a Utah corporation)
35. LW Acquisition, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
36. Longmont Transportation Co., Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Colorado corporation)
37. Loveland Industries, Inc., 2307 W. 8th Street, Loveland, CO 80539 (a Colorado corporation)

38. Lynn Transportation Company, Inc., 422 N. Washington, Box 1997, El Dorado, AR 71730 (an Iowa corporation)
39. MHC, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oregon corporation)
40. M & R Distributing Company, PO Box E, West Highway 30, Grand Island, NE 68801 (a Minnesota corporation)
41. Mid Valley Chemicals, Inc., PO Box 446, Weslaco, TX 78596 (a Texas corporation)
42. Midwest Agriculture Warehouse Company, 725 S. Schneider Street, Fremont, NE 68025 (a Nebraska corporation)
43. Mid-West By-Products, PO Box G, Greeley, CO 80632 (a Nebraska corporation)
44. Miller Brothers, Inc., 410 North 200 West, Hyrum, UT 84319 (a Utah corporation)
45. Molinos de Puerto Rico, Inc., GPO Box G–1960, San Juan, PR 00936 (a Nebraska corporation)
46. Monfort Energy Resources, Inc., PO Box G, Greeley, CO 80632 (a Colorado corporation)
47. Monfort Food Distributing Company, PO Box G, Greeley, CO 80632 (a Colorado corporation)
48. Monfort Lamb Company, PO Box G, Greeley, CO 80632 (a Delaware corporation)
49. Monfort of Colorado, Inc., PO Box G, Greeley, CO 80632 (a Delaware corporation)
50. Monfort Transportation Company, PO Box G, Greeley, CO 80632 (a Colorado corporation)
51. Northwest Chemical Corporation, 4560 Ridge Road, NW., Salem, OR 97303 (an Oregon corporation)
52. O'Donnell-Usen Fisheries, Inc., 255 Northern Avenue, Boston, MA 02210 (a Massachusetts corporation)
53. Omaha Vaccine Company, Inc., 3030 "L" Street, Omaha, NE 68107 (a Nebraska corporation)
54. Ostlund Chemical Company, 1230 40th Street, NW., Fargo, ND 58102 (a North Dakota corporation)
55. Peavey Marts, Inc., Country General Stores, 123 S. Webb Road, Grand Island, NE 68802
56. Platte Chemical Company, 150 South Main Street, Fremont, NE 68025 (a Nebraska corporation)
57. Public Grain Elevator of New Orleans, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Louisiana corporation)
58. Pueblo Chemical & Supply Company, PO Box 1279, Garden City, KS 67846 (a Colorado corporation)
59. Scentry, Inc., 11806 E. Riggs Road, Chandler, AZ 85224 (a Delaware corporation)
60. Sheepskin Products, Inc., 145 Factory Road, Eaton, CO 80615 (a Colorado corporation)
61. Snake River Chemicals, Inc., PO Box 1196, Caldwell, ID 83650 (an Idaho corporation)
62. Spencer Beef Corporation, 400 North 200 West, Hyrum, UT 84319 (a Nebraska corporation)
63. Summit Commodity Advisers, Inc., PO Box G, Greeley, CO 80632 (a Colorado corporation)
64. Summit Trading Company, Inc., 165 S. Union Blvd., 470, Lakewood, CO 80228 (a Colorado corporation)
65. Swift Independent Holding Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
66. Taco Plaza, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Texas corporation)
67. To-Ricos, Inc., PO Box 646, Aibonito, PR 00609 (a Nebraska corporation)
68. Trans-Agra International, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Tennessee corporation)
69. Transbas, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Tennessee corporation)
70. Tri-River Chemical Company, Inc., PO Box 2778, Pasco, WA 99302 (a Washington corporation)
71. Tri-State Chemicals, Inc., PO Box 1837, Hereford, TX 79045 (a Texas corporation)
72. Tri-State Delta Chemicals, Inc., 2673 Old Leland Road, PO Box 5817, Greenville, MS 38704
73. Tropmi Import Company, 5024 Uceta Road, PO Box 2819, Tampa, FL 33619 (a Florida corporation)
74. UAP Special Products, Inc., 13808 "F" Street, Omaha, NE 68137 (a Nebraska corporation)
75. United Agri Products, Inc., 2687 18th Street, Box 1286, Greeley, CO 80634 (a Delaware corporation)
76. United Agri Products Financial Services, Inc., 4687 18th Street, Box 1287, Greeley, CO 80634 (a Colorado corporation)
77. United Agri Products-Florida, Inc., 3804 Coconut Palm Drive, Ste 170, Tampa, FL 33619 (a Florida corporation)
78. U.S. Tire, Inc., 3443 N. Central Ave., Ste 1205, Phoenix, AZ 80512 (a Florida corporation)
79. Weld Agricultural Credit, Inc., PO Box G, Greeley, CO 80632 (a Colorado corporation)
80. Weld Insurance Company, PO Box G, Greeley, CO 80632 (a Colorado corporation)
81. Westchem Agricultural Chemicals, Inc., 1505 Lockwood Road, Billings, MT 59107 (a Montana corporation)
82. Willow Creek Talc, Inc., 1603 Copper Road, Anaconda, MT 59711 (a Montana corporation)
83. Woodward & Dickerson Japan, Ltd., Woodward House, 937 Haverford Road, Bryn Mawr, PA 19010 (a Pennsylvania corporation)
84. WVS, Inc., 537 Atlas Avenue, Madison, WI 53714 (an Illinois corporation)
85. Yellowstone Valley Chemicals, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Montana corporation)

Noreta R. McGee,

Secretary.

[FR Doc. 88–20506 Filed 9–8–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dispensary; Revocation of Registration

On March 7, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Dispensary, a pharmacy located at 101 N. Grimmell Road, Jefferson, Iowa. The Order to Show Cause (Order) sought to revoke Dispensary's Certificate of Registration A99039997 under 21 U.S.C. 823(f). The grounds for the proposed action are that the owner of Dispensary, Gail John Swanson, was convicted of a felony relating to controlled substances. The Order was sent via registered mail and was received on March 12, 1988. Title 21, Code of Federal Regulations, § 1301.54(a) allows the Registrant to file a request for a hearing within 30 days of the date of receipt of the Order. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver of the hearing. No request for a hearing has been filed and Dispensary is therefore deemed to have waived its opportunity for a hearing. Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based on the information contained in the investigative file.

The Administrator finds that on at least five separate occasions in 1986, Mr. Swanson sold quantities of cocaine to Special Agents of the DEA. In a statement to DEA Agents in June of 1986, Mr. Swanson detailed a ten-year involvement with the possession and sale of cocaine. Mr. Swanson was prosecuted by information in the United States District Court for the Northern District of Iowa and on May 28, 1987, entered a guilty plea to Conspiracy to

Distribute Cocaine, in violation of 21 U.S.C. 846.

The Drug Enforcement Administration has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer, of key employee, or who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances. *See Yazid M. Mahdi, d/b/a Gresham Road Pharmacy*, Docket No. 86–31, 51 FR 27267 (1986); *Ozie T. Faison, d/b/a Smith Discount Drugs*, Docket No. 85–37, 51 FR 16403 (1986); and *K & B Successors, Inc.*, Docket No. 82–15, 49 FR 34588 (1984). Such conviction provides the lawful grounds for the revocation of a corporate registrant's registration, and for the denial of any pending application for renewal of that registration. 21 U.S.C. 824(a)(2) and 823(f)(3).

Accordingly, having concluded that there is a lawful basis for the revocation of the pharmacy's registration, and for the denial of any pending applications for renewal, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration A99039997, previously issued to Dispensary be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

This order is effective October 11, 1988.

Date: September 6, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–20536 Filed 9–8–88; 8:45 am]

BILLING CODE 4410–09–M

Russell R. Mann, D.D.S.; Revocation of Registration

On March 24, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (Order) proposing to revoke the DEA Certificate of Registration of Russell R. Mann, D.D.S. of Cleveland, Ohio. The statutory basis for the proposed action was that Dr. Mann is not currently authorized to handle controlled substances in the State of Ohio. 21 U.S.C. 824(a)(3).

The Order was sent via registered mail and, although the return receipt received by the DEA was signed, it was not dated. It has now been more than 30 days since the return receipt was received by the DEA and hence more than 30 days since the Order was served by the DEA on Dr. Mann. Title 21 of the Code of Federal Regulations, § 1301.54(a) allows a recipient to file a request for a hearing within 30 days of the date of receipt of an Order to Show Cause. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver for the hearing. No request for a hearing has been filed. Dr. Mann is therefore deemed to have waived his opportunity for a hearing and pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based on the information contained in the investigative file.

On February 27, 1987, the Ohio State Dental Board issued a seven count citation alleging that Dr. Mann issued numerous prescriptions for controlled substances to individuals for no legitimate thereapeutic purpose. A hearing was held by the Board on April 15, 1987, and all seven counts were found to be true. The Board found, *inter alia*, that in a two month period from December 1986 to January 1987, Dr. Mann issued prescriptions totaling approximately 1275 dosage units of Dilaudid to various individuals for no legitimate medical purpose. On April 24, 1987, the Board revoked Respondent's license to practice dentistry. Dr. Mann subsequently obtained an order from the Court of Common Pleas of Summit County, Ohio staying the Board's Order. The Stay provided, however, that Dr. Mann "shall not dispense or prescribe any scheduled drugs during the pending of this appeal."

The Administrator finds that Dr. Mann is not authorized to handle controlled substances in any manner in the State of Ohio. Since the DEA does not have authority to maintain the registration of a practitioner who is not authorized to handle controlled substances in the state in which he conducts business, Dr. Mann's Certificate of Registration must be revoked. See *Emerson Emery, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208; *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). The Administrator concludes that there is a lawful basis for the revocation of Dr. Mann's DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM8504614 be, and it hereby is, revoked. The Administrator further orders that any outstanding applications for registration submitted by Dr. Mann be, and they hereby are, denied.

This Order is effective on September 9, 1988.

Date: September 6, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–20535 Filed 9–8–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Pension and Welfare Benefits Administration

Proposed Regulation Regarding Allocation of Fiduciary Responsibility, Federal Retirement Thrift Investment Board 1210–AA30
On occasion; Semi-annually
Federal agencies or employees
2 respondents; 0.5 total hours; 3 minutes per response

This proposed regulation establishes procedures which a fiduciary must follow in order to allocate fiduciary responsibility to another fiduciary.

Proposed Regulation Relating to the Definition of Adequate Consideration
On Occasion
Businesses or other for profit; Small businesses or organizations
30,109 responses; 112,918 hours; 3.76 hours per response

This regulation would provide guidance as to what constitutes adequate consideration under section 3(18) of ERISA for assets other than securities which there is a generally recognized market.

Extension

Mine Safety and Health Administration

Gamma Radiation Exposure Records
1219–0039
Quarterly
Operators of metal and nonmetal underground mines
15 respondents; 240 total hours; 4 hours quarterly

Requires operators of metal and nonmetal underground mines, where radioactive ores are mined, to keep records of the results of annual gamma radiation surveys and individual miner's cumulative gamma radiation exposure.

Signed at Washington, DC this 6th day of September, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88–20569 Filed 9–8–88; 8:45 am]

BILLING CODE 4510–29–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 effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and 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.

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 decisionsa being modified.

Volume I

Florida:
FL88–1 (Jan. 8, 1988) ..... p. 100.
Kentucky:
KY88–25 (Jan. 8, 1988) ..... p. 356.
Pennsylvania:
PA88–4 (Jan. 8, 1988) ..... p. 870.
PA88–11 (Jan. 8, 1988) ..... p. 934.

PA88–14 (Jan. 8, 1988) ..... p. 958.
PA88–22 (Jan. 8, 1988) ..... pp. 990, 992–994, p. 998.

Volume II

Illinois:
IL88–12 (Jan. 8, 1988) ..... p. 165.
IL88–14 (Jan. 8, 1988) ..... p. 186.
Indiana:
IN88–1 (Jan. 8, 1988) ..... pp. 236, 238.
IN88–2 (Jan. 8, 1988) ..... p. 247.
IN88–4 (Jan. 8, 1988) ..... p. 279.
Ohio
OH88–1 (Jan. 8, 1988) ..... pp. 727–728.
OH88–2 (Jan. 8, 1988) ..... p. 742.
OH88–3 (Jan. 8, 1988) ..... p. 759.
OH88–28 (Jan. 8, 1988) .... p. 815.
OH88–29 (Jan. 8, 1988) .... pp. 827, 829, pp. 835, 842.
Listing by Location (index). pp. xxxi–xxxii.
Listing by Decision (index). p. lv

Volume III

Colorado:
CO88–1 (Jan. 8, 1988)..... pp. 104–105.
Utah:
UT88–1 (Jan. 8, 1988)..... p. 336.

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 2nd day of September 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–20341 Filed 9–8–88; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–88–159–C]

Becky Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Becky Mining, Inc., Drawer 1160, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 2 (I.D. No. 44–06170) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals in return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to rock falls and poor roof conditions existing old works in the first left-hand section and the right-hand pillar sections of the mine cannot be safely traveled, and to require certified personnel to perform weekly checks could result in a diminution of safety.

3. As an alternate method, petitioner proposes to establish an air monitoring station where the quality and quantity of air passing over the old works can be monitored. In support of this request, petitioner states that—

(a) Examinations for air quality/quantity would be conducted by a certified person on a weekly basis and a log would be kept at each station;

(b) Variations that are noted would be investigated and appropriate corrective action would be taken; and

(c) The mine is located above drainage and methane has never been detected;

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 11, 1988. Copies of the petition are available for inspection at that address.

Date: August 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–20572 Filed 9–8–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–156–C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., Pennsylvania Division, P.O. Box 143, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its 84 Complex, Livingston Portal (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that the roof in certain specified areas has become hazardous, roof falls have occurred, and rehabilitation of these areas would create a diminution of safety to the examiners and miners.

3. As an alternate method, petitioner proposes to establish monitoring stations in lieu of traveling the aircourse in its entirety. In support of this request, petitioner states that—

(a) The specified aircourses would no longer be a part of the ventilation system of active working sections;

(b) The monitoring stations and access routes would be kept in a travelable and safe condition, and air-lock doors would be provided when needed. Station identification signs would be posted along the haulage road;

(c) Methane and air readings would be made daily by a certified person at each measuring station. The results of the examinations would be recorded on a date board or in a book located at each measuring station. The daily readings would also be posted in a record book kept on the surface; and

(d) Methane would not be allowed to accumulate beyond legal limits in these aircourses. A marked variation in quantity or 0.5 percent increase in methane content would cause an investigation to be conducted and appropriate action would be taken.

4. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 11, 1988. Copies of the petition are available for inspection at that address.

Dated: August 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20570 Filed 9-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-154-C]

Canada Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Canada Coal Company, Inc., P.O. Box 2686, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 2 Mine (I.D. No. 15-02410) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to roof falls certain areas of the mine cannot be safely traveled.

3. As an alternate method, petitioner proposes to establish two evaluation points where the quantity and quality of air would be examined by a qualified person on a daily basis. The results of the examinations would be recorded in a pre-shift/on-shift examination book.

4. In support of this request, petitioner states that—

(a) The return airway is not a part of the mine escapeway system;

(b) Air passing through this area does not pass over any electrical power sources; and

(c) No methane has been detected in the face area or return.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 11, 1988. Copies of the petition are available for inspection at that address.

Date: August 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 88-20571 Filed 9-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-163-C]

Gamble Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Gamble Mining Company, Inc., Drawer 1160, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 3 (I.D. No. 44-06318) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to rock falls and poor roof conditions existing old works in the first right-hand pillar section of the mine cannot be safely traveled, and to require certified personnel to perform weekly checks could result in a diminution of safety.

3. As an alternate method, petitioner proposes to establish an air monitoring station where the quality and quantity of air passing over the old works can be monitored. In support of this request, petitioner states that—

(a) Examinations for air quality/quantity would be conducted by a certified person on a weekly basis and a log would be kept at each station;

(b) Variations that are noted would be investigated and appropriate corrective action would be taken; and

(c) The mine is located above drainage and methane has never been detected;

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 11, 1988. Copies of the petition are available for inspection at that address.

Date: August 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 88-20575 Filed 9-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-151-C]

Golden Oak Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Route 2, P.O. Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Black Oak No. 5 Mine (I.D. No. 15-15288), its Black Oak No. 6 Mine (I.D. No. 15-15703), and its Black Oak No. 7 Mine (I.D. No. 15-16287) all located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies would result in a diminution of safety because the cabs or canopies would limit the equipment operator's visibility, causing the operator to lean out while in motion, exposing himself and others to danger. The cabs or canopies would create cramped conditions causing unnecessary fatigue resulting in reduced alertness and safety. Limited operating space would hinder the operators escape from the equipment in case of an emergency and the cabs or canopies would hit the roof bolt plates and create weak roof support.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 11, 1988. Copies of the petition are available for inspection at that address.

Date: August 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20573 Filed 9-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-150-C]

Leeco, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741-8799 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas adjacent mines; drilling of boreholes) to its Mine No. 22 (I.D. No. 15-11548), its Mine No. 49 (I.D. No. 15-14616), its Mine No. 60 (I.D. No. 15-12941) all located in Leslie County, Kentucky, and to its Mine No. 47 (I.D. No. 15-13830) located in Clay County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas, or within 200 feet of any other abandoned areas that cannot be inspected and may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, boreholes must be drilled at least 20 feet in advance of the working place and be continually maintained to a distance of at least 10 feet in advance of the advancing working face.

2. As an alternate method, petitioner proposes to use probe drills capable of drilling long test drill holes in excess of 400 feet in lieu of 20-foot test drill holes.

3. In support of this request, petitioner states that—

(a) Test holes would be drilled into the face before the working section reaches the 200-foot barrier to the abandoned mine. Seven holes would be drilled deep enough to intersect the abandoned workings. One hole would be drilled on each centerline of the middle three faces. Two holes would be drilled at the midpoints between the centerline holes. Two holes would be drilled 27½ feet outside of the centerline holes;

(b) The seven test holes would intersect the abandoned workings prior to the faces advancing inby the 200-foot barrier. If data collected from the test holes indicates that no hazardous atmospheric or water condition exists in the abandoned workings where the active face would intersect, mining of the middle three entries would proceed along the drill holes to cut into the abandoned mine; and

(c) Once the seven test holes have located the old workings and allowed for the determination of conditions, the projected three advance headings would be bracketed by test holes and the miners would be completely protected from accidental inundation by cutting into undetected abandoned workings.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 11, 1988. Copies of the petition are available for inspection at that address.

Date: August 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20574 Filed 9-8-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-164-C]

Old Ben Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Old Ben Coal Company, 200 Public Square, Cleveland, Ohio 44114-2375 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 24 (I.D. No. 11-00589) located in Franklin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and that they be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to use 2300 volt a.c. electricity to power the No. 4 longwall panel and subsequent longwall panels or components of such panels.

3. In support of this request, petitioner states that—

(a) The No. 14 longwall panel would have a "hybrid" face in that only the shearer would be powered by 2400 volt a.c. electricity;

(b) The pan line and stage loader would be powered by medium voltage electricity; and

(c) Future panels, whether totally high voltage or hybrid, would be subject to the same terms and conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 11, 1988. Copies of the petition are available for inspection at that address.

Date: August 31, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-20576 Filed 9-8-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-74]

NASA Advisory Council; Establishment of Commercial Programs Advisory Committee and Reorganization of the NASA Advisory Committee Structure

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Establishment of Commercial Programs Advisory Committee and Reoganization of the NASA Advisory Committee Structure in the Areas of Space Science and Applications.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Pub. L. 92–463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that establishment of the Commercial Programs Advisory Commiittee of the NASA Advisory Council, and reorganization of the committees of the NASA Advisory Council responsible for advising in the areas of space science and applications is in each case in the public interest in connection with the performance of duties imposed upon NASA by law. In the reorganization, the following committees will be abolished:

Life Sciences Advisory Committee
Space Applications Advisory Committee
Space and Earth Science Advisory Committee

To replace them, the following committees will be established:

Aerospace Medicine Advisory Committee
Space Science and Applications Advisory Committee

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, National Aeronautics and Space Administration, Code ADI–1, Washington, DC 20546 (202/453–8766).

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

The Commercial Programs Advisory Committee will be concerned with the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content.

The Aerospace Medicine Advisory Committee will be concerned with all Agency activities related to the science and practice of aerospace medicine, including space medicine, biomedical research, and environmental health, and those aspects of developmental, gravitational, and planetary biology that impact human health and performance in space.

The Space Science and Applications Advisory Committee will be concerned with space observations and use of space technology in support of basic research in: (1) Solar system exploration; (2) astrophysics, cosmology, and relativity physics; (3) solar and space physics; (4) earth science (including interactions of the atmosphere, oceans, and masses, and biosphere); (5) fundamental physics and chemistry; and (6) life sciences (including fundamental biological mechanisms, plant and animal physiology, and exobiology). It will also be concerned with applied research and the applications of space technology in: (1) Materials science and biotechnology, (2) earth remote sensing, and (3) communications.

September 1, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–20523 Filed 9–8–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice (88–76)]

Intent To Prepare a Draft Environmental Impact Statement for the Galileo Mission (Tier–2)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS); Galileo Mission.

SUMMARY: On November 30, 1987, NASA published a "Notice of Availability of a Supplemental Draft Environmental Impact Statement" (SDEIS) for the Galileo and Ulysses Missions (52 FR 45513) that addressed the proposed action of continuing preparation of the Galileo and Ulysses missions, for launch on board the Space Shuttle utilizing the Inertial Upper Stage (STS/IUS), in October 1989 and October 1990 respectively. The SDEIS (Tier–1) was necessitated by the cancellation of the Centaur G (Shuttle version) and the subsequent reconfiguration of the missions to use the IUS and of Galileo to use a Venus-Earth-Earth Gravity Assist (VEEGA) trajectory. Substantive public comments on the proposed action described in the SDEIS have been received and are being considered in the preparation of the Final EIS (Tier–1). Concurrent with the preparation of the Final EIS (Tier–1), NASA is preparing a DEIS (Tier–2), which will address the proposed action of completion of preparations and operation of the Galileo mission, including its planned launch in October 1989.

The Galileo Mission will study Jupiter, probe the Jovian planetary atmosphere, study the four major moons and the planet's extended electromagnetic environment. To gain sufficient velocity to reach Jupiter, the Galileo spacecraft will first execute a Venus gravity-assist flyby and then two Earth gravity assist flybys. This trajectory is known as the VEEGA trajectory, and the analysis of the probability of an inadvertent reentry to Earth's atmosphere during an Earth flyby will be in the Final EIS (Tier–1). The safety and environmental implications of the VEEGA trajectory will be treated in detail in the DEIS (Tier–2) for the Galileo Mission.

The DEIS (Tier–2) for the Galileo Mission will address the proposed action of completion of preparations and operation of the Galileo mission, including its planned launch in October 1989, and the alternatives: (1) Delaying completion of preparations in favor of a launch in the 1991 opportunity, and (2) cancelling further work on the mission (i.e., the "No Action" alternative). As part of the consideration of alternatives, the EIS will also consider an alternative launch configuration, the Titan-IV/IUS expendable launch system.

The environmental effects of these actions are those associated with the launch vehicle and those associated with the Galileo spacecraft. Environmental effects associated with the launch vehicle have been considered in the previously published EIS's on the Space Shuttle Program (1978), the Kennedy Space Center (Revision 1979), and the SDEIS for the Galileo and Ulysses Missions (Tier–1) (1987).

Potential environmental effects associated with the Galileo spacecraft are principally adverse health and environmental effects related to the possible release of plutonium-238 from the spacecraft Radioisotope Thermoelectric Generators (RTG's) and the Radioisotope Heater Units (RHU's) stemming from (1) an accident or mission abort during launch, or (2) reentry of the spacecraft from Earth orbit or during an Earth flyby. The potential effects associated with the Galileo spacecraft which will be considered in preparing the DEIS (Tier–2) for the Galileo Mission include impacts on air and water quality; local land area contamination by plutonium-238; adverse health and safety impacts; the disturbance of biotic resources; the occurrence of adverse impacts in wetland areas or in areas containing historical sites; and socioeconomic impacts. The analysis will use the latest information from a detailed Final Safety Analysis Report currently being prepared by the Department of Energy (DOE). The DOE is participating as a cooperating agency in the preparation of this EIS because of the DOE's role in providing RTG's and RHU's and their responsibility for the safe operation of this power-source equipment.

The DEIS is expected to be released for review in January 1989. Written comments or suggestions concerning the

scope of this EIS are solicited at this time.

DATE: Comments in response to this notice must be received in writing on or before October 11, 1988.

ADDRESS: Office of Space Science and Applications, Code E, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Deputy Director, (Advanced Programs), Solar System Exploration Division, Code EL, NASA Headquarters, Washington, DC 20546 (202) 453–1587.

September 2, 1988.

M. Peralta,

Associate Administrator for Management.

[FR Doc. 88–20524 Filed 9–8–88; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Challenge II/ Advancement Section) to the National Council on the Arts will be held on September 27–28, 1988, from 9:00 a.m.–5:30 p.m., in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 27, from 9:00–9:30 a.m. The topic for discussion will be a general program overview.

The remaining sessions of this meeting on September 27, from 9:30 a.m.–5:30 p.m., and on September 28, from 9:00 a.m.–5:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–20485 Filed 9–8–88; 8:45 am]

BILLING CODE 7537–01–M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Challenge II/ Advancement Section) to the National Council on the Arts will be held on September 29–30, 1988, from 9:00 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

September 1, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 88–20486 Filed 9–8–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Ilinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would revise the Technical Specifications (TS) related to the process and effluent radiation monitoring systems.

Specifically, the licensees requested the proposed changes to account and allow credit to be taken for the redundancy of the common Central Control Terminals (CCTs), where process and effluent radiation monitor status and indications are provided, and to clarify certain testing and surveillance requirements for process and effluent radiation monitors based on as-built capabilities and features provided in these systems.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF–62 which consists of four changes to the TS concerning the process and effluent radiation monitoring systems.

The first change consists of various revisions to account and allow credit to be taken for redundancy of the common Central Control Terminals (CCTs) where process radiation monitor status and indications are provided. One revision is proposed to include the CCTs in the OPERABILITY requirements for certain radiation monitor channels required to be OPERABLE by the Technical Specifications. A revision to the ACTIONs is proposed, as applicable, to account for inoperability of the CCTs versus inoperability of the monitor itself that provides input to the CCTs. A revision is proposed to the Channel Check for the applicable radiation monitors to ensure that channel communication is established to the Main Control Room-CCT or Radiation Protection-CCT. A revision is also proposed to the expanded Channel Functional Test requirements for the

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

radiation monitors to make the wording of the requirement based on the Standard Technical Specifications more specific and applicable to the Clinton design without changing the intent of the requirement.

The second change consists of a revision to the Channel Functional Test requirement for the liquid radwaste discharge monitor. The current requirement requires a demonstration of automatic isolation of the release pathway with the monitor controls not set in the OPERATE mode. The change would delete this specific requirement since the monitor is not designed to effect an isolation for this specific condition.

The third change consists of specific revisions in order to make the channel/instrument descriptions for the Standby Gas Treatment System (SGTS) Exhaust Process Radiation Monitor (PRM) agree with the HVAC Exhaust PRM descriptions since they are designed and operated in a similar manner.

The fourth change consists of several changes to Action 72 of Table 3.3.7.1–1 in order to make the Action consistent with other applicable Specifications including other Actions. To support those changes related to OPERABILITY of the Pre-Treatment Off-Gas process radiation monitor, changes to Specifications 4.11.2.7.1 and 4.11.2.7.2 are also proposed.

Environmental Impacts of the Proposed Action

The changes proposed apply to Technical Specifications 3/4.3.7.1 (along with 4.11.2.7.1 and 4.11.2.7.2), 3/4.3.7.11, and 3/4.3.7.12. The change to Table 3/4.3.7.1–1 (Radiation Monitoring Instrumentation), Table 3/4.3.7.11–1 (Radioactive Liquid Effluent Monitoring Instrumentation), and Table 3/4.3.7.12–1 (Radioactive Gaseous Effluent Monitoring Instrumentation) are as follows:

The process radiation monitors at Clinton provide their operational information via data links to two common CCTs. The radiation monitor indication and status are provided through either of the CCTs. One CCT is located in the Main Control Room (MCR) and the other CCT is located in the Radiation Protection Office (RPO). The licensees stated in their letter dated October 30, 1987 that the RPO is continuously manned (24 hours a day) with telephone lines to the MCR and that these two CCTs are functionally equivalent. The staff considered in its evaluation that they are redundant CCTs with respect to verifying monitor status, checking monitor indications, and performing required surveillances on the radiation monitors.

The channel functional tests specified for certain monitors in the above tables require, among other things, the capability to remotely annunciate an alarm condition in the MCR. Since the CCT in the MCR (CCT–MCR) is considered to be functionally equivalent to the CCT in the RPO (CCT–RPO), a new note is affixed to Table 3.3.7.1–1 as Note (b) and to Tables 3.3.7.11–1 and 3.3.7.12–1 as Note (a). This new note is added to include in the channel functional tests the capability of either the CCT–MCR or CCT–RPO to provide the alarm status of the applicable radiation monitor channels, rather than referring only to the MCR annunciation as currently specified in the Clinton TS. Inoperability of one CCT does not constitute inoperability of a monitor since the redundant CCT can provide the required status, indication, and alarm for applicable radiation monitors. Therefore, the staff finds the additions to the above tables to be acceptable.

Actions 72 and 73 for Table 3.3.7.1–1, Action 111 for table 3.3.7.11–1, and Action 121 for Table 3.3.7.12–1 are extended to include the operability requirements for both CCTs in the event that both CCTs are inoperable and are therefore incapable of providing the required remote alarm annunciation. Since these changes to the action statements do not remove or relax any existing requirements but add the new requirements, the staff finds the extended action statements to be acceptable.

The licensees proposed a revised Table Notation (1) to Table 4.3.7.1–1 (Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirements) to reflect the as-built capabilities and design features provided in the liquid effluent radiation monitors. The current Clinton TS (Item 4 in Table Notation 1) states that automatic isolation of liquid effluent is to occur with "Instrument Controls not set in Operate Mode." The licensees' proposed change clarifies this item to read "Instrument Control not set in *Normal* Operate Mode (uninitialized, calibrate, maintenance, or standby)." The discrepancy between specific system design features and the current Clinton TS is due to an oversight at the time the Clinton TS was drafted. This change does not remove or relax the currently existing requirements but clarifies the requirement to reflect the specific design features. Therefore, the staff finds this change to be acceptable.

The changes proposed for Tables 3.3.7.12–1 (Radioactive Gaseous Effluent Monitoring Instrumentation) and 4.3.7.12–1 (Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements) are editorial in nature and are to provide consistent nomenclature for the station heating, ventilation, and air conditioning (HVAC) exhaust process radiation monitor (PRM) and the standby gas treatment system exhaust PRM. The staff finds the changes to be acceptable.

Action Statement 72 for Pre-Treatment Off-Gas PRM in Table 3.3.7.1–1 (Radiation Monitoring Instrumentation) currently states that "* * * gases from the main condenser off-gas treatment system may be released to the environment for up to 72 hours provided * * *" This Action Statement is not specific as to what actions should be taken after the 72-hour limit since the limiting condition for operation (LCO) in the same section also specifies that the provision of Specifications 3.0.3 and 3.0.4 are not applicable. Thus, no further action (reactor shutdown) is required if the 72-hour limit is exceeded. To rectify this discrepancy, the licensees proposed to delete the 72-hour limit requirement and instead to insert a new provision (3) stating "Grab samples are taken at least once per 8 hours and analyzed for gross noble gas activity within 4 hours * * *" (until this monitor become operational). In addition to this monitor, there is a downsteam detector (plant effluent monitor) which monitors the gaseous radioactive effluent through the pre-treatment off-gas monitor to the environment. Therefore, the staff finds the licensees' proposed changes to be acceptable.

As a direct result of this change, a phrase is added to Surveillance Sections 4.11.2.7.1 and 4.11.2.7.2: "* * * required to be operable as otherwise provided by Table 3.3.7.1". This addition provides consistency with the operational requirements of the pre-treatment off-gas process radiation monitor.

The Commission has determined that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton

Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternative with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

Agencies and Persons Consulted

The NRC staff revised the licensees' request of October 30, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Vespasian Warner, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 30th day of August 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-20528 Filed 9-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-282 and 50-306]

Northern States 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 Licenses Nos. DPR-42 and DPR-60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the Technical Specifications (TSs) to change the values of the nuclear hot channel factor (F_Q) and the nuclear enthalpy rise in the hot channel factor ($F_{\Delta H}$) as they relate to the power distribution limits that are used in the departure from nucleate boiling (DNB) calculations for analyzing various potential accidents. Specifically, F_Q and $F_{\Delta H}$ will have assigned values of 2.50 and 1.70 respectively, instead of the existing condition where the assigned values are based on a function of each other. The proposed action is in accordance with the licensee's application for amendment dated July 5, 1988.

The Need for the Proposed Action

The proposed change to the TSs is based on the new evaluation model. This change is necessary to (1) revise the surface heat transfer coefficient used in the analysis of the rod ejection accident; (2) increase the reliability factor (RF) applied to Doppler coefficient; and (3) ensure conservatism in all cases related to the revised SCRAM reactivity insertion curve and the updated rod bow penalty factor for the minimum departure from nucleate boiling ratio (MDNBR).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed revision would change the F_Q and $F_{\Delta H}$ factors to specific values of 2.50 and 1.70 respectively, instead of determining these factors based on a functional curve related to both values. The evaluation demonstrates that operation of the plant does not exceed the acceptable thermal limits and is bounded by previously approved safety analyses. In addition, the impacts of operation in the proposed manner are within those impacts evaluated in the Final Environmental Statements related to operation of the facility. Therefore, the proposed change does not increase the probability or consequences of any accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TSs involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 29, 1988 (53 FR 28737). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission 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.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the Prairie Island Nuclear Generating Plant dated May 1973.

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 and environmental impact statement for the proposed license amendment.

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 amendment dated July 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 31st day of August 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-20527 Filed 9-8-88; 8:45 am]

BILLING CODE 7590-01-M

Relocation of Public Document Room

The Nuclear Regulatory Commission's Public Document Room (PDR) is being relocated to 2120 L Street, NW., Lower Level, Washington, DC. It is anticipated that the PDR will be closed for this move on Thursday and Friday, September 15-16, 1988, and will reopen the following Monday, September 19, 1988.

The mailing address will remain: U.S. Nuclear Regulatory Commission, Office of the Secretary, Public Document Room, Washington, DC 20555.

The PDR's service hours and telephone numbers will remain the same:

Hours: 7:45 am-4:15 pm—Reading Room; 8:30 am-4:15 pm—Telephone Reference

Telephone Numbers: (202) 634-3273—Reference Service; (202) 634-1421—BRS Online dial-in; (202) 775-0564—Facilities Management, Inc. (Reproduction Contractor).

All services, including remote dial-in and document reproduction, will be suspended September 15-16, when the PDR is closed. This initial phase of the move will include all PDR personnel and equipment, the entire microfiche collection, selected files and paper reference tools, and Reading Room contents. Over a period of approximately one week following September 19, the remaining paper files will be removed to the L Street location. During this interim period, access to the bulk of the PDR's paper file collections will be restricted and greater emphasis will be placed on the use of our substantial microfiche collections. Reproduction service turnaround times will be leniently enforced from September 13, 1988, until completion of the move.

If you have any special projects that must be accomplished during this time, contact Kathleen Ruhlman at (202) 634-3251. Please check with the reference staff prior to the move with regard to the recall of retired materials. Every effort will be made to accommodate your requests and minimize this temporary inconvenience.

Dated at Bethesda, Maryland, this 6th day of September, 1988.

For the Nuclear Regulatory Commission.

John Philips,

Acting Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-20532 Filed 9-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 and 50-374]

Commonwealth Edison Co.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 59 to Facility Operating License No. NPF-11 and Amendment No. 39 to Facility Operating License No. NPF-18, issued to Commonwealth Edison Company, (the licensee), which revised the Technical Specifications for operation of The LaSalle County Station, (the facility), Units 1 and 2, located in LaSalle County, Illinois. The amendments are effective 30 days after the date of issuance.

The amendments correct an inconsistency between Technical Specification requirements regarding the suppression pool high level alarm. The following changes to the Technical Specification have been made:

1. The suppression pool high water level alarm setpoint in Technical Specification 4.6.2.1.c.1 has been raised 1 inch to be consistent with Technical Specification Table 3.3.3-2 and the UFSAR.

2. All references to suppression pool level in the Technical Specifications have been amended to be consistent with plant indications.

3. A figure has been added to the Technical Specification bases which correlates plant elevation, suppression chamber levels and suppression pool level indications.

These revisions to the licensees of LaSalle County Station, Units 1 and 2 are in response to the licensee's application for amendment dated April 29, 1987.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 8, 1987 (52 FR 46541). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because the action will not have a significant adverse effect on the quality of the human environment and there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated November 1978.

For further details with respect to the actions see (1) the application for amendment April 29, 1987, and Amendment No. 39 to License No. NPF-18, (2) Amendment No. 59 to License No. NPF-11 and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 31st day of August 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-20530 Filed 9-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

GPU Nuclear Corp.; Exemption

I

GPU Nuclear Corpoartion, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating license No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

By letter dated December 28, 1987, which discussed Revision 3 of the TMI-2 Licensed Operator Requalification Program, the licensee requested exemptions from requirements of 10 CFR 55.59, "Requalification." Specifically, the licensee requested exemption from the requirements of 10 CFR 55.59(c)(2), Lectures, subjects (iv) and (v). Subsection (2) to 10 CFR 55.59(c) requires that the oeprator requalification program contain preplanned lectures on a regular and continuing basis throughout the license period in areas where emphasis in scope and depth of coverage is needed. Nine topics are listed in the regulations. The licensee has requested exemption from topics (iv) Plant protection systems and (v) Engineered safety systems.

The licensee has also requested exemption from § 55.59(c)(3), On-the-Job Training, subsection (i), items (A) through (AA). The regulations require under § 55.59(c)(3) that the requalification program include on-the-job training so that each licensed operator manipulates the plant controls and each licensed senior operator either manipulates the controls or directs the activities of individuals during plant control manipulations. The manipulation must consist of a set of specified manipulations corresponding to various plant evolutions applicable to the plant design. Section 10 CFR 55.59(c)(3)(i) (A) through (AA) specifies the various plant evolutions for which all operators will be required to manipulate the facility controls annually or in some cases biannually during the term of the licensed operator's or senior operator's license. They can be performed at the plant or on a simulator. The manipulations required include plant startup, plant shutdown, manual control of feedwater, loss of coolant events, turbine trip, reactor trip, and loss of electric power.

III

TMI-2 is currently in a post-accident, cold shutdown, long-term cleanup mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system to the reactor building atmosphere. The licensee is presently engaged in defueling the damaged reactor, decontaminating the facility and readying the plant for long-term storage. The requirements to maintain safety related systems have been deleted from the TMI-2 operating license. The present unconventional configuration of the TMI-2 plant does not allow the conventional evolutions normal to an operating facility.

The licensee has requested exemption from the requirement to include preplanned lectures in the requalification program throughout the individual's license period on Plant Protection Systems and Engineering Safety Systems.

The Reactor Protection and the Engineering Safety Features Actuation System constitute the Plant Protection Systems at TMI-2. Both of these systems have been disabled. The Reactor Protection System is currently used only for plant monitoring. The monitoring capability of the portions of the system that are still functioning are addressed in the "Plant Instrumentation and Control Systems" lecture.

There currently is no requirement in the TMI-2 license to maintain the Engineered Safety Features Actuation System and no training on this system is included in the requalification program.

The licensee has also requested that they be exempted from control manipulations required by 10 CFR 55.59(c)(3)(i), subsections (a) through (AA). In lieu of the requirements to perform the specific manipulations required by the regulations, the licensee has included in the TMI-2 Licensed Operator Requalification Training Program abnormal and emergency evolutions that are applicable to TMI-2 in its current condition. These evolutions provide a more meaningful requalification training program for the TMI-2 licensed operators. The licensee believes that the current requalification program, which specifies completion of specific evolutions through the plant drill program, satisfies the intent of the regulation.

Verification by an NRC subject matter expert has confirmed that exemptions to the requirements of 10 CFR 55.59(c)(2) and 10 CFR(c)(3)(i) are appropriate and relevant to the present condition of TMI-2.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 55.11, these exemptions are authorized by law, will not endanger life or property and are otherwise in the public interest.

Accordingly, the Commission hereby grants exemption from the requirements of 10 CFR 55.59(c)(2), subsections (iv) and (v), and 10 CFR 55.59(c)(3)(i) items (A) through (AA).

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (53 FR 33562).

This exemption is effective as of the date of issuance.

Dated at Rockville, Maryland this 31st day of August, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 88-20533 Filed 9-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas and Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42, issued to Kansas Gas and Electric Company, Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc., (the licensees), for operation of the Wolf Creek Generating Station Unit No. 1, located in Coffey County, Kansas.

The proposed amendment would modify Technical Specification 5.3.1, Fuel Assemblies, to allow the replacement of a limited number of fuel rods with filler rods or vacancies if such replacement is acceptable based on the results of a cycle-specific reload analysis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

(1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. This license amendment request will allow the utilization of filler rods or vacancies in the fuel assemblies at Wolf Creek Generating Station. These fuel assemblies will meet the same mechanical, nuclear and thermal hydraulic limits as the other fuel assemblies. A cycle-specific reload analysis will confirm that the use of a fuel assembly with filler rods or vacancies in a core design does not result in an existing design limit being exceeded. Therefore, this license amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. A fuel assembly with filler rods or vacancies satisfies the same design criteria as other fuel assemblies and since only a single fuel assembly will be moved at a time during fuel reconstitution activities, the consequences of an accident are bounded by the presently postulated fuel handling accident. Therefore, this license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) This proposed amendment does not involve a significant reduction in a margin to safety. The use of a fuel assembly with filler rods or vacancies will not result in any existing design limit being exceeded. These reconstituted fuel assemblies meet essentially the same design requirements, satisfy the same design criteria as the other fuel assemblies and the use of reconstituted assemblies will not result in a change to existing safety criteria or design limits. Therefore, this change does not reduce the margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By October 11, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding

the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland, this 29th day of August, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–20531 Filed 9–8–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 And 50–362]

Southern California Edison Co., et al; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The requests for amendments were submitted by letter dated May 6, 1988 and identified as Proposed Change Numbers 243 and 244. Each proposed change is discussed below.

Proposed change No. NPF–10/15–243 would change several Technical Specification (TS) sections as described below:

(a) T.S. Table 3.3–9, "Remote Shutdown Monitoring Instrumentation"—This table provides a listing of the required instruments for the remote shutdown panel (RSP) along with the instrument channel range. This proposed change would revise the stated RCS cold leg temperature range from 0–600°F to 0–700°F. The RCS hot leg temperature range would similarly be changed from 190–625°F to 0–700°F. This change would also clarify the need to have RCS cold and hot leg temperature indication at RSP L411 only.

This change would also delete the Reactor Coolant Boron Concentration Instrument display and replace it with source range neutron flux indication (10^{-1}–10^{5}CPS).

T.S. Table 4.3–6, "Remote Shutdown Monitoring Instrumentation Surveillance Requirements" This table provides a listing of RSP instruments and the associated surveillance requirements. The proposed change would replace reactor coolant boron concentration with source range neutron flux to be consistent with the changes to Table 3.3–9.

(b) T.S. 3/4.3.3.7 "Fire Detection Instrumentation"—This specification and the associated Table 3.3–11 specify the number of fire detection early warning and actuation instruments that must be operable in each fire zone, the action that must be taken when detection equipment is inoperable, and the surveillance requirements for determining operability. This change would allow more early warning detectors to be inoperable before an hourly fire watch is required, would suspend the requirement for an hourly fire watch in areas of temporary radiation and/or life-threatening hazards, and would change the method for determining operability of the fire detection system following a seismic event. Table 3.3–11 would be changed to replace the current designation of each fire zone with the designations used in the Updated Fire Hazards Analysis (UFHA) and to specify only those fire detection based upon the UFHA, 10 CFR Part 50 Appendix R and Generic Letter 86–10 guidance. The proposed change to Table 3.3–11 would also remove the distinction between heat, smoke, and flame type early7 warning detectors.

(c) T.S. ¾.7.8.2 "Spray and/or Sprinkler Systems"—This specification and the associated Table 3.7–5 designate the actions to be taken when any of the systems listed in Table 3.7–5 are inoperable, and the surveillance requirements for determining operability. The proposed change would suspend the fire watch requirement when equipment is inoperable in areas of temporary radiation and/or life threatening hazards, would specify what constitutes establishment of backup fire suppression equipment, and would change the 18 month surveillance interval to "once per refueling outage for those plant areas that are inaccessible during non-refueling plant operation. Also, Table 3.7–5 would be changed to agree with the UFHA and the computerized plant equipment data base, and to specify only those systems which protect safe shutdown and/or safety related equipment based upon the UFHA, 10 CFR Part 50 Appendix R, and Generic Letter 86–10 guidance.

(d) T.S. ¾.7.8.3 "Fire Hose Stations"—This specification and the associated

Table 3.7–6 describe which fire hose stations are required to be operable, the actions to taken when any are inoperable, and the surveillance requirements for determining operability. This change would remove the requirement to lay backup fire hose to an area served by an inoperable fire hose station if that stations is inside containment with the equipment hatch closed, within 250 feet of an operable water source, or if two 150 foot hose packs on the fire engine are operable. The change would also remove the requirement to identify the purpose and location of the backup hose valves on the signs required to be mounted above the hose and at the inoperable station. The 18-month surveillance requirements would be changed to "once per refueling outage for those plant areas that are inaccessible during non-refueling plant operation." Table 3.7–6 would be changed by adding a new column labeled "Fire Area/Zone," by adding 31 hose stations, and by removing Unit 2 hose stations from the Unit 3 Specifications and vice versa.

(e) T.S. ¾.7.9 "Fire Rated Assemblies"—This specification delineates which fire rated assemblies and penetrations are required to be operable, when they are required to be operable, the actions to be taken when any are inoperable and the surveillance requirements for determining operability. This change would clarify which assemblies are required to be operable and would only require them to be operable when equipment protected by the assembly is required to be operable, rather than at all times as currently specified. The change would also clarify the action to be taken when any assembly is inoperable, would suspend the requirement for a fire watch in an area of temporary radiation and/or life-threatening hazards, and would change the 18-month surveillance interval to "once per refueling outage for those plant areas that are inaccessible during non-refueling plant operation."

(f) T.S. Bases ¾.3.3.7 "Fire Detection Instrumentation"—This section would be changed to reflect proposed changes described in (b) above.

Proposed Change No. NPF–10/15–244 would revise License Conditions 2.C(14) and 2.G for Unit 2 and 2.C(12) and 2.G for Unit 3. The existing license conditions 2.C(14) for Unit 2 and 2.C(12) for Unit 3 reference specific amendments to the fire protection program which were reviewed and approved by the NRC, but have since been superseded by the Updated Fire Hazards Analysis (UFHA) and subsequent SCE submittals to the NRC. The proposed change will require SCE to implement and maintain in effect the fire protection program described in the UFHA and subsequent submittals as approved in the Updated Fire Hazards Analysis Evaluation for San Onofre 2 and 3, Revision 1 dated June 29, 1988. The proposed license condition will allow changes to be made, exclusive of those requirements addressed by Technical Specifications, without prior NRC approval under the authority of 10 CFR 50.59 provided that the changes do not involve an unreviewed safety question and that the changes do not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Specifically, changes which do not requrie prior NRC approval are those which do not reduce the current level of San Onofre 2 and 3 compliance with the requriements of 10 CFR 50 Appendix R, Sections III.G, III.J, III.L and III.O (and approved deviations thereto) and which do not involve an unreviewed safety question under 10 CFR 50.59. Compliance with the above sections of Appendix R is identified in the documents referenced in the proposed license condition.

License condition 2.G for both units requires that violation of a license condition be reported within 24 hours to the NRC Regional Administrator with written followup within 14 days. Deviations from the fire protection program required by License Condition 2.C(14) for Unit 2 and 2.C(12) for Unit 3 are currently exempted from 2.G reportability unless they violate the provision of 10 CFR 50, Appendix R, Section III.G, III.J, or III.O and are not otherwise covered by technical specification requirements. The proposed change would revise License Condition 2.G to exempt deviations from the fire protection program which could be interpreted as failure to comply with License Condition 2.C(14) for Unit 2 and 2.C(12) for Unit 3 from reportability under License Condition 2.G. Deviations from the fire protection program which are not otherwise subject to technical specification reporting requirements and which would have adversely affected the ability to acheive and maintain safe shutdown in the event of a fire will be reported under revised Technical Specification 6.9.4, "Special Reprots."

This proposed change would also add a new Section 6.9.3 to the Technical Specification for each unit. This change would clarify that violations of the requirements of the fire protection program which are not otherwise subject to technical specification reporting requirements and which would have adversely affected the ability to achieve and maintain safe shutdown in the event of a fire shall be reported to the Regional Administrator of the Regional Office of the NRC via the Licensee Event Report System within 30 days. Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 11, 1988 the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800)325-6000 (in Missouri 1-(800)342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message adressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq. 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in the 10 CFR 2.714(a)(l)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 1717 H Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 30th day of August, 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-20534 Filed 9-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 118 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revises the steam generator low-level Steam and Feedwater Rupture Control System trip setpoint and the allowable values for channel functional test and channel calibration required by TS Section 3.3.2.2, Table 3.3-12. Also, a footnote was changed to clarify that the setpoints are defined in terms of actual water level above the lower tube sheet.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 3, 1988 (53 FR 15759). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated December 7, 1987, (2) Amendment No. 118 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated August 31, 1988 and (4) the Environmental Assessment dated August 31, 1988 (53 FR 33563). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items, (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 31st day of August 1988.

Albert W. De Agazio,

Sr. Project Manager, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-20529 Filed 9-8-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, October 5, 1988
Wednesday, November 9, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman,

representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washinton, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 88–20521 Filed 9–8–88; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A88–7; Order No. 799]

Vanadium, NM (Elisa M. Munoz, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued September 2, 1988.

Before Commissioners: Janet D. Steiger, Chairman, Patti Birge Tyson, Vice-Chairman, John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Docket Number: A88–7

Name of Affected Post Office: Vanadium, New Mexico 88073.

Name(s) of Petitioner(s): Elisa M. Munoz.

Type of Determination: Closing.

Date of Filing of Appeal Papers: August 29, 1988.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously failed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 13, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

[Docket No. A88–7, Vanadium, New Mexico 88073]

August 29, 1988
Filing of Petition
September 2, 1988
Notice and Order of Filing of Appeal
September 23, 1988
Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
October 3, 1988
Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b)).
October 23, 1988
Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
November 7, 1988
Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(d)).
November 14, 1988
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 26, 1988
Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 88–20468 Filed 9–8–88; 8:45 am]

BILLING CODE 7715–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1988, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1988, 31.9 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.1 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated: August 31, 1988.

Beatrice Ezersiki,

Secretary to the Board.

[FR Doc. 88–20466 Filed 9–8–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16547; File No. 812-7027]

Mutual of America Life Insurance Co., et al.

September 2, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Mutual of America Life Insurance Company (the "Insurance Company"); Mutual of America Separate Account No. 1 ("Account No. 1"); and Mutual of America Investment Corporation ("Investment Company") (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from section 17(a).

Summary of Application: Applicants seek an order to the extent necessary to permit the reorganization of Account No. 1 from a separate investment account investing primarily in a diversified portfolio of common stocks to one investing solely in shares of the Investment Company.

Filing Date: The application was filed on May 9, 1988 and amended on August 11, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on September 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants, 666 Fifth Avenue, New York, New York 10103.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300)).

Applicants' Representations

1. The Insurance Company is a mutual life insurance company organized in 1945 under the laws of the State of New York and is authorized to transact business in New York and all other states.

2. Account No. 1 is a separate investment account of the Insurance Company to which assets have been allocated from time to time to support benefits payable under the Insurance Company's group annuity contracts used as funding vehicles for tax-qualified pension and retirement plans (the "Contracts"). Applicants state that Account No. 1 is exempt from registration under the 1940 Act by virtue of section 3(c)(11) of the 1940 Act. Applicants state that the offer and sale of the Contracts funded through Account No. 1 are exempt from registration under the Securities Act of 1933 by virtue of section 3(a)(2) thereof. The investment objective of Account No. 1 is the achievement of long-term growth through both income and capital appreciation. Account No. 1 invests primarily in a diversified portfolio of common stocks that are listed on national securities exchanges, although amounts may also be invested in stocks that are traded over-the-counter, or other equity-related secirities, including foreign securities traded in U.S. markets.

3. The Investment Company, a management investment company of the series type, was organized under Maryland law in February, 1986. It has four separate funds (Stock, Bond, Money Market, and Composite), each with a separate series of shares. The Investment Company currently offers its shares exclusively to the separate accounts of the Insurance Company, and at the date of the application offers its shares only to Mutual of America Separate Account No. 2 ("Account No. 2").

4. Under the Plan of Reorganization (the "Reorganization") the Insurance Company, on behalf of Account No. 1, will transfer the portfolio assets and related liabilities of Account No. 1 to the Stock Fund of the Investment Company in return for shares of the Stock Fund of the Investment Company. The Insurance Company will record shares issued by the Investment Company's Stock Fund as assets of the Stock Sub-account of Account No. 1. The Insurance Company will comply with secton 22(c) of the Act and Rule 22c-1 thereunder in effecting the transaction. In this regard, the net asset value of Account No. 1 and of the Stock Fund of the Investment Company will be determined in the customary manner as of the business day immediately preceding the effective date of the Reorganization. The number of shares of the Stock Fund of the Investment Company to be issued to Account No. 1 will be determined by the per share value of the Investment Company shares. The Insurance Company will assume all costs to be incurred in effecting the Reorganization.

5. Applicants state that the primary purpose of the Reorganization is to realize certain economies. Both the Stock Fund of the Investment Company and Account No. 1 have virtually identical investment objectives, and the Reorganization will enable those corresponding funds to be efficiently invested as a single fund, with the possible consequence of improved overall performance. The Reorganization should also result in lower aggregate fees from attorneys, auditors, and custodians, lower administrative expenses, and lower expenses for such items as the preparation of shareholder reports. The Reorganization will be beneficial both from the standpoint of promoting effective investment management and from the standpoint of reducing operating expenses.

6. Applicants represent that the Reorganization will not have any adverse economic impact on the participants' interest under the Contracts, on the interests of the present stockholders of the Investment Company or on the interests of the present participants in Account No. 2. The overall level of fees and charges borne, directly or indirectly, by the Contracts and the participants thereunder, by the present stockholders of the Investment Company and by the present participants in Separate Account No. 2, will be no greater immediately after the Reorganization than immediately before it. The charges and expenses currently deducted from contributions under the Contracts or otherwise will not change, except that the advisory fee, brokerage commissions and similar securities transaction expenses will be deducted from the Investment Company assets after the Reorganization rather than from Account No. 1 assets.

7. Applicants represent that the investment objectives of the Stock Fund of the Investment Company which corresponds to the Stock Sub-account of Account No. 1 are identical. The Reorganization, therefore, will not require liquidation of any assets of either Account No. 1 or the Investment

Company. Applicants assert that the only sales of Account No. 1 assets will be those arising in the ordinary course of business. Therefore, neither Account No. 1 nor the Investment Company will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets.

8. Applicants represent that the voting rights of the participants under Account No. 2 will not be affected by the Reorganization. The Insurance Company will vote the shares of the Investment Company held in Account No. 1 at shareholders' meetings of the Investment Company according to instructions received from persons having a voting interest in Account No. 1 (*i.e.*, the participants). The Insurance Company will vote shares for which it has not received instructions in the same proportion as the Insurance Company votes shares for which the Insurance Company has received instructions, except for shares owned by the Insurance Company which will be voted in the Insurance Company's discretion. The Insurance Company owns less than 1% of the voting interest in Account No. 1.

9. The Insurance Company does not believe that it will recognize gain or loss in connection with the Reorganization, but if it does, the Insurance Company will absorb any tax liability rather than making any charges to Account No. 1 or the Investment Company.

10. Applicants represent that the terms of the proposed transactions, as described fully in the application and the Plan of Reorganization, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching; are consistent with the investment policies of Account No. 1 and the Investment Company; and are consistent with the general purposes of the Act.

11. Applicants represent, for the reasons discussed fully in the application, that the terms of the proposed Plan and the related transactions meet all of the requirements of section 17(b) of the Act and that an order should be granted exempting the proposed transaction from the provisions of section 17(a) of the Act, to the extent requested.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20503 Filed 9-8-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-1464]

Issuer Delisting; Application To Withdraw From Listing and Registration; Baruch-Fosters Corp., Common Stock, $.50 Par Value, Pacific Stock Exchange

September 2, 1988.

Baruch-Foster Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company has determined that the nominal trading volume of the Company's Common Stock on the PSE, the expense of listing additional shares of the Company's Common Stock, and the annual expense of maintaining the listing of the shares on the PSE do not justify the continued listing of the Company's Common Stock on the PSE.

Any interested person may, on or before September 26, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20505 Filed 9-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24709]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 2, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 27, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Savannah Electric and Power Company (70-7531)

Proposal to Issue and Sell First Mortgage Bonds and Preferred Stock; Amend Charter and By-Laws; Order Authorizing Proxy Solicitation

Savannah Electric and Power Company ("Savannah"), 600 Bay Street, East, Savannah, Georgia 31401, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to sections 6(a)(2), 6(b), 7(e) and 12(e) of the Act and Rules 50, 62 and 65 thereunder.

Savannah proposes to issue and sell up to $30,000,000 aggregate principal amount of its first mortgage bonds ("Bonds") in one or more series from time to time not later than December 31, 1990. Savannah also proposes to issue and sell up to $20,000,000 of its preferred stock ("Preferred"), par value up to $100 per share, in one or more series from time to time not later than December 31, 1990. For such issuances and sales of Bonds and Preferred, Savannah will comply with the competitive bidding requirements of Rule 50 of the Act, as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623). Savannah may amend its application to seek an

exception from the competitive bidding requirements under Rule 50 so that it may offer the Bonds and Preferred through a negotiated public offering or private placement.

In addition, savannah proposes to have a special meeting of its common, preference and preferred stockholders to be held on or about September 28, 1988, and to solicit proxies with respect to the following matters: (1) Amendments to its charter to create the new Preferred Stock and to establish its rights and preferences; (2) certain amendments to the Charter of Savannah to conform with the Commission's Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13106); (3) a proposal to increase the permitted amount of unsecured short-term debt under the Charter of Savannah, as amended; (4) a proposal to amend the Charter of Savannah to eliminate the personal liability of directors for monetary damages under certain circumstances; and (5) a proposal to amend the By-Laws of Savannah relating to idemnification of directors, officers and certain employees.

Savannah has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation of proxies for voting by its stockholders on the proposal to amend and restate the Charter and By-Laws, be permitted to become effective as provided in Rule 62(d). Savannah proposes to mail a notice of meeting, proxy statement and proxy to its stockholders for the meeting on September 28, 1988.

It appearing to the Commission that Savannah's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20504 Filed 9-8-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26059; File No. SR-CBOE-88-12]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Deletion of Rules Concerning GNMA and Foreign Currency Options

On June 27, 1988 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to delete the introduction and all Exchange rules in Chapters XX and XXII concerning Government National Mortgage Association ("GNMA") and foreign currency options, respectively.

The proposed rule change was noticed in Securities Exchange Act Release No. 25903 (July 13, 1988), 53 FR 27586 (July 21, 1988). No comments were received on the proposed rule change.

The CBOE notes that the Exchange does not presently nor does it intend in the future to trade GNMA or foreign currency options contracts. The CBOE states that the proposed rule change is designed to avoid investor confusion that could arise from continued reference to Exchange rules for products which are no longer traded on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[3] More specifically, the Commission believes it is appropriate for the CBOE, in connection with its recent review of its options rules, to revise those rules to reflect current options trading. The Commission also believes that deletion of CBOE rules concerning products which are no longer traded on the Exchange is logical and will minimize investor confusion. The Commission notes, however, that if the CBOE desires to trade GNMA and/or foreign currency options at a later date, the Exchange must resubmit the deleted rules, or a revised version thereof, to the Commission for its approval before initiating trading in such options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

Dated: September 2, 1988.

[FR Doc. 88-20566 Filed 9-8-88; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 2, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Fruehauf Corporation
Common Stock, $3.68 par value (File No. 7-3873)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 26, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20502 Filed 9-8-88; 8:45 am]

BILLING CODE 8010-01-M

[5] 17 CFR 200.30-3(a)(12) (1988).

DEPARTMENT OF STATE

[CM-8/1212]

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 29, 1988, at the Sheraton Anchorage Hotel, Anchorage, Alaska, at 7:00 p.m. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet at 9:00 a.m. on September 30, 1988. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the 35th Annual Meeting of the International North Pacific Fisheries Commission to be held in Tokyo, Japan, November 1–4, 1988. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee * * * shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Robert J. Ford, Pacific Fisheries Officer, OES/OFA Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Ford can be reached by telephone on (202) 647–2009.

Date: August 30, 1988.

R. Tucker Scully,

Acting Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 88–20472 Filed 9–8–88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1213]

Commission on the Foreign Service Personnel System; Meeting

The Department of State announces that the Commission on the Foreign Service Personnel System, established by the Foreign Affairs Authorization Act of 1988–1989, will meet on October 4, 1988 in the Dean Acheson Auditorium of the Department of State, 2201 C Street NW., Washington, DC. The meeting will begin at 12 noon.

The Commission will, at that time, solicit the views of employees of the foreign affairs agencies and of the general public on the Foreign Service personnel system, in particular the question of career stability for members of the U.S. Foreign Service.

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. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, members of the general public and employees of the Foreign Commercial Service, the Foreign Agricultural Service and the Animal and Plant Health Inspection Service of the Department of Agriculture who plan to attend should so advise the office of Ms. Ann K. Korky, State Department, Washington, DC; telephone (202) 647–4703. All attendees must use the C Street entrance to the building.

Ann K. Korky,

Staff Director, Commission on the Foreign Service Personnel System.

August 19, 1988.

[FR Doc. 88–20484 Filed 9–8–88; 8:45 am]

BILLING CODE 4710-15-M

[CM-8/1215]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Friday, September 30, 1988 at 2:30 p.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 4:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in March 1988, the announcement of gifts, loans and financial contributions since January 1, 1988, and a report on the architectural work to be done in the office of the Deputy Secretary of State.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, September 26, 1988, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Date August 30, 1988.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 88–20482 Filed 9–8–88; 8:45 am]

BILLING CODE 4710-38-M

[CM-8/1214]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee will conduct an open meeting at 0930 on Tuesday, September 27, 1988 in Room 6103 of U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC, 20593. The purpose of the meeting is to consider U.S. positions for the 60th Session of the International Maritime Organization (IMO) Legal Committee scheduled for October 10–14, 1988 In London.

The agenda form the September 27, 1988 public meeting will include the following substantive topics, all of which appear on the Legal Committee's provisional agenda for the 60th Session:

1. Draft Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (1974);

2. Proposed convention concerning liability and compensation related to the maritime carriage of hazardous and noxious substances (HNS); and

3. Draft IMO Resolution on Cooperation in Maritime Casualty Investigations (proposed by Liberia and the United States).

Members of public are invited to attend the September 27, 1988 Shipping Coordinating Committee meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting, contact Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527.

Date: August 30, 1988.
Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.
[FR Doc. 88-20483 Filed 9-8-88; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-076]

National Offshore Safety Advisory Committee; Establishment

SUMMARY: The Secretary of Transportation has approved the establishment of the National Offshore Safety Advisory Committee.

The purpose of this Committee is to advise the Commandant of the Coast Guard on matters and actions concerning the safety of activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within Coast Guard jurisdiction.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Steve Ciccalone, USCG, National Offshore Safety Advisory Committee, U.S. Coast Guard (G-MVI-4) Washington, DC 20593. (202) 267-2307.

Dated: August 31, 1988.
A.B. Smith,
Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.
[FR Doc. 88-20548 Filed 9-8-88; 8:45 am]
BILLING CODE 4910-14-M

Maritime Administration

Application of Foreign Underwriters To Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from Preservatrice Fonciere T.I.A.R.D. (PFA), a French underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which exist in the applicant's country of domicile.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and must be received by close of business on September 23, 1988.

Dated: September 6, 1988.
James E. Saari,
Secretary, Maritime Administration.
[FR Doc. 88-20460 Filed 9-8-88; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 2, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0074.
Form Number: 1040 and Related Schedules A, B, C, D, E, F, R & SE.
Type of Review: Resubmission.
Title: U.S. Individual Income Tax Return.
Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households.
Estimated Number of Respondents: 66,850,000.

Estimated Burden Hours Per Response:

1040: 2 hours and 51 minutes.
Sch A: 44 minutes.
Sch B: 23 minutes.
Sch C: 1 hour 51 minutes.
Sch D: 1 hour 32 minutes.
Sch E: 1 hour 6 minutes.
Sch F: 1 hour 36 minutes.
Sch R: 28 minutes.
Sch SE: 15 minutes.
Frequency of Response: Annually.
Estimated Average Reporting Burden: 297,014,128 hours.

OMB Number: 1545-0087.
Form Number: 1040-ES, 1040-ES (NR), 1040-ES (OCR).
Type of Review: Resubmission.
Title: Estimated Tax for Individuals.
Description: Form 1040-ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.
Respondents: Individuals or households.
Estimated Number of Respondents: 14,563,250.

Estimated Burden Hours Per Response:

1040-ES (OCR): 15 mintues.
1040-ES: 15 minutes.
1040-ES (NR): 15 minutes.
Frequency of Response: Quarterly.
Estimated Average Reporting Burden: 7,127,777 hours.
OMB Number: 1545-0089.
Form Number: 1040NR.
Type of Review: Resubmission.
Title: U.S. Nonresident Alien Income Tax Return.
Description: This form is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 180,000

Estimated Burden Hours Per Response: 6 hours and 3 minutes.

Frequency of Response; Annually.
Estimated Average Reporting Burden: 1,119,474 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revnue Service, Room 5571, 111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88-20501 Filed 9-8-88; 8:45 am]
BILLING CODE 4810-25-M

Customs Service

[T.D.88-57]

Conditional Approval of a Commercial Gauger

AGENCY: Customs Service, Treasury.

ACTION: Notice of Conditional Approval of a Commercial Gauger.

SUMMARY: Stanton Marine U.S.A., Inc., of Houston, Texas, applied to Customs for approval to gauge imported petroleum and petroleum products and organic chemicals and vegetable and animal oils in bulk and in liquid form under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Stanton Marine meets the requirements for conditional approval.

Therefore, in accordance with § 151.13(c), Stanton Marine U.S.A., Inc., 12700 Northborough Drive, Suite 600, Houston, Texas 77067, is conditionally approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446).

Dated: August 30, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88–20525 Filed 9–8–88; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

Performance Review Board; Senior Service Membership

AGENCY: Internal Revenue Service; Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 1, 1988.

FOR FURTHERN INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 566–4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Assistant Commissioners, Regional Commissioners and senior executives in the office of the Commissioner are as follows:

Charles H. Brennan, Deputy Commission (Operations).
John L. Wedick, Jr., Deputy Commissioner (Planning and Resources).
Peter K. Scott, Deputy Chief Counsel.
Teddy R. Kern, Assistant Commissioner (Inspection).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Lawrence B. Gibbs,

Commissioner.

[Fr Doc. 88–20542 Filed 9–8–88; 8:45 am]

BILLING CODE 4830–01–M

Performance Review Board; Membership, Senior Executive Service

AGENCY: Internal Revenue Service.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 1, 1988.

FOR FURTHERN INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 566–4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the office of the Commissioner (Inspection) are as follows:

Michael J. Murphy, Senior Deputy Commissioner, Chairperson.
Michael Hill, Inspector General, Department of the Treasury.
Peter K. Scott, Deputy Chief Counsel.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Lawrence B. Gibbs,

Commissioner.

[Fr Doc. 88–20543 Filed 9–8–88; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Cleopatra's Egypt: Age of the Ptolemies" (see list [1]) imported from abroad for the temporary exhibition without profit with the United States are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of this listed exhibit objects at the Brooklyn Museum in Brooklyn, New York, beginning on or about October 7, 1988, to on or about January 2, 1989, and at the Detroit Institute of Arts in Detroit, Michigan, beginning on or about February 14, 1989, to on or about April 30, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 1, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88–20487 Filed 9–8–88; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Japan: The Shaping of 'Daimyo' Culture 1185–1868 and the Art of the Tea Ceremony" (see list [1]) imported from abroad for the temporary exhibition without profit with the United States are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the

[1] A copy of this list may be obtained by contracting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address in Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address in Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

temporary exhibition or display of this listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about October 30, 1988, to on or about January 25, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 1, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-20488 Filed 9-8-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 175
Friday, September 9, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Tuesday, September 6, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Consider matters relating to the possible closing of certain insured banks; and (2) discuss 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. Robert J. Herrmann, 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 matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(i), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 6, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-20616 Filed 9-7-88; 2:53 pm]

BILLING CODE 6714-01-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 2:30 p.m. on Tuesday, September 13, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporstion's assistance agreement with an insured bank.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Harris County Bank-Houston, National Association, Houston, Texas (5927) (Memo dated August 5, 1988).
Audit Report re:
Port City Bank, Houston, Texas (2779), (Memo dated August 5, 1988).
Audit Report re:
Addison Consolidated Office, Cost Center 404 (Memo dated July 20, 1988).
Audit Report re:
Costa Mesa Condolidated Office, Cost Center 601 (Memo dated August 11, 1988).

Discussion Agenda:

Applications for Federal deposit insurance:

Ventura Thrift and Loan, a proposed new industrial bank to be located at 2601 East Main Street, Ventura, California.

First Gulf Bank of Destin, a proposed new bank to be located at 1000 East Highway 98, Destin, Florida.

Request for an exemption pursuant to section 348.4(b)(1) of the Corporation's rules and regulations:

Lisbon Bank and Trust Company, Lisbon, Iowa.

Discussion regarding the Corporation's assistance agreement with an insured bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 6, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Exective Secretary.

[FR Doc. 88–20584 Filed 9–7–88; 8:56 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the povisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 13, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors

requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,234 (Amendment)
Midland Consolidated Office
Midland, Texas

Reports of actions approved by the standing committee of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Delegations of authority relating to liquidation activities.

Memoradum and resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals. Delegations of Authority, and Notices of Acquisition of Control," which amendments, to implement certain amendments to the Change in Bank Control Act made by section 1360 of the Anti-Drug Abuse Act of 1986, would (1) permit the Corporation to (a) waive the newspaper publication of comment solicitation requirements of 12 CFR 303.4(b)(2)(ii), or to act on a proposed change in control prior to the expiration of the public comment period, only if the Corporation makes a written finding that newspaper publication or comment solicitation would seriously threaten the safety or soundness of the bank to be acquired, and (b) for good cause, shorten the public comment period to a period of not less than ten days; and (2) provide for publication and solicitation of comment in situations in which notice has not been filed pursuant to the Change in Bank Control Act.

Memoradum and resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations,entitled "Applications, Requests, Submittals. Delegations of Authority, and Notices of Acquisition of Control," and Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks" which amendments pertain to exemptions from the deposit insurance requirement, the capital equivalency requirement, the country exposure provision, the pledge of assets requirement and to the delegations of authority concerning it, as well as to miscellaneous provisons throughout the regulation.

Memorandum and resolution re: (1) Notice of Withdrawal of proposed policy statement, entitled "Bank Merger Transactions" which policy statement was published in the **Federal Register** on October 4, 1985, and (2) Solicitation of Comment on a new, substitute proposed policy statment entitled "Bank Merger Transactions," which redefines and clarifies product and geographic markets and the standards to be applied in assessing both the competitive effects and prudential concerns involved in a proposed bank merger transaction.

Review of FDIC's financial performance.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 6, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–20583 Filed 9–7–88; 8:55 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., September 15, 1988.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Docket Nos. 87–26 and 88–1—*Agreement Provisions on Loyalty Contracts*—Discussion of the Record

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88–20630 Filed 9–7–88; 3:43 pm]

BILLING CODE 6730–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, September 15, 1988.

PLACE: Eldorado Hotel, 309 West San Francisco, Santa Fe, New Mexico 87501, (505) 988–4455.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Central Liquidity Facility Reserving Policy for FY 1989.
5. Central Liquidity Facility Agent Commitment Fee.
6. Insurance Fund Report.
7. Request by Lualualei Community FCU, Waianae, Hawaii, to Expand its Community Field of Membership.
8. Proposed Amendment to § 701.20, NCUA Rules and Regulations, Surety Bond.
9. Request by Trenton FCU, Trenton, Michigan, to Expand its Community Field of Membership.
10. Request by Bedford Independent FCU, Bedford, Indiana to Expand its Community Field of Membership.
11. Report on Chartering and Field of Membership Proposal.
12. Legislative Update.

RECESS: 11:30 a.m.

TIME AND DATE: 2:00 p.m., Thursday, September 15, 1988.

PLACE: Eldorado Hotel, 309 West San Francisco, Santa Fe, New Mexico 87501, (505) 988–4455.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Appeal of Denial of Charter Application. Closed pursuant to exemptions (4) and (8).
3. Central Liquidity Facility Lines of Credit for FY 1989. Closed pursuant to exemptions (4), (8), (9)(A)(ii).
4. Request by a FCU to Expand its Field of Membership. Closed pursuant to exemptions (8) and (9)(A)(ii).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88–20614 Filed 9–7–88; 2:53 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 53, No. 175
Friday, September 9, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Correction

In notice document 88-20152 appearing on page 34192 in the issue of Friday, September 2, 1988, make the following correction:

In the second column, under **TIME AND DATE:**, the second line should read, "September 27, 1988.".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards Under the Research in Education of the Handicapped Program for Fiscal Year 1989

Correction

In notice document 88-19113 beginning on page 32095 in the issue of Tuesday, August 23, 1988, make the following correction:

On page 32095, in the table, at the bottom of the page, in the entry for "Student-Initiated Research Projects", in the second column, the deadline for transmittal of applications should read "Mar. 3, 1989".**NOTE:**For a Department of Education correction to this document see the Notices Section of this issue.

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

Eligibility to Use GSA Sources of Supply and Services

Correction

In notice document 88-19242 beginning on page 32453 in the issue of Thursday, August 25, 1988, make the following corrections:

1. On page 32454, in the second column, in the sixth complete paragraph, in the first line, "*Certain*" was misspelled.

2. On the same page, in the third column, in the sixth complete paragraph, in the sixth line, "FPMR Parts 103-43" should read "FPMR Parts 101-43".

3. On the same page, in the same column, in the seventh complete paragraph, in the fourth line, "sources" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0056]

Model Food Protection Unicode; Notice of Availability; Extension of Comment Period

Correction

In notice document 88-17935 appearing on page 29953 in the issue of Tuesday, August 9, 1988, make the following correction:

In the second column, in the third line from the bottom, under the signature, the title line should read "*Associate Commissioner for Regulatory Affairs.*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-07-4212-13; N-44686]

Realty Action; Exchange of Public Lands in Elko County, NV

Correction

In notice document 88-23367 appearing on page 37668 in the issue of Thursday, October 8, 1987, make the following corrections:

1. In the third column, under T. 40 N., R. 62 E., the fourth line should read "Sec. 3, All;".

2. In the same column, under T. 41 N., R. 62 E., Sec. 26 should read "E½, S½NW¼, N½SW¼,".

BILLING CODE 1505-01-D

federal register

Friday
September 9, 1988

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 502

Employment Standards Administration; Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 502

Employment Standards Administration; Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment Standards Administration (ESA) of the U.S. Department of Labor (DOL) is promulgating final regulations regarding reporting and employment requirements applicable to any employer who employs certain resident aliens in seasonal agricultural services. These requirements apply to workers employed from October 1, 1988, through September 30, 1992, and were developed with the Department of Agriculture after consultation with the Department of Justice's Immigration and Naturalization Service (INS) and the Bureau of the Census.

Section 210A of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA), requires any employer to report information about the amount of work performed by a special agricultural worker employed in seasonal agricultural services. This information is submitted in certificate form to the Federal Government and to any individual "replenishment agricultural worker." In part on the basis of this information furnished to the Federal Government, the Secretaries of Labor and Agriculture will determine the number, if any, of additional replenishment agricultural workers to be admitted into the United States. The accuracy, completeness, and timeliness of the employment information reported by employers of special agricultural workers in seasonal agricultural services will directly affect the Secretaries' determination of the number of replenishment agricultural workers admitted into the country during each year from FY 1990 through FY 1993.

These regulations specify employer reporting requirements and provisions concerning the terms of employment of replenishment agricultural workers as prescribed by section 210A of INA.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Telephone (202) 523–8305.

SUPPLEMENTARY INFORMATION: On July 19, 1988, a proposed rule was published in the **Federal Register** regarding the reporting and employment requirements applicable to employers of certain workers employed in seasonal agricultural services.

The comment period expired on August 15, 1988. The Wage and Hour Division received 13 comments from agricultural employers, agricultural associations, advocates for farmworkers, and public interest groups. In response to the comments, several changes have been made to the proposed rule. The majority of these changes were clarifying in nature. Supplementary information, including a summary of the final rule, and a compilation of the issues raised in public comment with accompanying Wage and Hour Division response follow.

Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average 20½ minutes per response for the report to the Federal Government on Form ESA–92, one minute per response for the report to replenishment agricultural workers (optional Form WH–501R), and one hour per year for the underlying recordkeeping. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including comments on the ESA–92 and optional WH–501R and suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management 1215—0168, and Budget, Washington, DC 20503.

The Office of Management and Budget (OMB) has cleared the paperwork requirements of this regulation at §§ 502.11, 502.12, and 502.13 and of Forms ESA–92 and WH501–R (optional), under control numbers 1215–0148, 1215–0168, and 1215–0169.

Comment: There were several comments specifically regarding the paperwork burden.

One commenter suggested that the paperwork requirement is "excessively burdensome and costly." Another commenter suggested that the amount of time spent to complete required paperwork is not justified especially when reporting for workers who sometimes work fewer than 5 days. The third commenter suggested that the recordkeeping requirements are burdensome and have "low time estimates for preparing and submitting the reports" because of the time consuming job of reviewing daily records, having to refer to daily field records to obtain daily hours worked, and lack of crop and task information.

Response: The reporting requirements implemented with these regulations are established by law and apply for all special agricultural workers employed in seasonal agricultural services, even if so employed by any employer for only one work-day in a quarter. The Department does not have discretion in this regard. Further, the Department continues to be of the view that the burden estimate stated above is the best estimate of the *average* burden per response. The estimates for the optional Form WH–501R and the recordkeeping are based on the fact that almost all of the information required to be maintained in the employer's records and reported to the workers, including for example, daily hours worked, is currently required from the vast majority of agricultural employers employing reportable workers pursuant to the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Workers Protection Act (MSPA), and the IRCA requirements for maintaining Forms I–9. The primary additional burden is the preparation of the ESA–92 each quarter to be sent to the Government. Based on studies that agricultural employers in California average the equivalent of ten full time employees per employer, and assuming four of these employees would be reportable workers, we assume an average of five minutes per worker would be spent in preparing each ESA–92. Our view is that this is a reasonable average estimate since the information can be easily compiled from the reports (optional Form WH–501R or other form used by the employer) currently provided to workers under MSPA. Furthermore, a prudent business operator, aware of the reporting requirement, would ensure the information is easily retrievable at the end of the quarter.

Comment: A commenter suggests that instead of instituting reporting requirements, the Department should

institute some type of "statistical sampling to project accurately the changes in labor demand and supply as practiced by the national opinion polls." The commenter suggested that the statistical sampling is less costly and less burdensome than the reporting requirements as drafted.

Response: While it may be, as suggested, that sampling would be less costly and less burdensome, there is a statutory requirement for reporting which cannot be substituted by sampling. Therefore this change is not made.

Comment: Two other commenters made reference to a Department of Labor survey. The survey will use sampling techniques to assist in estimating the supply of farm workers for employment in seasonal agricultural services. The commenters expressed concern about the design of the survey and the value its results may have in determining the number of replenishment agricultural workers to be authorized.

Response: The survey is an additional source of information which will be used by the Secretaries of Labor and Agriculture in determining whether there is a shortage of workers for employment in seasonal agricultural services. While the Department appreciates the commenters' concerns, the survey is not a subject of these regulations.

Comment: A commenter suggests that (1) the reporting system also require reporting of specific losses of alien employees to non-agricultural employers and (2) an additional system be instituted so that agricultural employers could recruit specific alien workers for their agricultural employment needs.

Response: The regulation implements the statutory requirements to have employers report the number of "man-days" ("work-days" herein) worked by reportable workers in seasonal agricultural services, and it may not arbitrarily expand or add further burden by requiring additional reporting for purposes which are not authorized by the Act. Consequently, no related change has been made in the final regulation.

Background to the Regulation

The Immigration and Nationality Act of 1952 (INA) was amended by the Immigration Reform and Control Act of 1986 (IRCA) to: (1) Control illegal immigration into the United States and (2) make limited changes in the system for legal immigration. In this regard, Section 210 of the INA grants resident alien status to special agricultural workers (SAWs) who can demonstrate that they performed seasonal agricultural services for at least 90 "man-days" during the 12-month period ending May 1, 1986.

In part on the basis of information regarding work-days of employment (during each fiscal year (FY) from FY 1989 to FY 1992) in seasonal agricultural services, submitted by employers to the Federal Government pursuant to this regulation, the Secretaries of Labor and Agriculture shall determine the number, if any, of additional special agricultural workers, termed replenishment agricultural workers (RAWs), to be admitted to the United States (during each fiscal year from FY 1990 to FY 1993) with temporary resident alien status to perform seasonal agricultural services. The admittance of replenishment agricultural workers is to meet a shortage of workers employed in seasonal agricultural services.

To make this determination, section 210A(b)(2) of the INA requires an employer of SAWs (including RAWs) employed in seasonal agricultural services to assemble employment information which must be reported to the Federal Government during the period beginning October 1, 1988, through September 30, 1992; essentially the same employment information that must be reported to any individual replenishment agricultural worker during the period beginning October 1, 1989, through September 30, 1992.

Section 210A(f)(4) of the INA provides for assessment of civil money penalties, as provided under Section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), for, among other things, failure to provide, or failure to provide accurately, the information as required by INA section 210A(b)(2).

Summary of Final Rule

This final rule establishes:

(1) Data collection procedures to enable the Federal Government to make determinations about the annual number of replenishment agricultural workers to be admitted to the United States and given temporary residency status, from October 1, 1989, to September 30, 1993, to meet a shortage, or replenish, the number of workers employed in seasonal agricultural services; and

(2) A method whereby a replenishment agricultural worker (at least those admitted before FY 1993) can assemble some of the information necessary to establish the work history needed to retain legal temporary resident status and avoid deportation, apply and qualify for permanent resident status after three years (from being admitted for temporary residency) and, subsequently, to apply for naturalization. The work history needed to retain legal temporary resident status, avoid deportation, and qualify for permanent resident alien status is 90 work-days (any day with at least four (4) hours worked) a year for three consecutive years after admission, employed in seasonal agricultural services. Accordingly, an employer who hires a replenishment agricultural worker shall report the employment information specified by this rule (at section 502.13) to the worker each pay period when seasonal agricultural services are performed, for the period through September 30, 1992.

Although replenishment agricultural workers will need such information for three consecutive years after admission to retain temporary resident alien status, avoid deportation, and apply for permanent resident alien status (and will need such data for a total of at least five years to apply for citizenship), the statute only requires such reporting through September 30, 1992. Consequently, the statute—while establishing requirements for demonstrating continued employment in seasonal agricultural services in order for a replenishment agricultural worker to retain legal temporary status and avoid deportation, and apply and qualify for permanent resident alien status (and, eventually, citizenship)—does *not* authorize requiring agricultural employers to provide replenishment agricultural workers with the required employment documentation, after FY 1992, to support the entire work history needed to qualify for change in immigration status. For example, the Act requires that RAWs admitted in FY 1992 must be provided with employment reports by their employers for their work in seasonal agricultural services during FY 1992 but *not* thereafter—despite the statutory requirement that they must document such employment for at least three consecutive years after admission to retain and eventually change their legal status. There is *no* statutory requirement in *INA* mandating *any* such reporting to RAWs admitted in FY 1993 (although reporting of some employment information is required by employers covered under MSPA).

To carry out the statutory requirements, employers are mandated to: (1) Identify each reportable worker employed in seasonal agricultural services subject to this regulation, (2) report to the Federal Government the number of work-days performed *by* any such reportable worker, and (3) report the number of work-days performed *to*

each reportable worker who is a replenishment agricultural worker.

Under the provisions of section 274A of the INA, an employer may only hire persons who are eligible to work in the United States. With respect to any person hired after November 6, 1986, every employer must verify the employee's identity and employment eligibility and complete the INS Employment Eligibility Verification Form I–9 (see 8 CFR 274a.2).

When completing the Form I–9, the employer is able to recognize reportable workers subject to the provisions of this regulation by the INS Alien Registration Number ("A Number") provided by the newly hired employee on the INS Form I–9. When completing the top portion of the I–9 Form, a prospective employee who is not a United States citizen must provide an INS Alien Registration Number in completing part (Part 1) of the I–9 form.

Any prospective employee must also provide documentation that establishes identity and employment eligibility. As long as the documents furnished by the worker satisfy the requirements of the INS regulations as set forth on the Form I–9, an employer may *not* require any additional or specific documents from the employee (see 8 CFR 274a.2(b)(v)). An employer, therefore, may be unable to determine which employees are special agricultural workers based on the document(s) presented to establish identity and employment eligibility.

INS has, or will, assign INS Alien Registration Numbers in the A90000000 series to all workers whose status has been adjusted under the provisions of the IRCA amendments to the INA, including special agricultural workers (and replenishment agricultural workers). Therefore these regulations define a reportable worker as any worker employed in seasonal agricultural services whose INS Alien Registration Number is within the A90000000 series.

An employer must report to the Federal Government as prescribed herein on the employment of any and all resident aliens identified with an INS Alien Registration Number in the A90000000 series who are employed in seasonal agricultural services for even one work day (any day in which at least four (4) hours of work are performed) in any quarter. Such reports must be submitted for each quarter in which any reportable worker is employed for at least one work-day in seasonal agricultural services for the period from October 1, 1988, through September 30, 1992. Where employment verification has been performed by a State Employment Service, rather than the employer, and results in a referral of a job applicant to an employer, these regulations require the State Employment Service to provide the employee's Alien Registration Number obtained during the verification process on its certification to the employer. Therefore, the employer will be able to identify the reportable worker under this rule. (An employer may not be able to identify a special agricultural worker continuously employed since prior to November 6, 1986, since employers are not required to complete I–9s or have State Employment Service certificates on such "grandfathered" employees. These "grandfathered" employees are not considered as "reportable workers" under this regulation (unless I–9s have been completed for any such employee and the employee otherwise meets the definition of a "reportable worker").)

As set forth above, the INA as amended by IRCA requires that employers verify the identity and employment eligibility of all employees hired after November 6, 1986. However, the Act also provides that no penalties will be assessed prior to December 1, 1988, against employers with respect to employees in seasonal agricultural services. A statement of mutual understanding between representatives of agricultural growers and the INS provides that the INS will not initiate enforcement penalties against agricultural employers for failing to fulfill the I–9 requirements with respect to employees in seasonal agricultural services prior to December 1, 1988, and INS and the representatives of the growers will encourage the growers to complete the I–9 form for all employees hired after November 6, 1986. After December 1, 1988, agricultural employers will be liable for penalties for failing to conduct such verification and to complete I–9s on any workers then in their employment (except "grandfathered" employees) for whom there is no completed I–9.

These regulations require employers to report quarterly to the Federal Government on all workers employed in seasonal agricultural services for even one work-day after October 1, 1988, who are identified as reportable workers through the I–9 or State Employment Service certification process (i.e., who have Alien Registration Numbers in the A90000000 series). For the first quarter for which reports are due, from October 1 through December 31, 1988, an employer must therefore report the number of work-days performed in seasonal agricultural services in the months of October, November, and December with respect to all reportable workers for whom I–9s are completed (or State Employment Service certificates have been received), whether the employment eligibility verification process is completed before or after December 1, 1988, and whether the workers are employed before or after December 1, 1988.

Employers must report each quarter the work-days in seasonal agricultural services of every reportable worker identified. During the first quarter for which reports are due, reportable workers identified during October and November must be reported on (as well as workers reported on for work in December). If some or any reportable workers are not identified until I–9s are completed (before or) on December 1, 1988, their total work-days during the entire quarter (i.e., including any work performed previously in October and November) must be reported. However, during this first quarter and only during this first quarter (October 1–December 31, 1988), employers may not be able to report on that subgroup of seasonal agricultural workers, if any, for whom I–9s were not completed in October/November—in reliance on the statement of mutual understanding. This subgroup of employees would be limited to those workers employed in seasonal agricultural services for whom no I–9 was completed prior to December 1, 1988, *and* who were no longer employed on and after December 1, 1988.

The reports furnished to the Federal Government under these regulations are an essential ingredient of the statutory process for determining the annual numerical limit on the number of replenishment agricultural workers, if any, to be admitted into the United States from FY 1990 through FY 1993. Complete, accurate, and timely reporting of the information required by this regulation is essential to an accurate determination of the number of work-days of employment in seasonal agricultural services by special agricultural workers, and is directly linked to the determination of the number of replenishment agricultural workers to be admitted to the United States.

After the reports are received by the Federal Government, the INS will determine which of the resident alien workers in the A90000000 series on whom reports were submitted were admitted under the special agricultural worker program. The Bureau of the Census will then use this data to determine the number of special agricultural workers employed in seasonal agricultural services (based on work in seasonal agricultural services performed by special agricultural

workers who worked an *aggregate* 15 work-days per year in seasonal agricultural services for any number of employers), and the average number of work-days in seasonal agricultural services performed by such special agricultural workers. In this regard, every employer of a reportable worker or workers is mandated to report as prescribed herein even one work-day (a day with four hours or more of work) in seasonal agricultural services by any reportable workers in any calendar quarter.

The determinations of the Bureau of the Census will then be used, along with other information, by the Secretaries of Labor and Agriculture to determine the annual number, if any, of replenishment agricultural workers to be admitted to the United States with temporary resident status to perform seasonal agricultural services in FY 1990 through FY 1993. Another rule will be promulgated to explain this procedure.

Included within the A90000000 series are all of the replenishment agricultural workers (who will be specifically identified with an INS Alien Registration Number series to be incorporated in these regulations when announced by INS at a later date). As in the case of the other special agricultural workers, an employer must report to the Federal Government on the employment of any replenishment agricultural worker who worked at least one work-day in seasonal agricultural services. However, in addition, an employer must report *to* each such replenishment worker, with each wage payment, information concerning the number of work-days the individual was employed in seasonal agricultural services during the pay period. Since MSPA currently requires the provision of employment information to migrant and seasonal agricultural workers each pay day, optional form WH–501 used for such reports is being modified (WH–501R) to include the work-day information required by these regulations. Employers have the option, however, of providing this same information (see § 502.13) to the workers in any manner, such as on the pay stub furnished workers with their wages.

Because this employment information will be needed by replenishment workers to retain their temporary legal status and apply and qualify for permanent residency and citizenship, these regulations require that underlying payroll data for such replenishment workers be retained for at least five years. This will assist most replenishment agricultural workers in establishing their employment history, at least in part, and will assist INS in verifying work histories provided by such workers. Other records and reports required by these regulations need to be retained for at least three years.

The responsible person to report to the replenishment agricultural worker and to the Federal Government is the employer (or the employer's designated agent). An employer may designate or delegate the tasks of recordkeeping and reporting, but retains ultimate responsibility and liability for failure(s) to comply with the requirements of INA or these regulations. Further, Forms ESA–92 must be certified/signed by the employer. In this regard, the Department has adopted the definitions of "employee," "employer," "employment," and "independent contractor" promulgated by the INS in its regulations at 8 CFR 274a.1. Those regulations define employer to include a contractor as opposed to a person using contract labor. As a general matter, therefore, it is possible that a farm labor contractor is responsible for reporting, rather than the grower who uses the services of a farm labor contractor.

Pursuant to section 210A(f) (1), (2), and (3) of the INA, additional provisions of the regulations require that employers of a replenishment agricultural worker must: (1) Provide the same transportation arrangements to other workers as are provided to any replenishment agricultural worker and (2) not discriminate against any replenishment agricultural worker. The Act at section 210A(f) further requires that employers who would otherwise be exempt from MSPA (29 U.S.C. 1801 *et seq.*) pursuant to section 4(a) (1) or (2) of MSPA, not knowingly provide false or misleading information to a replenishment agricultural worker concerning the terms, conditions, or existence of agricultural employment.

In addition, pursuant to the definition of "seasonal agricultural services" in section 210(h) of the INA, the Department has incorporated the definitions of "field work," "horticultural specialties," "fruits," "vegetables," and "other perishable commodities" promulgated by the Department of Agriculture in regulations, 7 CFR Part 1d. The Department of Agriculture has recently amended those regulations (53 FR 31630, August 19, 1988) and their new definitions are incorporated herein. (Any further amendments to their definitions will be automatically incorporated in these regulations.) In addition, pursuant to the order issued in *National Cotton Council of America v. Lyng*, Civil No. CA–5–87–0200 (N.D. Tex., February 8, 1988) "cotton" has been declared to be a fruit and therefore it is not listed as an example of a commodity excluded from the definition of "other perishable commodities." Because application of the provisions of sections 210 and 210A to hay, sod, and sugarcane is in litigation, these regulations also include field work on those crops for purposes of these regulations only. The requirement of reporting on any work in these crops does not constitute evidence that they are eligible crops for purposes of the special agricultural worker program. Rather, they are included to enable the Federal Government and the individual replenishment workers to obtain data on work in these crops which will be needed if it is ultimately determined that they are eligible crops. Once the issues are finally resolved in the courts, these regulations will be amended accordingly.

Finally, pursuant to INA section 210A(f), the regulations contain enforcement procedures, including procedures for assessing civil money penalties for violations of section 210A, in accordance with MSPA.

Further Comment and Response

Comment: There are several commenters who addressed the subject of educating the public about this regulation. One commenter suggested that there be provided a "well-planned and successfully-conducted" education program directed to agricultural employers about the special agricultural worker/replenishment agricultural worker program through "a publicity campaign emphasizing the importance of the program, direct mailings, and posting notices in the county offices of the Department of Agriculture's Agricultural Stabilization and Conservation Service." Another commenter suggested there be "immediate educational effort by the Department of Labor, Immigration and Naturalization Service (INS), Department of Agriculture and other agencies" to inform agricultural employers about this regulation. The third commenter suggested that DOL emphasize "the need to ensure voluntary and widespread compliance by the employer community with the reporting requirements" thereby "alleviating legitimate concerns over the burdensome nature of the requirements * * *."

Response: An extensive program of public information and education is planned. Copies of the regulation, the Wage Statement (optional Form WH–501R), the Work-Day Report (ESA–92)

and a simplified information pamphlet outlining these requirements are to be:

(1) Available at all:

(a) Department of Labor, Wage and Hour Division Area Offices nationwide;

(b) Offices of Agriculture's county extension service nationwide;

(c) County offices of the Department of Agriculture's Agricultural Stabilization and Conservation Service;

(d) INS (including Border Patrol sector headquarter) offices nationwide.

(2) Mailed to all:

(a) Registered Farm Labor Contractors;

(b) Identified interest groups and representational organizations.

Additionally, press releases will be issued regarding the responsibilities set forth in these regulations. Lastly, the Wage and Hour Division, and especially its Farm Labor Specialists, in the course of contacting employers, conducting investigations and providing technical assistance, will distribute written materials and inform employers about these regulations. The information provided will explain not only the recordkeeping and reporting requirements, but also the purpose they serve for employers who may have shortages of agricultural labor and need replenishment agricultural workers, and for the replenishment agricultural workers seeking to maintain legal status and obtain permanent resident status and citizenship.

Educational efforts and compliance requirements will progressively phase in starting October 1, 1988, when the law requires recordkeeping and reporting only on the employment of special agricultural workers. Further information will be provided in conjunction with the admission of replenishment agricultural workers beginning October 1, 1989. Starting with the second year (FY 1990), recordkeeping and reporting requirements are applicable not only for special agricultural workers but also for replenishment agricultural workers.

Comment: One commenter suggested that the Department of Agriculture be the agency that collects the employment information rather than the Department of Labor as the proposed regulations were read to suggest.

Response: The Committee for Employment Information on Special Agricultural Workers (see § 502.12) is an inter-agency committee. This Committee, as opposed to the Department of Labor, will collect the employment information furnished to the Federal Government and act as a coordinator for all Federal Government agencies connected with this legislation—the Departments of Labor and Agriculture, in consultation with INS and the Bureau of Census. A technical revision to this regulation will be issued in the near future to provide the full mailing address of the Committee; in addition, the ESA–92 form, when printed and distributed, will contain the full mailing address of the Committee.

Comment: One commenter suggested that agricultural employers should be represented on the Commission on Agricultural Workers established under IRCA. Furthermore, it suggested that this Commission should be consulted "as to the need for additional workers."

Response: The establishment and functioning of the Commission on Agricultural Workers is not within the purview of this regulation and is not addressed here.

Comment: Two commenters suggest that the regulation be more precise on the enforcement procedure which will apply to an employer who must report SAW employment data to the Federal Government from October 1, 1988, through December 1, 1988, but does not complete I–9s during October or November because of IRCA's deferment of sanctions. (Note: A statement of mutual understanding between representatives of agricultural growers and the INS provides that the INS will not initiate enforcement penalties against agricultural employers for failing to fulfill the I–9 requirements with respect to employees in seasonal agricultural services prior to December 1, 1988. INS and the grower representatives, however, were to encourage all of the growers to complete the I–9 form for all employees hired after November 6, 1986.)

Response: As explained above, the INA as amended by IRCA requires that employers verify the identify and employment eligibility of all employees hired after November 6, 1986. The Act also provides that no penalties will be assessed prior to December 1, 1988, against employers on the basis of any violation alleged with respect to employees in seasonal agricultural services. However, as required by section 210A of the Act, and as reflected in these regulations, there is no stated exception to an employer's obligation of reporting accurately on the employment of special agricultural workers from October 1, 1988, through December 1, 1988. Our understanding is that many employers in agriculture are currently completing the I–9 forms as they are encouraged to do by INS and the agricultural associations. We strongly encourage employers to continue to complete and retain the I–9s because of their importance to the entire process of determining the number of replenishment agricultural workers who may be admitted to the United States starting in FY 1990.

In any event, by December 1, 1988, an employer must undertake the employment eligibility verification (Form I–9) process for *all* seasonal agricultural workers then employed (if hired after November 6, 1986). As indicated above, to address the apparent conflict between the October 1 effective date for recordkeeping and reporting under these regulations, and the December 1 effective date of sanctions for failure to complete the employment eligibility verification (I–9) process, the following further clarifies the requirements of these regulations: *any* and all employment in seasonal agricultural services performed by a reportable worker identified through the employment eligibility verification process—whether completed on or before December 1, 1988, and whether the work was performed in October, November, or December 1988—*must* be reported. Employers may be unable to report during this first quarter *only* on workers engaged in seasonal agricultural services during October or November who left employment before December 1 and for whom no I–9 was completed.

Comment: One commenter believes there will be employees whose employment will not be verified because they were hired prior to November 6, 1986, being "grandfathered" and potentially reportable workers. They suggest that the regulations should provide an alternative method of identifying these employees other than the I–9 method, which is not applicable.

Response: The Department is aware that the employer is not required to fulfill the I–9 obligation for those employees continuously employed since prior to November 6, 1986. However, it is our view that the number of special agricultural workers employed at the present time by the same employer who employed them prior to November 6, 1986, is very likely to be so insignificant as to not justify initiating an alternative reporting method, especially considering the absence of a viable alternative methodology.

Section 502.2(f)(2) Definition of Employer

Comment: Several commenters favored this section. There were two commenters who made suggestions for change. One commenter suggested that the definition of employer, including joint employment, should derive from FLSA and MSPA, which would greatly

improve compliance by "holding farm employers and labor contractors jointly responsible for reporting." Another commenter suggested that "the employer of the worker" be the responsible party to do the reporting since INS regulations specifically "allows for an agent of the employer to prepare and retain the I–9 document on behalf of the employer."

Response: These regulations are based upon the requirements of the INA as amended by IRCA and are dependent upon completion of the employment eligibility verification (I–9) process. Therefore, it was deemed most appropriate to follow the definition of employer developed by INS for its I–9 enforcement process. No change is made.

There are instances where an agent prepares and retains I–9 documentation. In such circumstances, the regulation holds the employer responsible for the recordkeeping and reporting requirements under this rule. An employer may, as its option, delegate the task of keeping the required records or preparing and submitting the required reports (provided that they are signed by the employer) to the government and to the replenishment workers, and may delegate such tasks whether or not it has also delegated the I–9 responsibility. However, the employer is responsible for the acts of its agent and will be held responsible for compliance with these regulations. Section 502.10(a) has been modified, with the addition of a new paragraph (3), to clarify this issue.

Section 502.2(n) Definition of Reportable Worker

Comment: One commenter suggested that this definition state specifically that a reportable worker is one who works "for four or more hours on one or more days during the reporting period."

Response: Since a reportable worker is identified at the time of completion of the employment eligibility verification process, it is not appropriate to change the regulation. However, the regulation makes clear that reports must only be filed regarding reportable workers who work at least one-day in any quarter in seasonal agricultural services.

Section 502.2(o) Definition of Seasonable Agricultural Services

Comment: One commenter suggested that the definition of "seasonal agricultural services" reflect the inclusion of packinghouse work. The comment indicated that this work "was included as eligible by Immigration and Naturalization Service (INS) wires and memorandums" and is a part of the definition of seasonal agricultural services.

Response: The definition of seasonal agricultural services as defined in Department of Agriculture regulations is incorporated as required by section 210A(h) of the INA. Their regulations are referenced in § 502.2(o) of these regulations. It is our view that these regulations are not the appropriate place to interpret the meaning of the Department of Agriculture's definitions. However, it should be noted that since publication of the proposed regulation, the Department of Agriculture has promulgated a new definition of "vegetable" (53 FR 31630, August 19, 1988). That new language has been incorporated herein.

Section 502.2(s) Definition of Work-day

Comment: One commenter suggested that the statutory term of "man-day" be used instead of "work-day." Another commenter asked that the rule clearly point out that a "work-day" of four (or more) hours is statutory.

Response: As stated in the regulation, in order to avoid confusion with the other programs enforced by the Department of Labor, the term "work-day" was adopted in lieu of the statutory term "man-day." The "man-day" definition in § 502.2(k) is changed to read that "man-day" for purposes of this regulation means "work-day." The standard (of four or more hours) is indentical to that in the statute and only the terminology is different. No further change is made.

Comment: One commenter suggested referencing the applicability of Fair Labor Standards Act (FLSA) hours worked principles in this regulation.

Response: The definition of work-day in § 502.2(s) is changed to reflect the requirement that hours of work for such purpose be determined as established under the Fair Labor Standards Act (29 U.S.C. 201–219) and under the principles found in 29 CFR Part 785.

Section 502.4 Investigation authority of Secretary

Comment: One commenter suggested that the Department's investigation authority should parallel INS's investigation authority by requiring a three day notice prior to inspection. The comment further suggests that interviewing of employees during the enforcement process be eliminated.

Response: All representatives of the Secretary of Labor are trained to coordinate and organize their visits in a manner that takes into consideration the mission of the government in carrying out the public interest, the Congressional mandate, as well as the employer's business activities. Generally these officials will be conducting investigations in agriculture concurrently under the provisions of the FLSA, MSPA and/or the H–2A programs, as well as this regulation. Prior notification is not required under these Acts (the H–2A program is another program established by the 1986 IRCA amendments to the INA). The Department of Labor's inspection of I–9s, which conforms to the INS three day notice provision, is a record inspection program and therefore involves a different technique than can be applied to investigation programs.

The interviewing of employees is an integral part of verifying that an employer has performed the reporting requirements accurately, and ensuring that an employer has complied with the employee protection provisions of section 210A. Asking questions of both the employer and the employee, while reviewing available records, is a fundamental part of the investigation procedure. In addition, interviewing workers cannot be eliminated since their rights, including their right to adjustment of status, are involved. No change is made.

Section 502.5 Prohibition on interference with Department of Labor officials

Comment: There were two comments on this section. One commenter suggested there is no statutory authority in the INA to authorize a prohibition against interference with Department of Labor officials and that the criminal authority of 18 U.S.C. 111 and 18 U.S.C. 1114 did not apply. It was further suggested that this reference is "unconstitutionally vague and/or overboard, and does not follow the standard of the underlying statute." Another commenter suggested that the word "interfere" be defined and that no violation be cited "against an individual who believes he/she is exercising his/her constitutional rights."

Response: In order to effectuate the Act and clarify the application of the Federal criminal statutes, changes are made to the regulation. These changes clarify that potential criminal penalties may be pursued only under the terms of 18 U.S.C. 111 and 18 U.S.C.1114, and that civil penalties may be assessed under this regulation. In addition, language has been added to clarify its scope.

Section 502.10

As indicated above, a change has been made to add paragraph (a)(3) clarifying the responsibilities of employers and their agents.

Section 502.11 Recordkeeping

Comment: One commenter suggested that the regulation be changed so that it is clear that only copies of reporting forms have to be retained as opposed to retaining the "actual forms."

Response: Section 502.11(a)(2) provides that only copies of the ESA–92s and copies of the reports to the replenishment agricultural workers be retained.

Comment: One commenter suggested that recordkeeping requirements are not required by statute and are "redundant and unnecessary to auditing or otherwise verifying the accuracy of information submitted by employers."

Response: The authority of the Department to review payroll records (and to interview employees) is implicit in the statute and is indispensable in verifying compliance with the reporting requirements and the accuracy of the reports submitted. Most of the records are already required to be maintained under MSPA and FLSA, as recognized by the commenter, so there is little additional burden. No change is made in the regulation.

Comment: One commenter suggested that records should be created and maintained for five years following the termination of the program, or through FY 1998. Two commenters suggested that replenishment agricultural worker records should not have to be maintained for five years.

Response: Replenishment agricultural workers have to establish that they worked at least 90 "man-days" (herein termed "work-days) in seasonal agricultural services for three consecutive years to retain legal temporary resident alien status, avoid deportation and qualify for permanent residency, and for five years to apply for naturalization. Although the workers are required to be given this information every pay day, retention of the basic records for five years is an important back-up source to the worker if the documentation is not furnished or if it is stolen or lost. Similarly, the records are an important back-up for INS if the ESA–92s are not received or if there is an error in their tabulation, in order to help establish the legitimacy of the worker's application and detect fraud. For thses reasons, it is our view that retention of the basic records covering replenishment agricultural workers is not an unreasonable burden. On the other hand, because workers can apply for citizenship after five years, and because the statute only requires that the reports be furnished to the government through FY 1992, we do not believe that we can reasonably impose a longer recordkeeping requirement.

As discussed at length above, the statute only requires reporting to individual replenishment agricultural workers and to the Federal Government through FY 1992. There is no statutory basis for requiring creation of records beyond FY 1992. However, replenishment agricultural workers will need evidence of the number of work-days in seasonal agricultural services and other employment information well beyond October 31, 1992, when the reporting requirements end. It is imperative that employment records be accurate and maintained to reflect the information necessary to substantiate, if only in part, any worker's continuing legal status, and subsequent application to change legal residency status and/or to apply for naturalization. It is in the public interest that basic employment records be maintained for at least five years, and no change is made in this section. However, becaue the information contained in the notice to the workers (optional WH–501R) is contained in the basic records, retention of these forms beyond three years was deemed an unnecessary burden. Therefore, § 502.13(e) is changed to read that the employer shall keep a copy of each completed report to a replenishment agricultural worker for no less than *three* years.

Comment: One commenter suggested that the requirement to list the employee's permanent address be dropped. This is suggested because it may not be provided by the worker and some workers don't have permanent addresses "given the transient nature of the farmworker population."

Response: Section 502.11(a)(1)(b) is changed so that the permanent address is recorded *if any is provided.*

Section 502.12 Reporting to the Federal Government

Comment: One commenter suggested that employers report to the government the hours and type of work for all agricultural workers in the A90000000 series rather than just those employed in seasonal agricultural services. This is "to avoid problems inherent in such subtle distinctions."

Response: The Department believes that "seasonal agricultural services" is clearly defined in the regulations and in the ESA–92 instructions, and that it is not appropriate to impose any further burden on employers. Furthermore, sorting the workers employed in seasonal agricultural services from other workers in agricultural employment will pose a considerable burden to the government, which would impede the ability of the Departments of Labor and Agriculture to timely determine the shortage number necessary for admission of replenishment agricultural workers.

Comment: One commenter suggested that the ESA–92 should include the Social Security Account Number in addition to the INS "A number."

Response: The Department does not think it is necessary since only the INS "A number" reveals the worker's immigration status. No change is implemented.

Comment: One commenter suggested that "certified report" and the word "crop" be defined.

Response: A "certified report" is one that is signed and certified by the employer, who certifies to the truth, accuracy and completeness of the information provided on the ESA–92. "Crop" refers to the fruit, vegetable, or other perishable commodity in which field work, as defined by the Department of Agriculture regulation, is performed. We believe that these terms are sufficiently clear and that no change is necessary to the regulation.

Comment: Two commenters suggested that when reporting to the Federal Government, the Department accept certified computer-generated lists submitted by the employer to be acceptable in lieu of form ESA–92.

Response: In order to further facilitate the submission of the reports, the regulations and ESA–92 instructions are changed to accept certified computer generated paper listings of employee information, attached to an otherwise complete ESA–92, in the same form and containing the same information as called for on the ESA–92. The employer reporting to the Federal Government can select one of two reporting means:

(a) Complete the form ESA–92 only; *or*

(b) Complete the form ESA–92 except for item 6, which contains the name(s) of reportable workers, "A number(s)," and work-day information. The employer must attach a computer-generated paper listing with all the information required for item 6 of form ESA–92, furnished in the same format as called for on the form ESA–92.

The instructions for form EAS–92 have been modified to reflect these changes and a requirement for the employer's signature, not only to the truthful attestation on the ESA–92 (which must always be submitted), but also on the attached computer-generated paper listing.

Comment: The commenter further suggested that the ESA–92 be clarified by explaining the calendar period of a fiscal year, specify the quarters in the

instructions and give better instruction for completing the section about crop activity if the "worker did not work in a specific crop activity."

Response: The Department believes that the ESA–92 is fully explanatory in listing the calendar period and quarters, which are also explained in § 502.12 of the regulation. No further instructions are necessary. If the work performed was not in seasonal agricultural services, the employer does not have to report the employment (and no entry is made).

Comment: One commenter suggested that the two week period for filing form ESA–92 does not allow sufficient time to complete the report. They suggest an allowance of 30 days. Another commenter suggested that January 16, 1989, was too early for submission of the initial report.

Response: The information reported to the Government on the ESA–92s must be checked for apparent errors, tabulated, submitted to INS for identification of the special agricultural workers, and forwarded to the Bureau of the Census. The Bureau of the Census uses this information to determine the number of special agricultural workers who performed seasonal agricultural services during the fiscal year, and the average number of work-days of such services performed by such workers. This information in turn must be used, with other data, by the Secretaries of Agriculture and Labor to determine the shortage number (if any)—the number of replenishment agricultural workers who can be admitted in the next fiscal year. In order to timely perform all of these functions, and considering the importance of a timely determination by the Secretaries, we have concluded after consultation with all of the affected agencies that the time period for submission of the ESA–92 reports cannot be lengthened. Furthermore, since a prudent business operator will have maintained the required records in an easily accessible manner, it is our view that the burden of submitting the information within the period designated is not unreasonable. The ESA–92 may be completed and submitted anytime prior to the required submission date (for example, at the end of a season) so long as the report contains *complete* information on the *total* work-days in seasonal agricultural services by special agricultural workers during the quarter being reported by the employer and the employer is *certain* that no additional seasonal agricultural services will be performed. No change is made to the regulation.

No comments were received on the Department's proposal to require reporting of reportable workers' work-days in hay, sod, and sugarcane—crops whose status is contested in litigation. The requirement to furnish the information on the ESA–92 has been included in order to assure proper treatment of work on these crops when the litigation is concluded. After further consideration it has been determined that the information furnished may be ambiguous if a worker employed in a contested crop was employed in more than one crop. Therefore, the regulation and the form ESA–92 have been revised to require that the employer separately list the number of work-days performed in seasonal agricultural services in each of the contested crops, as well as the number of work-days in all other crops. This will permit more accurate compilation of the data.

Section 502.13. Reporting to the Replenishment Agricultural Worker

Comment: One commenter suggested that the regulations be changed to require employers to give the replenishment agricultural worker some notice of the need "to earn and collect 90 days worth of work documentation during each year in order to satisfy Immigration and Naturalization Service (INS) that the worker is legally maintaining the temporary status."

Response: The Department of Labor recognizes the importance of informing and educating replenishment agricultural workers about the employment protections afforded them under the law and about their obligations to obtain and retain evidence of their work history in order to retain legal temporary residency status and establish a claim for change of legal status and, eventually, naturalization. The Department of Labor and INS will undertake efforts to ensure that replenishment agricultural workers are fully informed in these matters, both at the time of their admission and during the course of their employment in the United States. In response to this comment, the (optional) Form WH–501R has been modified to include a notice to the worker-recipients of the information, advising of the vital importance of retaining the documentation relating to their employment history in seasonal agricultural services. Furthermore, these regulations require that employers retain copies of basic employment records relating to replenishment agricultural workers for no less than five years (as discussed above, and set forth in § 502.11) in order to provide some fall-back for replenishment agricultural workers who may not receive or somehow lose such employment documentation. However, we believe that it would be impractical to require employers to explain to their replenishment agricultural workers what their obligations are in maintaining legal status and/or in applying for change in legal status.

Comment: One commenter suggested that the requirement to report "crop worked and the tasks performed" has "no real purpose for the worker * * * and is an unnecessary reporting requirement."

Response: The requirement to list "crop worked and the tasks performed" in reporting to replenishment agricultural workers is essential to their demonstrating that they have met their employment obligations in seasonal agricultural services. No change is made.

Comment: Two commenters suggest that, to avoid additional paperwork and expense, the regulations should allow using the ESA–92 (or a computer-generated report, which contains the same information in the same or similar format in reporting to replenishment agricultural workers, rather than require a separate report (i.e., the optional WH–501R, or equivalent).

Response: Reporting to the replenishment agricultural worker on the ESA–92 would violate the privacy protections of any other workers whose employment information would appear on the same form, and cannot be allowed. Further, due to the transitory nature of the agricultural workforce, the statutory purpose would not be served unless the replenishment agricultural workers receive the information at the time of each wage payment. No change is made to the regulation. (The use of computer-generated reporting in relation to the ESA–92 is discussed above under comments on § 502.12.)

Comment: One commenter suggested that reporting to the replenishment agricultural worker should be only when the replenishment agricultural worker requests it and, if not, on no more than a quarterly basis.

Response: The statute clearly states that the employer report employment information to the replenishment agricultural worker. The Department believes that the law does not permit such reports to be made only when requested. Furthermore, it is our view that furnishing the report to the worker each payday is necessary, considering the high mobility and generally transitory character of the seasonal agricultural workforce, to effectuate the law's purpose that these workers be provided the information necessary to retain their legal temporary residency status and obtain permanent residency

and naturalization, at least for the period that the statutes sets for reporting.

Comment: The commenter further suggested that the reporting to the replenishment agricultural worker, in addition to that required by MSPA, be only that information specifically required by IRCA (number of work-days, crop and task).

Response: We have concluded that several items of information listed in this section of the proposed rule should be dropped from the required report to replenishment agricultural workers. Three of these items (i.e., employer's telephone number, type of agricultural business, and the worker's local address) were not included on the proposed (optional) form WH–501R in any case. Another item (the date the report was furnished to the worker) has also been dropped from § 502.13 and form WH–501R. On the other hand, we continue to believe that the replenishment worker's INS "A number" must be included to allow verification of status as a reportable worker. Further, information on the date the worker is paid is necessary to ascertain compliance with the requirement that the report be furnished each payday. We point out that the WH–501R itself is an optional form. The required information (as specified in § 502.13 of the regulation) may be furnished in any written form.

Comment: One commenter suggested that this section be changed to clarify that the report to the replenishment agricultural worker must be provided in written form. They further suggest that the form should state on its face that the form is an optional one and not required.

Response: Section 502.13(a) is changed to read that each replenishment agricultural worker is to be furnished a "written" report. The (optional) form WH–501R has been modified to show that it is an optional form. (See also the discussion above in relation to § 502.11 regarding the retention period for these reports.)

Section 502.14 Accuracy of information furnished

Comment: Two commenters suggest that the regulation should be clear that small and family businesses are not required to furnish the information required by MSPA section 301.

Response: The comments are correct that the information which MSPA requires to be furnished employees does not need to be provided to employees of those small and family businesses exempt from MSPA. The only requirement imposed by IRCA is that if any such information is provided, an employer not knowingly furnish any false or misleading information. However, employment information is commonly provided to employees, and the Department encourages employers to provide such information. Since the regulation does *not* require employers to furnish employment information (except as specified for replenishment agricultural workers), but only requires that no employer knowingly furnish false or misleading information, no change is needed in the regulation.

Section 502.15 Discrimination prohibited.

Comment: There were two comments regarding this section. One commenter suggested that this language adopt the statutory language which incorporates the provisions of section 505 of MSPA.

Response: Section 502.15 is written to incorporate the language of section 505 of MSPA. Specifically, the incorporation includes the intent that any worker shall be protected from discrimination because the worker exercised the right to file a complaint, to cause to be instituted a proceeding, to testify or be about to testify in a proceeding, or otherwise exercised or asserted a right or protection afforded by section 210A of IRCA or these regulations on behalf of the worker or others.

Comment: Another commenter suggested that the discrimination protections should be "changed to allow an employer to terminate" a replenishment agricultural worker "for cause" with the exception of subsection (a)(1), (2), (3), and (4).

Response: The regulation sets forth what kinds of activities are prohibited. If the prohibited acts are not performed, then no violation has occurred. No change is made.

Section 502.16 Prohibition on providing false information when reporting to a replenishment agricultural worker or to the Federal Government.

Comment: One commenter suggested that the word "material" be added to this section per the statute, to read as follows: "Any person or entity who employs * * * shall not furnish a certificate * * * containing a false statement of material fact * * *."

Response: Section 502.16 (a) and (b) are changed to include the word "material."

Comment: One commenter suggested there is no statutory authority to impose 18 U.S.C. 1001.

Response: The criminal authority of 18 U.S.C. 1001 exists independent of IRCA. There is nothing in IRCA which expands or diminishes the already existing criminal authority. Reference is inserted in these regulations for informational purposes only. However, the reference to the criminal authorities is moved to a new section, 502.26, and has been rewritten for clarification. Section 502.16(c) is deleted. The proposed regulation, in § 502.16(b) erroneously stated that reporting to replenishment agricultural workers is only for the period through September 30, 1989. This has been corrected to reflect the statutory requirement that reporting continue through September 30, 1992.

Section 502.17 Equal transportation provision

Comment: One commenter suggested the regulation "should define in more detail what generally comparable in expense and scope means with respect to transportation arrangements. For example, what types of transportation are covered and should be equal? Another commenter suggested that this section is "broadly subject to interpretation" and suggested a definition of their own. The third commenter suggested that the statutory description, "comparable in expense and scope," be inserted in the regulation. It suggested further that the regulation should be clarified to state that transportation is not required.

Response: The Department's intent is to reflect the statutory prescription that the same transportation offered to a replenishment agricultural worker must be offered to any worker who is not a replenishment agricultural worker. One commenter specifically asked if an employer who offers transportation to a replenishment agricultural worker in another country to the work site must also offer free transportation to any other agricultural worker in the United States. As the Department of Labor construes the statute, the answer is clearly "yes" (provided that the transportation is "comparable in scope and expense"). If any replenishment agricultural worker is provided one-time transportation to a work location, the same transportation (comparable in scope and expense) must be provided to any worker who is not a replenishment agricultural worker who so desires. Moreover, if daily, local home-to-work and return transportation is offered to any replenishment agricultural worker, such transportation also must be offered to each worker who is not a replenishment agricultural worker.

Section 502.23 Civil money penalty assessment

Comment: One commenter suggested that the regulation be changed to reflect

that no civil money penalty (CMP) assessment will be made if an employer fails to report on a worker who fails to voluntarily furnish an INS "A number" in the A90000000 series when completing the Form I–9.

Response: The employer is required to ensure that the I–9 form is properly completed. See *United States* vs. *Mester Manufacturing Company*, Immigration Review Case No. 87100001, Decision of the Administrative Law Judge (June 17, 1988). If a worker identifies himself or herself as an alien on the I–9 form (in Part 1) and fails to provide an "A number", the employer is held responsible for ensuring that the alien provides this number. On the other hand, an employer can *not* require presentation of any *specific* document to ascertain or verify the workers' status and must accept any documentation presented by the worker that establishes identity and employment eligibility as listed in IRCA and the implementing INS regulations, 8 CFR Part 274a, and on the Form I–9 itself. Therefore, the employer cannot look "behind" a worker's statement regarding citizenship status nor require the worker to provide documentation validating an "A number" provided by the worker on the I–9. Of course, if a worker voluntarily provides INS documentation containing their "A number" to establish identity and employment eligibility for I–9 purposes, the employer is expected to ensure that the "A number" provided by the worker in completing Part of the I–9 is correct.

An employer who ensures that its I–9 forms are properly completed as described above will not be found in violation for failing to report on (or to) a worker who does not accurately identify himself or herself as having an "A number" in the A90000000 series. The employer is, however, responsible to have workers who identify themselves as aliens provide their "A number."

Comment: One commenter stated that violations for failing to keep records § 502.23(b)(6)), failing to provide records to Department of Labor officials § 502.23(b)(7)), and interfering with a Department of Labor investigation § 502.23(b)(8)) are not subject to any penalty by statute.

Response: The Department believes these penalties are necessary to effectuate the Act and its provisions and are implicit in the Department's enforcement authority under the Act. No change is made.

Effective Date—Good Cause

The Secretary has determined that good cause exists for making the effective date of this rule October 1, 1988, within the meaning of the Administrative Procedures Act, 5 U.S.C. 553(d).

Since the statue requires that reports be furnished to the government for all reportable special agricultural workers employed during the period October 1, 1988, through September 30, 1992, it is determined that it is necessary to make the rule effective on October 1, 1988, in order that employers be informed of and comply with the recordkeeping necessary to furnish the report required for the first quarter of FY 1989. The burden imposed by this recordkeeping is minor since employers currently subject to the FLSA, MSPA, and IRCA employee verification requirements (section 274A) of INA are already required to maintain most of the information required by these regulations. The necessity for extensive interagency consultation and coordination prevented issuance of a final rule at an earlier date. However, interested employer and worker groups were consulted prior to issuance of the proposed rule and efforts are being made by the Departments of Labor and Agriculture to publicize the regulations prior to their effective date. It is in the public interest to have this regulation become effective on October 1, 1988, to effectuate the statutory reporting requirement, and to enable the Secretaries of Labor and Agriculture to start collecting the data needed to determine the shortage number, if any, to permit the entry of replenishment agricultural workers in FY 1990.

Executive Order 12291; Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities. These conclusions are reached because most of the entities affected are already providing agricultural workers with itemized pay stubs in compliance with the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The amount of time spent preparing reports to the Federal Government will not be substantial. Consequently, the Department certifies under the Regulatory Flexibility Act that the rule will not have a significant economic impact on a substantial number of small entities.

Note: The Department presents forms in the Appendix which satisfy certain disclosure and recordkeeping aspects of the Act and the regulations. These forms, however, will not appear in the Code of Federal Regulations.

Appendix

Appendix A—Work-Day Report, ESA–92.
Appendix B—Wage Statement, WH–501R (optional).

List of Subjects in 29 CFR Part 502

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Farmers, Farm labor contractor, Immigration, Investigation, Labor, Penalties, Replenishment Agricultural Workers, Reporting requirements, and Special Agricultural Workers.

For the reasons set out in the preamble, Title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC this 2nd day of September 1988.

Ann McLaughlin,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

A new Part 502 is added to read as follows:

PART 502—REPORTING AND EMPLOYMENT REQUIREMENTS FOR EMPLOYERS OF CERTAIN WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES

Subpart A—General Provisions

Sec.

Subpart B—Employment and Reporting Requirements

Authority: 8 U.S.C. 1160, 1161; 29 U.S.C. 1801 et seq. section 502.6 also issued under 29 U.S.C. 49k.

Subpart A—General Provisions

§ 502.0 Introduction.

(a) Pursuant to the requirements of section 210A of the Immigration and Nationality Act (INA), the regulations in this part are promulgated and apply to employers with obligations, among other things, to provide reports applicable to the employment of any reportable worker (as defined in this part) employed for at least one work-day in any quarter in seasonal agricultural services. Reporting shall be to the Federal Government and to any individual replenishment agricultural worker.

(b) The statute requires the Director of the Bureau of Census, on the basis of information which is reported to the Federal Government, to estimate

(1) The number of special agricultural workers employed in seasonal agricultural services in the United States at any time during the fiscal year and

(2) The average number of "man-days" of labor performed by these workers during the fiscal year.

(For purposes of this part, an alternative term "work-day" is adopted and incorporated into the text in lieu of "man-day" and means any day when at least four (4) hours are worked.)

(c) The regulations contained in this part are issued in accordance with section 210A of INA in order to establish the rules necessary to carry out the provisions of INA.

(d) The Office of Management and Budget (OMB) has cleared the paperwork requirements of this regulation at §§ 502.11, 502.12, and 502.13, and of Forms ESA–92 and WH–501R (optional), under control numbers 1215–0148, 1215–0168, and 1215–0169.

§ 502.1 Purpose and scope.

(a) The INA was amended by the Immigration Reform and Control Act (IRCA) in 1986, in order to more effectively control illegal immigration to the United States and to make certain changes in the system for legal immigration.

(b)(1) Section 210 of the INA provides that the Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien resided in the United States and performed work in seasonal agricultural services in the United States for at least 90 "man-days" during the 12-month period ending on May 1, 1986. An individual so legalized is called a special agricultural worker (SAW). A special agricultural worker is given an Immigration and Naturalization Service (INS) Alien Registration Number in the A90000000 series.

(2) Section 210A of the INA provides that before the beginning of each fiscal year (beginning 1990 and ending 1993), the Secretaries of Labor and Agriculture shall jointly determine the number (if any) of replenishment agricultural workers (RAWs) to be admitted to the United States, or otherwise acquire the status of aliens lawfully admitted for temporary residence, to meet a shortage of agricultural workers. A replenishment agricultural worker will be identified by an INS Alien Registration Number in a series (within the A90000000 series) that INS will announce at a later date. (A technical amendment to this regulation will be issued to specify the "A number" series for replenishment agricultural workers when announced by INS.)

(c) This regulation establishes a method whereby an employer must assemble employment information on certain resident alien workers employed in seasonal agricultural services to be reported to the Federal Government and to any replenishment agricultural worker. This will assist the Secretaries of Labor and Agriculture in determining the number of replenishment agricultural workers, if any, to be admitted, and will assist the replenishment agricultural worker in establishing a work history to retain legal status and avoid deportation, and so that after three (3) consecutive years after admission the worker can apply for and be granted permanent residency in the United States. After five (5) years with such work history the worker can apply for naturalization. The work history needed is 90 work-days a year employed in seasonal agricultural services for three consecutive years after admission to retain legal status and qualify for permanent residency, and for five years to apply for citizenship. The Act and these regulations require reporting by the employer to the Federal Government and to the replenishment agricultural worker on employment in seasonal agricultural services from October 1, 1988, until September 30, 1992.

(d) Any person who hires any worker must complete the Employment Eligibility Verification Form (INS Form I–9). Any resident alien who is identified with an INS Alien Registration Number ("A number") in the A90000000 series on the I–9 Form (including any replenishment agricultural worker, who will be identified with an INS Alien Registration Number in a series, within the A90000000 series, that INS will announce at a later date) and who is employed in seasonal agricultural services, is an employee subject of this part (termed " reportable worker"). Employers cannot reliably determine whether such an employee is a special agricultural worker since employees cannot be required to document such status to anyone other than INS (see 8 CFR 274a.2(b)(v)).

(e) The provisions of section 210A(b)(2) of INA establish reporting

requirements applicable to the employment of certain workers in seasonal agricultural services. These regulations require that for the period beginning October 1, 1988, and ending September 30, 1992—

(1) Any person or entity employing any reportable worker in seasonal agricultural services for at least one work-day shall report employment information to the Federal Government each quarter;

(2) Any person or entity employing any replenishment agricultural worker in seasonal agricultural services for at least one work-day shall report employment information directly to the replenishment agricultural worker individually on a pay period basis at the time of each wage payment and no less frequently than twice per month (as well as to the Federal Government each quarter).

(f) Any employment of a reportable worker for at least one work-day in seasonal agricultural services is subject to the reporting requirements to the Federal Government. Additionally, any employment of a replenishment agricultural worker (who will be identified with an INS Alien Registration Number in a series within the A90000000 series that INS will announce at a later date) in seasonal agricultural services is subject to both the reporting requirements to the Federal Government and to the individual worker.

(g) The certified report submitted by an employer to the Federal Government shall contain the number of work-days of employment in seasonal agricultural services performed by each reportable worker employed for at least one workday during the preceding fiscal quarter. This information will be provided to the Commissioner of the INS who will determine which reportable workers are special agricultural workers. Information concerning them will be provided to the Director of the Bureau of Census for use in—

(1) Estimating the number of special agricultural workers employed in seasonal agricultural services;

(2) Determining the average number of work-days performed by special agricultural workers; and

(3) Reporting to the Congress.

(h) Any person or entity who employs a reportable worker in seasonal agricultural services will meet the requirements of this regulation when—

(1) Accurate records are kept and reports are made as required under this part to the Federal Government (see §§ 502.10, 502.11, and 502.12);

(2) Accurate records are kept and reports are made as required under this part to each replenishment agricultural worker (see §§ 502.10, 502.11, and 502.13);

(3) The same transportation provided to any replenishment agricultural worker is provided to any other worker (see § 502.17);

(4) There is no prohibited discrimination against any replenishment agricultural worker (see § 502.15); and,

(5) A replenishment agricultural worker is not knowingly furnished false or misleading information concerning the terms, conditions, or existence of agricultural employment with respect to the disclosure, posting, and recordkeeping requirements found in section 301(a), (b), and (c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.* (see §§ 502.13, 502.14, and 502.16).

(i) An employer of a reportable worker who is subject to the requirements of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 *et seq.*) and/or MSPA is required to comply with both the requirements of this part and the statutory labor standards protections provided by FLSA and/or MSPA.

(j) The Secretary of Labor may impose sanctions pursuant to section 210A(f)(4)(C) of the INA, which incorporate the penalty provisions of MSPA. Accordingly, these regulations provide that the Secretary of Labor is empowered to impose an assessment and to collect a civil money penalty of not more than $1,000 for each violation. In addition, the Secretary may seek a temporary or permanent restraining order in a United States District Court. Criminal penalties under 18 U.S.C. 1001 may also be applicable for submission of false information (see §§ 502.26).

(k) Subparts A and B set forth the substantive regulations relating to any employer of a reportable worker. These subparts cover the applicability of the Act, the recordkeeping and reporting requirements, antidiscrimination protections, the prohibition against furnishing false statements, and the equal transportation requirements.

(l) Subpart C sets forth enforcement responsibility and procedure.

(m) Subpart D sets forth the rules of practice for administrative hearings on the assessment of civil money penalties.

(n) The Department of Labor has developed two (2) forms for carrying out the purposes of the Act:

(1) The optional form WH–501R is offered to assist in carrying out the requirement that each replenishment agricultural worker receive a report each pay period in the form of a certificate from each employer indicating the number of work-days (any day with at least four (4) hours worked) employed in seasonal agricultural services; and

(2) The Work-Day Report (Form ESA–92) required to be submitted to the Federal Government, to certify the number of work-days performed in seasonal agricultural services by each reportable worker each quarter in which any reportable worker was employed in seasonal agricultural services for at least one work-day.

§ 502.2 Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.

For purposes of this part:

(a) "Act" and "INA" mean the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA 8 U.S.C. 1101 *et seq.*), with references particularly to §§ 210 and 210A.

(b) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and such authorized representatives as may be designated by the Administrator to perform any of the functions of the Administrator under this part.

(c) "Administrative Law Judge" means a person appointed as provided in Title 5 U.S.C and qualified to preside at hearings under 5 U.S.C. 3105. "Chief Administrative Law Judge" means the Chief Administrative Law Judge, United States Department of Labor, Washington, DC 20036.

(d) "Alien 'A' Number" or "A number" refers to an INS Alien Registration Number assigned to each alien.

(e) "DOL" means the United States Department of Labor.

(f) "Employee," "employer," "employment" and "independent contractor" are defined for purposes of the INA in regulations issued by INS at 8 CFR 274a.1, which definitions are adopted herein in pertinent part. They are as follows:

(1) The term 'Employee' means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors.

(2) The term "Employer" means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term "employer" shall mean the independent contractor

and not the person or entity using the contract labor.

(3) The term "Employment" means any service or labor performed by an employee for an employer within the United States.

(4) The term "Independent contractor" includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: Supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; directs the order or sequence in which the work is to be done; and determines the hours during which the work is to be done. The use of labor or services of an independent contractor is subject to the restrictions in section 274A(a)(4) of the Act, and any person or entity who knowingly uses a contract, subcontract, or exchange entered into, renegotiated, or extended after the date of enactment, to obtain labor or services of an unauthorized alien shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

(g) "Employment Standards Administration" means the agency within the Department of Labor (DOL), which includes the Wage and Hour Division, and which is charged with carrying out certain functions of the Secretary under section 210A of the INA.

(h) "Exempt person" means a person or entity who would be subject to the provisions of MSPA but for paragraph (1) or (2), or both, of section 4(a) of MSPA.

(i) "Form I–9" is an INS Form, "Employment Eligibility Verification" (EEV), which reflects the requirements established under section 274A(9)(b) of INA requiring employers to examine documents which establish the identity and employment eligibility of individuals hired since November 6, 1986. The EEV information must be recorded on an INS Form I–9 and be made available for inspection by INS and/or DOL representatives.

(j) "Immigration and Naturalization Service" (INS) is the component of the U.S. Department of Justice which is responsible for administering the INA.

(k) "Man-day," for purposes of section 210A of the INA and this regulation, is replaced by and has the same meaning as the term "Work-day."

(l) "MSPA" refers to the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 *et seq.*), and is referred to in section 210A of INA. MSPA provides for the protection of migrant and seasonal agricultural workers and for the registration of contractors of migrant and seasonal agricultural labor.

(m) "Replenishment Agricultural Worker" (RAW) is an individual (to be identified with an INS Alien Registration Number in a series within the A90000000 series, to be incorporated in these regulations when announced by INS at a later date) who is admitted to the United States during FY 1990 through FY 1993 for lawful temporary resident status or for the adjustment of status to lawful temporary residency to meet a shortage of workers employed in seasonal agricultural services.

(n) "Reportable Worker" is an alien employed in seasonal agricultural services who was admitted with lawful temporary resident status or whose status was adjusted to lawful temporary residency, and who is identified by an INS Alien Registration Number in the A90000000 series. This series includes:

(1) Resident aliens admitted under section 245A of the INA,

(2) Resident alien-special agricultural workers admitted under section 210 of the INA, and

(3) Resident alien-replenishment agricultural workers admitted between FY 1990 and FY 1993 under section 210A of the INA.

(o)(1) "Seasonal agricultural services" as provided by section 210(h) of the Act means "the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture."

(2) The Department of Agriculture regulations, 7 CFR Part 1d, definitions of "field work," "horticultural specialties," "fruits," "vegetables" and "other perishable commodities" are incorporated in this part, as required by sections 210A(g) and 210(h) of the INA, 8 U.S.C. 1161(g) and 1160(h). They are set forth below for information purposes only as they existed as of September 9, 1988. Users of these definitions are cautioned to research in the **Federal Register** and the Code of Federal Regulations whether amendments to 7 CFR Part 1d have been promulgated by the Department of Agriculture.

(i) " 'Field work' means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the 'on the field' loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural land are included. Supervising any of these activities shall be considered performing the activities."

(ii) " 'Horticultural specialties' means field grown, containerized, and greenhouse produced nursery crops which include juvenile trees, shrubs, seedlings, budding, grafting and understock, fruit and nut trees, fruit plants, vines, ground covers, foliage and potted plants, cut flowers, herbaceous annuals, biennials and perennials, bulbs, corms, and tubers."

(iii) " 'Fruits' means the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence."

(iv) " 'Vegetables' means the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of the meal, rather than as a dessert."

(v) " 'Other perishable commodities' means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties, spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal, aquacultural commodities, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, sod, sugar cane, wildlife, and wool."

(3) For purposes of these regulations, "seasonal agricultural services" include field work related to hay, sod, and sugar

cane. The requirement of reporting on these commodities does not constitute evidence that they are eligible commodities for purposes of the special agricultural worker program. They are included to enable the Federal Government and the individual replenishment agricultural worker to obtain data on work on these commodities which will be needed if it is ultimately determined that they are eligible commodities. This regulation will be amended in accordance with the final disposition of the litigation concerning the application of sections 210 and 210A to these commodities.

(p) "Secretary" means the Secretary of Labor or the Secretary's designee.

(q)(1) "Solicitor of Labor" means the Solicitor, United States Department of Labor, and includes employees of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this part.

(2) "Associate Solicitor for Fair Labor Standards" means the Associate Solicitor, who, among other duties, is in charge of litigation for MSPA, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, or the Associate Solicitor's designee.

(3) "Regional Solicitors" means the attorneys in charge of the various regional offices of the Office of the Solicitor, or their designees.

(r) "Special Agricultural Worker" (SAW) is: (1) Any individual granted temporary resident status in the Group 1 or Group 2 classification or permanent resident status under section 210 of the INA (i.e., an alien granted resident alien status as a result of an application, filed pursuant to section 210 of the INA, establishing residence in the United States and employment in seasonal agricultural services for at least 90 "man-days" during the 12-month period ending May 1, 1986); and (2) a replenishment agricultural worker (RAW) granted temporary residency pursuant to section 210A of the INA.

(s) "Work-day" means a calendar day during which at least four (4) hours of work in seasonal agricultural services is performed, as specified in INA. Hours of work principles are adopted as established from the FLSA and under 29 CFR Part 785.

Note: The alternative and gender-neutral terms "work-day" and "work-days" are adopted and incorporated into the text of this part, in lieu of the statutory term "man-days," to distinguish from the term "man-day" as used in both the Fair Labor Standards Act (FLSA) and MSPA, which in those Acts means any calendar day when at least one hour of work is performed.

§ 502.3 Waiver of rights prohibited.

No person shall seek to have any worker waive rights conferred under section 210A of the INA or under these regulations. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

§ 502.4 Investigation authority of Secretary.

The Secretary, either pursuant to a complaint or otherwise, may investigate and, in connection therewith, inspect such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance under section 210A of the INA or these regulations.

§ 502.5 Prohibition on interference with Department of Labor officials.

(a) It is a violation of these regulations, subject to civil money penalties or other appropriate relief (see § 502.24) for any person to resist, oppose, impede, intimidate, or otherwise interfere with any official of the Department of Labor assigned to perform an investigation, inspection, or law enforcement function during the performance of such duties.

(b) Criminal penalties may be applicable to persons who interfere with a Federal officer in the course of official duties as set forth in 18 U.S.C. 111 and 18 U.S.C. 1114.

§ 502.6 State Employment Service certificate form.

Pursuant to section 274A of the INA, any State Employment Service may voluntarily establish a system to perform employment eligibility verification for employers when referring job applicants for employment vacancies listed through the local State Employment Service offices (see 8 CFR 274a.6). In order that each employer can identify the reportable workers subject of this part, the State Employment Service certificate furnished to the employer must include the INS Alien Registration Number, if applicable, for each applicant referred for agricultural employment.

Subpart B—Employment and Reporting Requirements

§ 502.10 Requirements for reporting and employing a reportable worker in seasonal agricultural services.

Effective beginning October 1, 1988, any person employing a reportable worker in seasonal agricultural services shall do the following:

(a) *Identify reportable worker(s).* (1) When completing the I–9 at the time of hiring (or reviewing a State Employment Service certificate), identify any reportable worker subject to these regulations. A reportable worker is identified as a worker with an INS Alien Registration Number in the A90000000 series employed in seasonal agricultural services;

(2) When employment eligibility has been verified by the State Employment Service, the Alien Registration Number, if any, shall be set forth on the certification furnished to the agricultural employer by the State Employment Service.

(3) When employment eligibility has been verified by an agent of the agricultural employer, the INS Alien Registration Number ("A number") shall be reported by such agent to the employer to enable the employer to fully comply with the recordkeeping and reporting requirements of this part.

(b) *Report to the Federal Government.* (1) For the period October 1, 1988, through September 30, 1992, furnish to the Federal Government each quarter a signed, certified report (Form ESA–92) containing the information as specified in this part (see § 502.12), formulated from information derived from employment records maintained (see § 502.11), on any reportable worker employed in seasonal agricultural services for at least one workday during the quarter; and

(2) Furnish accurate, complete, and legible information in the certified report (Form ESA–92) to the Federal Government within the time frames established.

(c) *Report to the worker.* (1) For the period October 1, 1989, through September 30, 1992, furnish to any reportable worker who is a replenishment agricultural worker (identified by an INS Alien Registration Number in a series that INS will announce at a later date) employed for at least one work-day in seasonal agricultural services during the pay period, a report on each pay day containing the information specified in this part (see § 502.13), formulated from employment records maintained (see § 502.11); and

(2) Furnish accurate, complete, and legible information in the report to the replenishment agricultural worker.

(d) *Worker's rights.* (1) Not perform any prohibited act of discrimination against a replenishment agricultural worker (see § 502.15);

(2) Provide the same transportation arrangements or assistance (comparable in expense and scope) provided to any replenishment agricultural worker to all other workers (see §502.17); and

(3) Not provide false or misleading information concerning the terms, conditions, or existence of agricultural employment to a replenishment agricultural worker (see §§ 502.13, 502.14, and 502.16).

§ 502.11 Recordkeeping.

(a) Any person employing a reportable worker in seasonal agricultural services during the period October 1, 1988, through September 30, 1992, shall create and maintain for each such worker the records listed below. Records may be maintained and preserved in any recordkeeping format, provided they contain all of the required information, are accessible and legible, and are provided to a Department of Labor representative upon request. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be provided to Department of Labor representative within 72 hours of a request from such representative. The records required to be created and maintained are as follows:

(1) For *each* reportable worker employed in seasonal agricultural services—

(i) Name in full, INS Alien Registration Number, and Social Security Account Number;

(ii) Local address including zip code, and permanent address (if any);

(iii) Crop(s) worked and task(s) performed;

(iv) Hours worked each day.

(2) A complete copy of each—

(i) Dated and signed Work-Day Report (Form ESA–92) submitted to the Federal Government; and

(ii) Report provided to any replenishment agricultural worker of the number of work-days employed in seasonal agricultural services, including the period covered by the report. The optional form WH–501R may be used for this purpose.

(b)(1) Records required by paragraph (a) of this section shall be maintained for no less than three years, except with regard to such records as specified in paragraph (a)(1) of this section, on employment of replenishment agricultural workers.

(2) Records on employment of replenishment agricultural workers required by paragraph (a)(1) of this section, shall be maintained for no less than five years.

(c) If subject to the requirements of MSPA, refer to 29 CFR 500.80 for additional recordkeeping requirements.

(d) If subject to the requirements of FLSA, refer to 29 CFR Part 516 for additional recordkeeping requirements.

(Approved by the Office of Management and Budget under OMB control number 1215–0169)

§ 502.12 Reporting to the Federal Government.

(a) For the period beginning October 1, 1988, through September 30, 1992, any person employing a reportable worker in seasonal agricultural services for one or more work-day(s) during any quarter shall provide a certified report to the Federal Government for that quarter regarding each reportable worker's work-day(s) of employment.

(b) A report must be filed with respect to any reportable worker (worker having an INS Alien Registration Number ("A Number") in the A90000000 series) who has employed in seasonal agricultural services for one or more work-days at any time during the quarter reported. The Alien Registration Number is furnished by the resident alien when the Form I–9 is completed at the time of hiring (or by a State Employment Service Agency on the certification of employment eligibility verification furnished the employer when referring an employee for agricultural employment).

(c) Required employment data for each reportable worker shall be reported to the Federal Government and certified (signed by the employer) using the Work-Day Report, Form ESA–92. The information to be submitted for item 6 of the ESA–92 can be submitted on a separately signed certified computer-generated paper report, provided it is in the same format as called for on the ESA–92, attached to the otherwise completed (items 1 through 5, and 7) ESA–92. Copies of Form ESA–92 can be obtained from the U.S. Department of Labor or Agriculture or the Immigration and Naturalization Service and can be copied or reproduced.

(d) The ESA–92 shall be signed (by the employer) and dated and shall include the fiscal year and quarter for which the report is being provided, the employer name, address (including zip code), telephone number (including area code), employer identification number, type of agricultural business, and crop(s) on which reportable workers were employed. Any computer-generated paper report attached to the ESA–92 with information required for item 6 must be signed/certified by the employer. Other information furnished in the ESA–92 is derived from records required to be kept in § 502.11. This information for *each* reportable worker employed in seasonal agricultural services for one or more work-days during a calendar quarter is the following:

(1) Reportable worker's name and INS Alien Registration Number; and

(2) The number of work-days (any day with at least four (4) hours of work) of employment performed by the reportable worker during the fiscal quarter, separately stated for hay, sod, sugar cane, and/or all other crops. (See the instructions for Form ESA–92.)

(e) The information provided via this certified report must be tabulated and reported to the Federal Government each calendar quarter. The first period to be reported will be October 1 through December 31, 1988. The last period to be reported will be July 1 through September 30, 1992. The reporting shall follow a regular sequence each year as follows:

(1) For the period October 1 through December 31, certified report must be submitted by the following January 16;

(2) For the period January 1 through March 31, certified report must be submitted by the following April 17;

(3) For the period April 1 through June 30, certified report must be submitted by the following July 17; and

(4) For the period July 1 through September 30, certified report must be submitted by the following October 16.

(f) The employer will keep a copy of the completed EAS–92s furnished to the Federal Government for no less than three years.

(g) The Form ESA–92 shall be submitted to "Committee for Employment Information on Special Agricultural Workers" and mailed to P.O. Box ——, Washington, DC ——. (The complete mailing address of the Committee will be provided in a technical amendment to this regulation and included on the EAS–92 forms when printed and distributed.)

(Approved by the Office of Management and Budget under OMB control number 1215–0168)

§ 502.13 Reporting to the replenishment agricultural worker.

(a) For the period beginning October 1, 1989, through September 30, 1992, any person employing any reportable worker who is a replenishment agricultural worker (identified by an INS Alien Registration Number in a series within

the A90000000 series that INS will announce at a later date) in seasonal agricultural services for one or more work-days during any pay period shall provide such worker, with each wage payment, but no less often than twice per month, a complete, accurate, and legible written report certifying such reportable worker's employment.

(b) The report shall include the employer's name, complete address, and employer identification number. Other information that must be furnished by the employer is derived from permanent records required to be kept by § 502.11, as follows:

(1) Replenishment agricultural worker's full name, permanent address (if any), INS Alien Registration Number, and Social Security Account Number;

(2) The date paid, the pay period covered by the report, and the number of work-days (any day with at least four (4) hours of work) of employment performed by trhe replenishment agricultural worker in seasonal agricultural services during the pay period; and

(3) The crop(s) worked and the task(s) performed.

(c) Any such replenishment agricultural worker's employment may be reported using the WH–501R, a pay stub reprinted for this use which also meets the requirements of MSPA. Copies of the Form WH–501R can be obtained from the Departments of Labor and Agriculture or from the INS and can be copied or reproduced. Completion of *all* the items on the form will meet the requirements of these regulations and MSPA.

(d) Use of the WH–501R is optional, and the requirements of this part will be met as long as all of the information specified in § 502.13(b) is provided to the worker at the time of each wage payment, and no less than twice per month.

(e) The employer shall keep a copy of each completed WH–501R (or whatever form is used to report) furnished to any replenishment agricultural worker for no less than three years.

(Approved by the Office of Management and Budget under OMB control number 1215–0148)

§ 502.14 Accuracy of information furnished.

(a) If subject to MSPA, no employer shall knowingly provide false or misleading information on the terms, conditions or existence of agricultural employment required to be disclosed by MSPA (and 29 CFR Part 500) to any worker subject to MSPA.

(b) Any employer who is exempt from MSPA under either section 4(a)(1) or 4(a)(2) of MSPA shall not knowingly provide false or misleading information to a replenishment agricultural worker concerning the following terms, conditions, or existence of agricultural employment which are described in subsections (a), (b), or (c) of section 301 of MSPA:

(1) With respect to disclosures to workers when an offer of employment is made, at the place of recruitment, or any other time—

(i) The place of employment;

(ii) The wage rates to be paid;

(iii) The crops and kinds of activities on which the worker may be employed;

(iv) The period of employment;

(v) The transportation and any other employee benefits to be provided, if any, and any costs to be charged for each of them;

(vi) The existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; and

(vii) The existence of any arrangements with any owner or agent of any establishment in the area of employment under which a farm labor contractor or an employer is to receive a commission or any other benefit resulting from any sales by such establishment to the workers;

(2) With respect to any poster at the place of employment, information regarding the rights and protections afforded such workers; and

(3) With respect to records preserved by the employer and provided to the employee at time of wage payment—

(i) The basis on which wages are paid;

(ii) The number of piecework units earned, if paid on a piecework basis;

(iii) The number of hours worked per day;

(iv) The total pay period earnings;

(v) The specific sums withheld and the purpose of each sum withheld; and

(vi) The net pay.

§ 502.15 Discrimination prohibited.

(a) It is a violation of the Act and these regulations for any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any replenishment agricultural worker who has with just cause:

(1) Filed a complaint under or related to section 210A of the INA or this part;

(2) Instituted or caused to be instituted any proceedings related to section 210A of the INA or this part;

(3) Testified or is about to testify in any proceeding under or related to section 210A of the INA or this part; or

(4) Exercised or asserted on behalf of themselves or others any right or protection afforded by section 210A of the INA or this part;

(b) Any worker who believes, with just cause, that the worker has been discriminated against by any person in violation of this section may, no later than 180 days after such violation occurs, file a complaint with the Secretary alleging such discrimination.

§ 502.16 Prohibition on providing false information when reporting to a replenishment agricultural worker or to the Federal Government.

(a) Any person or entity who employs a reportable worker in seasonal agricultural services during the period beginning October 1, 1988, and ending September 30, 1992, shall not furnish a certified report as required under these regulations containing false information of material fact to the Federal Government, or falsely omitting required information of material fact.

(b) Any person or entity who employs a replenishment agricultural worker during the period beginning October 1, 1989, and ending September 30, 1992, shall not furnish a certificate as required under these regulations to the individual replenishment agricultural worker containing any false information of material fact, or falsely omitting required information of material fact.

§ 502.17 Equal transportation provision.

No person shall discriminate against any worker by failing to provide the same transportation arrangements or assistance (generally comparable in expense and scope) as provided to any replenishment agricultural worker. This regulation does not require provision of transportation to any replenishment agricultural worker. If transportation (whether local or long-distance) is provided to a replenishment agricultural worker, the same must be provided to all other workers.

Subpart C—Enforcement

§ 502.20 Enforcement.

The investigations, inspections and law enforcement functions to carry out the provisions of section 210A of the INA, as provided in these regulations for enforcement by the Wage and Hour Division, pertain to:

(a) The maintenance of records and the reporting to the Federal Government of those items required under §§ 502.11 and 502.12 of this part;

(b) The maintenance of records and the reporting to an individual replenishment agricultural worker of those items required under §§ 502.11 and 502.13 of this part;

(c) The truth of any disclosures, whether in writing or not, or terms, conditions, or existence of agricultural employment offered to a replenishment agricultural worker under § 502.14 of this part;

(d) The anti-discrimination protections to any replenishment agricultural worker as required under § 502.15 of this part;

(e) The accuracy of information provided as required to a replenishment agricultural worker and the Federal Government under § 502.16 of this part; and

(f) The providing of the same transportation (comparable in expense and scope) to other workers as provided to any replenishment agricultural worker as required under § 502.17 of this part.

§ 502.21 General.

(a) Whenever the Secretary believes that the provisions of section 210A of the INA or these regulations have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(1) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief to restrain violation of the provisions of the Act or this part by any person;

(2) Institute appropriate administrative proceedings, including the assessment of a civil money penalty against any person for a violation of the obligations of the Act or this part; or

(3) Refer any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery.

(b) The taking of any one of the actions referred to in paragraph (a) of this section, shall not be a bar to the concurrent taking of any other appropriate action.

§ 502.22 Representation of the Secretary.

(a) Except as provided in section 518(a) of Title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under section 210A of the Act.

(b) The solicitor of Labor, through authorized representatives, shall represent the Administrator and the Secretary in all administrative hearings under the provisions of section 210A of the Act and this part.

§ 502.23 Civil money penalty assessment.

(a) A civil money penalty in an amount not to exceed $1,000 may be assessed for each violation of section 210A of the Act or this part.

(b) A civil money penalty may be assessed by the Administrator for:

(1) Failing to furnish any certificate as required under §§ 502.12 and 502.13 of this part;

(2) Furnishing false information as prohibited in § 502.16 of this part;

(3) Failing to provide the same transportation to any worker as provided for a replenishment agricultural worker as required in § 502.17 of this part;

(4) Knowingly furnishing false or misleading information to a replenishment agricultural worker concerning the terms, conditions, or existence of agricultural employment as prohibited in § 502.14 of this part;

(5) Discriminating against a replenishment agricultural worker as prohibited in § 502.15 of this part;

(6) Failing to keep the records required by § 502.11 of this part;

(7) Failing to furnish records required to be kept under these regulations to Department of Labor officials upon request as required by § 502.11 of this part;

(8) Interfering with the performance of an investigation or inspection in the United States as prohibited in § 502.5 of this part; or

(9) Any other violation of the regulations in this part or section 210A (b)(2) or (f) of the Act.

(c) In determining the amount of penalty to be assessed for any violation outlined in paragraph (a) of this section, the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation(s) of the provisions of the Act or this part;

(2) The number of workers affected by the violation(s);

(3) The seriousness of the violation(s);

(4) Efforts made in good faith to comply with the provisions of the Act and the regulations in this part;

(5) Explanation by person charged with the violation(s);

(6) Commitment to future compliance, taking into account the public interest and whether the person has previously violated the provisions of the Act; and

(7) The extent to which the worker suffered loss or damage.

§ 502.24 Enforcement of Wage and Hour investigative authority.

Section 502.4 of this part prescribes the investigation authority of the Wage and Hour Division for the purpose of enforcing section 210A of the Act and this part. The taking of any action to interfere with Department of Labor officials in the conduct of an investigation is prohibited by § 502.5 of this part and will subject such person or entity to such action as appropriate, including the assessment of civil money penalties, an injunction to bar interference with the investigation, and/or criminal penalties as may be applicable under 18 U.S.C. 111 and 18 U.S.C. 1114.

§ 502.25 civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Administrator, by an Administrator Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violation(s) occurred.

§ 502.26 Accuracy of information, statements and data.

Information, statements and data submitted in compliance with provisions of the Act or these regulations are subject to the provisions of 18 U.S.C. 1001, which states; Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be subject to a fine of not more than $10,000 or imprisoned not more than five years, or both.

Subpart D—Administrative Proceedings

General

§ 502.30 Establishment of procedures and rules of practice.

This subpart codifies and establishes the procedures and rules of practice necessary for the administrative enforcement of the Act.

§ 502.31 Applicability of procedures and rules.

The procedures and rules contained in this subpart prescribe the administrative process necessary for a determination to impose an assessment of civil money penalties for violations of the Act or of these regulations. The "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to this subpart, as provided in § 502.38 of this part.

Procedures Relating to Hearing

§ 502.32 Written notice of determination required.

Whenever the Secretary determines to assess a civil money penalty for a violation of the Act or this part, the person against whom such penalty is assessed shall be notified in writing of such determination.

§ 502.33 Contents of notice.

The notice required by § 502.32 of this part shall:

(a) Set forth the determination of the Secretary and the reason or reasons therefore;

(b) Set forth a description of each violation and the amount assessed for each violation;

(c) Set forth the right to request a hearing on such determination;

(d) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Secretary shall become final and unappealable; and

(e) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 502.34 of this part.

§ 502.34 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than thirty (30) days after the service of the notice referred to in § 502.33 of this part.

(b) No particular form is prescribed for any request for hearing permitted by this subpart. However, any such request shall:

(1) Be typewritten or legibly written on size 8½" x 11" paper;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for hearing must be received by the Administrator at the address set forth in paragraph (a) of this section, within the time set forth in that paragraph. For the affected person's protection, if the request is by mail, it should be by certified mail, return receipt requested.

Rules of Practice

§ 502.38 General.

Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings under this subpart.

§ 502.39 Service of determinations and computation of time.

(a) Service of a determination to assess a civil money penalty shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by addressee;

(b) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day; and

(c) When a determination is served on a party by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

§ 502.40 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 502.34 of this part.

§ 502.41 Designation of record.

(a) Each administrative proceeding instituted under the Act and this part shall be identified of record by a number preceded by the year and the letters "S/RAW".

(b) The number, letter, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

§ 502.42 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows: In The Matter of ———, Respondent.

(b) For the purposes of administrative proceedings under the Act and this part the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearings shall be named as respondent.

Referral for Hearing

§ 502.43 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 502.34 of this part, the Secretary, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, promptly refer an authenticated copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this part.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 502.44 Notice of docketing.

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

§ 502.45 Service upon attorneys for the Department of Labor—number of copies.

Two (2) copies of all pleadings and other documents required for any

administrative proceeding provided by this part shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

Procedures Before Administrative Law Judge

§ 502.46 Appearances; representation of the Department of Labor.

The Associate Solicitor, Division of Fair Labor Standards, and such other counsel as may be designated, shall represent the Department in any proceeding under this part.

§ 502.47 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefore, the Administrative Law Judge, within thrity (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

§ 502.48 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to § 502.34 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefore, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) The decision when served shall constitute the final order of the Secretary unless the Secretary, pursuant to section 210A(f)(4) of the INA modifies or vacates the decision and order of the Administrative Law Judge.

(g) Except as provided in §§ 502.48 through 502.53 of this part, the administrative remedies available to the parties under the Act will be exhausted upon service of the decision of the Administrative Law Judge.

Modification or Vacation of Order of Administrative Law Judge

§ 502.49 Authority of the Secretary.

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor;

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge;

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive; or

(d) Otherwise warrants modifying or vacating.

§ 502.50 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 500.51. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

§ 502.51 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a Decision and Order may warrant modifying or vacating, the Secretary shall issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations

made, so as to avoid unreasonable delay.

(c) The notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

§ 502.52 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 502.53 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, index, certify and forward a copy of the complete hearing record to the Secretary.

§ 502.54 Final decision of the Secretary.

(a) The Secretary's final decision and Order shall be issued within 120 days from the Notice of intent granting the petition, and shall be served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

(b) Upon receipt of an Order of the Secretary modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

§ 502.55 Stay pending decision of the Secretary.

(a) The filing of a petition seeking review by the Secretary of a Decision and Order of an Administrative Law Judge, pursuant to § 502.50 does not stop the running of the thirty-day time limit in which respondent may file an appeal to obtain a review in the United States District Court of an administrative order, under section 210A of the INA, as provided in section 503(b)(c) of the MSPA, unless the Secretary issues a Notice of Intent pursuant to § 502.51.

(b) In the event a respondent has filed a notice of appeal of the Administrative Law Judge's Decision and Order in a United States District Court prior to receipt of the Secretary's Notice of Intent, the Secretary shall seek a stay of proceedings in such United States District Court.

(c) Where the Secretary has issued a Notice of Intent, the time for filing an appeal of a Decision and Order issued under this part, shall commence from the date of the issuance of the Secretary's final decision, as provided in § 502.54.

Record

§ 502.56 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 502.57 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court of a Decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Note.—The following Appendices will not appear in the Code of Federal Regulations.

BILLING CODE 4510-27-M

Appendix A—Work-Day Report (Form ESA–92)

WORK-DAY REPORT (Form ESA - 92)

Form ___ of ___
(use additional forms as needed)

Required under Public Law 99-603, Sec 210A (b) (2)

2. EMPLOYER NAME

BUSINESS NAME

3. ADDRESS

CITY STATE ZIP -

DAYTIME PHONE

4. EIN

TYPE OF BUSINESS

1. Reporting Period [check quarter *and* year]

Quarter	Year
( ) Oct. 1 through Dec. 31 *mail by Jan. 16*	( ) *1988* ( ) *1989*
( ) Jan. 1 through March 31 *mail by April 17*	( ) *1990* ( ) *1991*
( ) April 1 through June 30 *mail by July 17*	( ) *1992*
( ) July 1 through Sept. 30 *mail by Oct. 16*	

5. All crops on which reportable workers were employed:

6. The following (or attached, certified list of) employees are reportable workers and worked at least one work-day (4 or more hours worked) in seasonal agricultural services during the quarter reported:

Reportable Worker Name	INS Alien Registration Number	Number of days worked 4 hours or more in seasonal agricultural services			
		All Other Crops	Hay	Sod	Sugar Cane
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				
	A9 __, ___, ___				

I hereby certify that all information provided herewith is complete and accurate to the best of my knowledge. The willful falsification of any statements contained herein or attached hereto may subject the employer to civil or criminal prosecution See Section 1001 of Title 18 of the United States Code.

Instructions and authority for report on reverse side of form.

7. Employer Signature and Date

Return To: Committee for Employment Information
on Special Agricultural Workers
P.O. Box XXX
City, State

Form ESA - 92
Form Approved
OMB Number 1215-0168
Expiration Date 8/91

Form ESA 92 (Cont)

AUTHORITY FOR EMPLOYERS REPORTS

The authority for this certified report to the Federal Government is contained in Section 210A of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603 This form is to report employment information on certain workers employed in seasonal agricultural services This information is used to identify labor utilization and, if necessary, to determine any agricultural labor shortage in order to replenish the work force for this type of employment

Public reporting burden for this collection of information is estimated to average 20 1/2 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave , NW, Washington, DC 20210 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

WHO MUST REPORT

This form is to certify employment information of certain workers employed in seasonal agricultural services in which the employer is required to provide such information to the Federal Government A worker whose employment is to be reported is an individual with an INS Alien Registration Number (if applicable, submitted by the employee on the INS Form I-9) in the A90000000 series and who performs work in seasonal agricultural services for at least one workday (4 or more hours worked) during the quarter reported For further details refer to regulations at 29 CFR 502

ITEM 1 Indicate the quarter and year for which the information is submitted

ITEM 2 Enter the complete employer and/or business name(s)

ITEM 3 Enter the complete address, and telephone number (including area code of the employer)

ITEM 4 Enter the employer's federal tax identification number and type of agricultural business, e g , farm, nursery, or farm labor contractor

ITEM 5 Indicate in this space all the crops (such as "cucumbers" or "wheat") in which reportable workers were employed

ITEM 6 With respect to each employee with an Alien Registration Number in the A90000000 series who was employed in seasonal agricultural services at any time during the quarter reported, enter each worker's name, INS Alien Registration Number, and the total number of workdays that each worker was employed in seasonal agricultural services in any of the specific "contested crops" indicated and for all other crops Where an employee worked in one or more "contested crops" and in other crops on the same day, enter that workday under "All Other Crops "The entries in all columns should add up to the total number of workdays that each worker was employed in seasonal agricultural services A "workday" is defined as any day during which at least four (4) hours of work in seasonal agricultural services is performed If one worker performs seasonal agricultural services for more than one employer on any one day, only one workday will be counted

The information required under item 6 (only) may be supplied via a certified computer-generated paper listing in the same format as called for on the Form ESA-92 - attached to the otherwise complete ESA-92, but such attached listing must also be signed and dated (i e , certified) by the responsible party to be valid

ITEM 7 THIS FORM MUST BE SIGNED AND DATED BY THE REPORTING EMPLOYER OR A DESIGNATED REPRESENTATIVE OF THE EMPLOYER NOTE. STATEMENTS SUBMITTED ARE SUBJECT TO 18 U S C 1001

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned for not more than five years, or both

Failure to accurately complete and mail this form within the time period specified in regulation 29 CFR 502 will be in violation of the Immigration and Nationality Act as amended by IRCA The penalties imposed are contained in the statute and regulation 29 CFR 502

DEFINITIONS

Performing work in "Seasonal Agricultural Services" means performing field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities as defined in regulation 7 CFR part 1d. For purposes of this regulation only, "seasonal agricultural services" also includes field work performed in the following "contested crops". hay, sod, and sugarcane The requirement of reporting these commodities does not constitute evidence that they are eligible commodities for purposes of the SAW program The reporting requirements will enable the Federal Government and the replenishment agricultural worker to obtain needed data in the event that it is later decided that these commodities are SAW eligible

"Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the "on the field" loading of transportation vehicles are included Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural lands are included Supervising any of these activities shall be considered performing the activities

"Agricultural lands" means any land, cave, or structure, such as a greenhouse, except packinghouses or canneries, used for the purpose of performing field work

Fruits and vegetables of every kind and other perishible commodities INCLUDE the following. All fruits and vegetables, including (but not limited to) berries, melons, tree fruits and nuts, table vegetables also corn and small grains, cotton, soybeans. other perishable commodities are limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties (field grown, containerized, and greenhouse produced nursery crops), spanish reeds (arundo donax), spices, sugar beets, and tobacco, as defined in 7 CFR Part 1d

Examples of other commodities which are EXCLUDED include Animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, flax, forest products, fur bearing animals and rabbits, honey, horses and other equines, livestock of all kinds including animal specialties, forage, silage, poultry and poultry products, wildlife and wool

"Contested crops" INCLUDE hay sod and sugarcane Reports must be filed on field work performed by reportable workers in these crops

Employee _____ Social Security No. _____

Permanent Address _____ INS Alien Registration No. A _____

EMPLOYEE RECIPIENT: KEEP YOUR COPY OF THIS FORM. This information will be needed to support any future application for change in your immigration status.

Workweek Ending (Month, Day, Year) _____

Day/Date	Sun/	Mon/	Tues/	Wed/	Thurs/	Fri/	Sat/
Starting Time							
Quitting Time							
Hours Worked							
Crop/Task / Units Done							
Rate of Pay (Hourly or Piece Rate)							
Daily Pay							

Total Hours Worked in Week

Number Of Work-Days (At least 4 hrs worked each day)

Total Gross Pay

ITEMIZED DEDUCTIONS	
FICA	
Federal Tax	
State Tax	
Rent	
Food	
Transportation	
Other	
Other	
Total Deductions	
Net Pay (Amount Due Employees)	Date Paid:

Employer _____

Address _____

Social Security Employer I.D. No. _____

Any information which pertains to work days for the person named above is provided in accordance with section 210A of the Immigration and Nationality Act. See reverse for instructions.

Optional Form WH-501R

128

Properly filled out, this optional form will satisfy the requirements of sections 201(d)(2) and (c)(2) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and will also satisfy the requirements of section 210A of the Immigration and Nationality Act (INA):

PAYROLL INFORMATION: Enter the month, day and year on which the employee's payroll workweek ends. Enter the calendar date of the day worked. Enter the time work started and ended each day. Enter the total time actually worked each day. Subtract bonafide meal periods. Crop/Task - Units done - Enter the kind of work (such as picking oranges per bin). Enter the number of units produced if the employee is paid on a piece work or task basis. Enter the hourly or piece rate of pay. Enter the amount of the daily pay computed at the hourly and/or piece rate.

NUMBER OF WORK-DAYS: For resident alien workers with INS registration number (a series that INS will announce at a later date) and performing work in seasonal agricultural services, enter the number of days that the worker worked at least four (4) hours.

ITEMIZED DEDUCTIONS: In addition to FICA (Social Security), federal tax, state, tax, and rent, food, and transportation deductions (if any), enter any other deductions and identify the purpose of each other deduction. Total Deductions - Enter total deductions in right column and then transfer to left. Subtract total deductions from total Gross Pay - Enter the result as Net Pay (Amount Due Employee). Enter date worker is paid.

Public reporting burden for this collection of information under both MSPA and the INA is estimated to average 2 minutes per response in addition to that incurred in the normal course of business, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB No. 1215-0148 Expires: 8/91

[FR Doc. 88-20493 Filed 9-8-88; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
September 9, 1988

Part III

Department of Transportation

Federal Highway Administration
Urban Mass Transportation Administration

23 CFR Part 770
49 CFR Part 623

Air Quality Procedures for Use in Federal Aid Highway and Federally Funded Transit Programs; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 770

49 CFR Part 623

[FHWA Docket No. 88-13]
RIN 2125—AB10

Air Quality Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs

AGENCY: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA and UMTA are proposing to consolidate and amend existing air quality requirements under section 176 of the Clean Air Act (CAA) into a single air quality regulation. The amended regulation simplifies: (1) The process of determining which highway projects are exempt from the Federal assistance limitations (highway sanctions) of section 176(a) of the CAA, and (2) the conformity and priority procedures contained in 23 CFR Part 770. The amendments also provide more flexibility to State and local agencies and reflect experience gained over the past 8 years.

DATE: Comments must be received on or before November 8, 1988.

ADDRESS: Submit written and signed comments to FHWA Docket No. 88-13, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Shrouds, Noise and Air Analysis Division, 202-366-4836, or Mr. S. Reid Alsop, Office of the Chief Counsel, 202-366-1371, Federal Highway Administration; Mr. Abbe Marner, Program Analysis and Support Division, 202-366-0096, or Mr. Scott A. Biehl, Office of the Chief Counsel, 202-366-4063, Urban Mass Transportation Administration, all at 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The CAA Amendments of 1977 constituted a comprehensive revision of much of the CAA (42 U.S.C. 7401, *et seq.*). They required that revised State air quality implementation plans (SIPs) be prepared for all areas exceeding the national ambient air quality standards (NAAQSs). Section 176(a) of the CAA required that project approvals and grants authorized by the CAA and Title 23, U.S.C., be withheld from air quality control regions in which national primary ambient air quality standards had not been attained and where transportation control measures (TCMs) were necessary to attain such standards if the Environmental Protection Agency (EPA) Administrator found after July 1, 1979 (and after July 1, 1982, in cases where an extension of the attainment deadline was authorized), that a Governor had not submitted a plan which considered each of the elements required by section 172 of the Act, or was not making reasonable efforts to submit such a plan. The only exception to this Federal assistance limitation was that safety, mass transit and transportation improvement projects related to air quality attainment or maintenance could be approved and funded.

The 1977 CAA Amendments required attainment of the standards by either December 31, 1982, or December 31, 1987, depending upon whether an extension was granted. The CAA is silent as to what occurs thereafter. The EPA published a proposed policy entitled "State Implementation Plans: Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions for Areas not Attaining the National Ambient Air Quality Standards (NAAQSs)," on November 24, 1987, (52 FR 45044). In it, EPA indicated its view that highway sanctions under section 176(a) would be available in the Post-1987 era.

Congress addressed the December 31, 1987 deadline by imposing a moratorium on all new sanctions until August 31, 1988. See the Mitchell-Conte amendment to the Budget Reconciliation Act of 1987, Pub. L. 100-202, (December 22, 1987). This was done because the Congress has not yet reached agreement on amending the CAA. As part of the moratorium, Congress directed EPA to list all areas which are not in attainment of the NAAQSs. In response to this provisions, EPA issued a list of areas not now in attainment, together with a discussion of alternative policy interpretations of the Mitchell-Conte amendment. In the policy discussion, EPA states that sanctions under section 176(a) could be available for all Post-1987 nonattainment areas.

The DOT does not agree with these EPA interpretations and has so indicated to EPA. The DOT believes that the use of highway sanctions expired on December 31, 1987, which was the final date included in the 1977 CAA Amendments for demonstrating attainment of the NAAQSs. The matter is as yet unresolved.

Congress has not passed legislation that reauthorizes the use of highway sanctions, but both houses of Congress have introduced legislation to amend the CAA that would include this reauthorization. None of these proposals, however, alter the categories of highway projects exempt from sanctions established by the 1977 CAA Amendments. The DOT, therefore, requests public comments on its exemption process in the event that Congress reauthorizes the use of highway sanctions.

Section 176(c) of the CAA (42 U.S.C. 7506(c)) provides that "(n)o department, agency, or instrumentality of the Federal Government shall: (1) Engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110," and that "(n)o metropolitan planning organization * * * shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110." Section 176(d) of the CAA (42 U.S.C. 7506(d)) requires that "(e)ach department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States and other jurisdictions, to the implementation of those portions of plans prepared under this section (110) to achieve and maintain the national primary ambient air quality standard."

The DOT consulted with EPA to develop procedures for implementing sections 176 (a), (c), and (d) of the CAA. As a result of this consultation, the DOT and EPA jointly issued a notice of final policy and procedures memorandum, dated April 10, 1980 (45 FR 24692), for meeting the Federal assistance limitation in section 176(a) of the CAA. On January 26, 1981, FHWA and UMTA jointly issued interim final regulations (46 FR 8426) implementing the conformity and priority requirements mandated by sections 176 (c) and (d) of the CAA. These conformity and priority regulations were based on an interagency agreement between DOT and EPA dated June 12, 1980.

The DOT has determined that existing air quality regulations under section 176

of the CAA should be simplified in order to achieve the administration's stated goal of providing more flexibility to State and local agencies and reducing redtape whenever possible. The FHWA and UMTA are, therefore, proposing to consolidate DOT's responsibilities under section 176 of the CAA into a single air quality regulation. The amended regulation proposes to consolidate and simplify: (1) The process of determining which highway projects are exempt from the Federal assistance limitations of section 176(a) of the CAA, and (2) the conformity and priority procedures contained in 23 CFR Part 770. The DOT has discussed this rulemaking effort with EPA.

It is DOT's intent that all responsibilities of the DOT modal administrations either stated or implied in sections 176 (a), (c), and (d) of the CAA be met by the proposed regulation. Therefore, the following agreement and regulation are proposed to be superseded:

(1) DOT/EPA Agreement on Procedures for Conformance of Transportation Plans, Programs, and Projects with Clean Air Act State Implementation Plans, dated June 12, 1980.

(Note: A copy of this agreement has been placed in the docket.)

(2) FHWA/UMTA Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally Funded Transit Programs (published as an interim final rule) (46 FR 8426), dated January 26, 1981.

With respect to the April 10, 1980, DOT/EPA **Federal Register** Notice of Final Policy and Procedure on Federal Assistance Limitation required by section 176(a) of the Clean Air Act (45 FR 24692), this proposed regulation would codify DOT's responsibilities and update its procedures for determining which projects are exempt from the Federal Assistance Limitations. The modified procedures are based on experience gained over the past 8 years. Those parts of the April 10, 1980, **Federal Register** that cover EPA activities for imposing highway sanctions are not changed by this proposed regulation.

The FHWA further intends these procedures to meet its obligations under 23 U.S.C. 109(j), which requires guidelines to assure that Federal and Federally assisted highway projects are consistent with approved SIP's. The previous guidelines were superseded by the procedures incorporated in the interim final rule which amended 23 CFR Part 770 on January 26, 1981. Separate project consistency determinations are not required to meet the 23 U.S.C. 109(j) requirement.

Only six comments were received in the public docket (FHWA Docket No. 80–18) in response to the January 26, 1981, interim final rule, four of which were from State departments of transportation, one from a local environmental agency, and one from private industry. All but one of these commenters were generally supportive of the provisions in the interim final rule. The one commenter that objected to the interim final rule indicated that the conformity and priority procedures would unnecessarily delay project implementation with no corresponding air quality benefits, and recommended that the procedures be abolished. Several suggestions were made to improve the procedures and these are addressed in the Subpart B requirements that follow.

Section-by-Section Analysis

It is proposed to amend the process of determining which highway projects are exempt from the Federal assistance limitations of section 176(a) of the CAA and incorporate it into Subpart A of this regulation. These provisions are currently contained in the DOT/EPA **Federal Register** Notice of Final Policy and Procedures on Federal Assistance Limitation Required by section 176(a) of the CAA (45 FR 24692), dated April 10, 1980.

It is further proposed to amend and incorporate the existing conformity and priority procedures (23 CFR Part 770) contained in the January 26, 1981, **Federal Register** (46 FR 8426), into Subpart B of this regulation.

Subpart A—Federal Highway Assistance Limitation

Section 770.100—Purpose.

This section states that the subpart is to set forth the policy and procedures for implementing the highway sanctions provisions contained in section 176(a) of the CAA. This section is the same as that noted in the existing policy notice, with some minor editorial changes.

Section 770.102—Definitions.

This section defines the terms that apply to Subparts A and B. The definition of the term "Air Quality Control Region" is proposed to be added. Definitions for the terms "Annual (or biennial) element" and "Transportation improvement program (TIP)" are also proposed to be added and are consistent with the FHWA and UMTA Urban Transportation Planning Regulation (23 CFR Part 450).

The definitions for the terms "National Ambient Air Quality Standards," "Nonattainment Area," "State Implementation Plan (SIP)," and "Transportation Control Measure (TCM)" are identical to the definitions contained in the current conformity and priority procedures (23 CFR Part 770). However, it is proposed to relocate them to Subpart A, since the terms are first used in this subpart.

Section 770.104—Policy.

This section proposes to add a new policy statement. It states that it is FHWA policy to ensure that the requirements of section 176(a) of the CAA are met where the EPA Administrator makes a finding pursuant to section 176(a) and limitations on Title 23, U.S.C., funds are applicable.

Section 770.106—Applicability.

This section is a restatement of section 176(a) of the CAA. It indicates that Federal assistance limitations apply in all nonattaiment areas where TCM's are needed to attain primary air quality standards, when EPA finds that the Governor has not submitted or is not making reasonable efforts to submit a SIP which considers each of the elements required by section 172 of the CAA. It further states that the Federal assistance provisions are not applicable to safety, mass transit, transportation improvement projects related to air quality improvement, and transportation projects administered by UMTA under Title 49, U.S.C.

Section 770.108—Federal Highway Assistance Limitation: Application.

The procedures contained in this section, with regard to DOT's responsibilities after sanctions are imposed, are the same as those contained in the April 10, 1980, **Federal Register** notice, although some wording changes have been made to improve clarity. This section indicates that when EPA imposes highway sanctions, the FHWA Division Administrator is prohibited from approving any projects or awarding any grants, other than those exempt from the sanction provisions, in those areas contained in the EPA **Federal Register** sanctions notice. This section would also require the FHWA Division Administrator to provide the FHWA and EPA Regional Administrators with information on those exempt projects advanced in areas under highway sanctions. Procedures for this notification should be jointly negotiated by FHWA Regional/Division Administrators and EPA.

Language in the existing procedures describing EPA's actions for determining when sanctions apply is not included, since only FHWA responsibilities are proposed to be codified in this regulation. Imposition of highway sanctions is an EPA responsibility, and the procedrues for carrying out this responsibility which are included in the April 10, 1980, **Federal Register** are not affected by this proposed regulation.

Section 770.110—Federal Highway Assistance Limitation: Removal.

This section allows the FHWA Division Administrator to resume approval of projects and grants, on the effective date of EPA's final notice which is published in the **Federal Register** to lift highway sanctions in the area. This provision is the same as current provisions in the April 10, 1980, **Federal Register** notice, but has been reworded for clarity.

Section 770.112—Exemptions.

This section proposes to identify the projects and categories of projects that are exempt from highway sanctions. These projects are the same as those contained in the April 10, 1980, **Federal Register** notice except as follows:

Safety

Railroad/highway crossings, pavement resurfacing and/or rehabilitation projects, traffic control devices, lighting improvements, safety rest areas, and truck climbing lanes are proposed to be added to the list of safety projects that are exempt from highway sanctions. Typically, these projects require little or no additional right-of-way and are cost-effective when construction costs are compared to savings in accident costs. In addition, some FHWA and EPA Regional offices have already agreed to exempt these types of safety projects under existing procedures through regional interagency agreements. The addition of these types of safety projects would provide for a more uniform application of this provision and simplify the process of exempting these types of projects in areas where sanctions are proposed.

Mass Transit

Carpool/vanpool programs are proposed to be added to the mass transit projects that are exempt from highway sanctions, since these programs are benefical to air quality in that they increase vehicle occupancy, reduce congestion, reduce time delays, and contribue to a more efficient use of the existing transportation system.

Air Quality Improvement Projects

Bicycle lanes, bicycle/pedestrian facilities, and projects for which an air quality analysis indicates an improvement over the no-build alternatives are proposed to be added to this category. The FHWA proposes to add these additional categories of projects to further streamline and simplify the exemptions process.

By definition, air quality improvement projects provide for air quality levels in the near and long term that are better than those of the no-build condition. Therefore, certain projects may be identified as air quality improvement projects, provided that, an air quality analysis has been conducted that takes into account projected traffic levels in the near and long term, it is documented in the project files, and it demonstrates that the microscale Carbon Monoxide (CO) concentrations and the areawide Hydrocarbons (HC) emissions are less than the corresponding levels for the no-build condition in the near and long term. The scope and complexity of this air quality analysis should be determined after consultation between Federal, State, and local transportation and air quality agencies, as appropriate, if funding limitations are imposed. The FHWA will issue a guidance document on a suggested methodology to evaluate highway air quality improvement projects in sanctioned areas.

Sections 770.112(b) proposes to add a provision that would allow potentially exempt projects that do not clearly fall into one of the exemption categories in § 770.112(a) to be submitted to the FHWA Regional Administrator for final determination as to whether or not the project qualifies for exemption. Projects in this category need to be reviewed on a case-by-case basis, and the Regional Administrator may require sufficient information to determine if the project warrants an exemption under the highway sanctions provisions. For projects in this category, the FHWA Regional Administrator should consult with the EPA Regional Administrator, as appropriate, before making a final determination.

Section 770.112(c) notes that any project which is exempt from highway sanctions is still subject to the provisions of the National Environmental Policy Act. This requirement remains essentially unchanged from the April 10, 1980, **Federal Register** notice.

23 CFR, Subpart B—Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs

Section 770.200—Purpose.

This section states that the purpose of this subpart is to set forth the policy and procedures for implementing the conformity and priority provisions of the CAA and the consistency requirements of 23 U.S.C. 109(j). This section is unchanged from the existing regulation, except for the addition of the work "policy."

Section 770.202—Definitions.

The definition of the term "metropolitan planning organization" is proposed to be modified to make it consistent with the definition contained in FHWA and UMTA's Urban Transportation Planning Regulation (23 FR Part 450) which was issued in final form on June 30, 1983. The "Categorical Exclusion" (CE) definition is based on that contained in FHWA and UMTA's Environmental Impact and Related Procedures Regulation (23 CFR Part 771) and would rely on that regulation for the detailed description of activities identified as CEs. The definitions for the terms "National ambient air quality standards," "Nonattainment area," "State implementation plan," and "Transportation control measure" are proposed to be included in Subpart A of this regulation and are therefore deleted from this subpart.

Section 770.204—Policy.

This section states that it is the policy of FHWA and UMTA to satisfy the conformity and priority requirements of the CAA by consulting with Federal, State, amd local air pollution control agencies; ensuring that plans, programs, and projects conform with approved SIP's; and that priority is given to implementing the TCM's in the SIP. This section is essentially the same as contained in the current regulation.

Section 770.206—Applicability.

This section states that the conformity and priority procedures of this subpart apply to activities in nonattainment areas, or portions thereof, and in air quality maintenance areas where State and local officials have included in the SIP TCM's that are developed and implemented through the urban transportation planning process, in order to attain the primary national ambient air quality standards. The applicability section is proposed to be changed from the existing regulation so that it limits the conformity and priority requirements

to those TCM's that are developed, programmed, and implemented as part of the urban transportation planning process. The purpose of this change is to eliminate general control programs such as inspection and maintenance (I/M), vapor emission control, fleet conversion, engine retrofit, etc., from FHWA and UMTA conformity determinations since these programs are not developed, funded, or implemented through the Federal-aid highway or UMTA programs and therefore are not included in the urban transportation process. This change does not relieve a State of the responsibility to consider and/or implement these general control programs as part of its air quality attainment program. Rather the proposed rule serves to identify for State and local transportation agencies, those TCM's for which they may have direct responsibility. It also states that the conformity provisions apply to all construction activities funded with UMTA or FHWA funds. In addition, it points out that the conformity determination process described under this subpart satisfies the air quality consistency requirements of 23 U.S.C. 109(j).

Section 770.208—Conformity.

Conformity between transportation plans, programs, and projects and the SIP is required by section 176(c) of the CAA (42 U.S.C., 7506(c)). The UMTA and FHWA have an affirmative responsibility to assure the conformity of any activity they support, fund, or approve. Further, section 176(c) prohibits a metropolitan planning organization from giving its approval to any project, program, or plan that does not conform to the SIP.

This section proposes to update and condense information to reflect the procedures and criteria used for making conformity determinations. In addition, it proposes to reflect changes made to the Urban Transportation Regulation (23 CFR Part 450). The State and metropolitan planning organization certification, which is developed pursuant to 23 CFR 450.114(c) and indicates that the urban planning process is being carried out in conformity with all applicable requirements of section 174 and sections 176 (c) and (d) of the CAA, would be the primary basis for the conformity finding.

Conformity would be determined by FHWA and UMTA as part of each agency's independent TIP/annual (or biennial) element review conducted under 23 CFR Part 450 and 49 CFR Part 613 of the urban planning process. The requirement in the existing regulation to make a conformity determination as part of the federal Certification process would be eliminated since the revised Urban Transportation Planning Regulation (23 CFR Part 450) issued on June 30, 1983, deleted the Federal Certification requirement.

The basic philosophy of the conformity procedures is to compare transportation plans and programs with the air quality plans and programs which are included in the SIP's. Coordination and consultation at the State and local levels remain an essential part of the process. The FHWA and UMTA would determine conformance by comparing the transportation plan and TIP with the SIP to ensure that transportation plans and programs contribute to reasonable progress in implementing the TCM's in the SIP. This step is designed to meet FHWA and UMTA's affirmative responsibilities under the CAA.

Before making a final determination on the conformity of transportation plans and programs, FHWA and UMTA will coordinate with EPA as appropriate. Representatives of FHWA and UMTA are expected to meet with EPA and with affected Federal, State and local jurisdictions and agencies, and metropolitan planning organizations in an attempt to resolve problems which are discovered during the evaluation process. These discussions should focus upon remedial actions that would allow a conformity determination to be made. Once the evaluation process has been completed, including any necessary meetings, and UMTA and FHWA determine that an area's transportation plan or program does not conform to the SIP, transportation program approvals will be limited in the affected area to preliminary engineering and environmental impact studies; advance land acquisition for hardship and protective buying as defined in 23 CFR 712.204(d) and advance land acquisitions under section 3(b) of the UMTA Act which qualify for categorical exclusions under 23 CFR Part 771; and those actions that are exempt from sanctions by § 770.112 in Subpart A of this proposed regulation. These provisions are basically unchanged from the existing provisions, except the language regarding hardship acquisitions has been revised to make it consistent with 23 CFR Part 771. These funding limitations would remain in effect until the deficiencies are corrected and a finding of conformity is made.

An individual transportation project is by definition in conformity if any one of the following conditions exists: (1) The project is a TCM from the SIP, (2) the project comes from a conforming TIP, (3) the project is exempt from TIP requirements, or (4) it is processed as a "categorical exclusion" pursuant to 23 CFR Part 771. These provisions are the same as those in the existing regulation with the addition of categorical exclusions. This addition is proposed to simplify the conformity process for projects that by definition have no significant impact on the environment and therefore would not adversely affect the TCM's in the SIP.

It is the policy of FHWA and UMTA that compliance with project level environmental requirements should be undertaken and completed as part of the National Environmental Policy Act (NEPA) process, and that the relevant environmental documents should contain evidence of that compliance. This policy is set forth in the FHWA and UMTA regulation on Environmental Impact and Related Procedures set at 23 CFR Part 771.

Consistent with this policy, FHWA and UMTA propose to change this section so that after approval of a final EIS or after a finding of no significant impact (FONSI) is made under the Environmental Impact and Related Procedures regulation, the project involved will not be subject to further conformity review unless a supplemental EIS significantly related to air quality considerations is undertaken. This proposal would eliminate existing complex requirements to make further conformity reviews during a SIP revision, or when major steps toward implementation of the project (e.g., start of construction or substantial right-of-way acquisition and relocation activities) have not begun within 3 years of the date of approval of the final EIS. The original administrative procedures were developed in the belief that SIP's would require frequent adjustments. Experience gained since then has not shown this to be the case, thus making the existing procedures dealing with conformity during a SIP revision unnecessary. Further, the FHWA and UMTA are proposing this change because we believe that once a final EIS or FONSI has been completed, the project should not be subject to further conformity determinations except when changes are proposed to a project that would result in a change in anticipated air quality impacts significant enough to warrant a supplemental EIS. The proposed change makes full and appropriate use of the environmental process, a process which FHWA and UMTA strongly support.

This section also proposes to eliminate all non-regulatory guidance material on EPA activities. This section

would base conformity determinations on the currently approved SIP until such time as a new SIP is approved. Plans, programs, and projects that conform to the current SIP would continue to be authorized. The current provision that projects on a contingency list in the SIP be delayed for a 12-month period or until the SIP is formally revised, which ever is shorter, is proposed to be deleted. The FHWA and UMTA propose to delete this requirement because it is in conflict with EPA guidance contained in EPA's final policy for 1982 SIP's (46 FR 7182). This change does not affect the requirement for contingency provisions as contained in EPA directives.

Section 770.210—Priority.

Section 176(d) of the CAA requires Federal agencies with authority to support or fund transportation-related activities to give priority to implementing the TCM's in the SIP's. In accordance with this section, a review of implementation progress will be made by FHWA prior to approval of the Statewide Program of Projects required under 23 U.S.C. 105 and by UMTA as part of the TIP/annual (or biennial) element review process, to ensure the timely programming and implementation of the TCM's in the SIP.

Other priority provisions in the existing regulations are proposed to be deleted since they deal solely with internal DOT/EPA interactions which are inappropriate for retention in the regulation.

Section 770.212—Construction.

This section would require grant recipients to assure that construction activities that receive FHWA or UMTA funding conform with the approved SIP. Coordination with the State air pollution control agency is also required. These requirements apply to transportation projects funded by UMTA as well as to those funded by FHWA.

The existing and proposed conformity and prority procedures are geographically limited to those areas having SIP's which contain TCM's for the attainment or maintenance of the national ambient air quality standards. However, the construction procedures in this section apply in all geographical areas regardless of air quality attainment status.

The provisions in this section are unchanged from the existing provisions, except for the deletion of the requirement to have revisions to the construction specifications made in consultation with FHWA and UMTA, as appropriate. Since FHWA and UMTA already provide for consultation on specification changes, this requirement is redundant.

Related Regulations

The FHWA and UMTA issued their current Environmental Impact and Related Procedures Regulations on August 28, 1987, at 52 FR 32645. Additional requirements for compliance with the NEPA are contained in the regulations of the CEQ (40 CFR 1500–1508) and DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, October 1, 1979).

Under these requirements, an air quality analysis is still required as part of the EIS process. The results of the analysis are included in the EIS, and air quality impacts are considered during the review of the EIS. However, this project-level air quality analysis is not required in order to determine conformity. This is the difference between the CAA and the NEPA—conformity is based on a comparison of transportation plans and programs with air quality plans and programs contained in the SIP, while the anaylsis for the EIS is an evaluation of the anticipated pollutant emissions, dispersion and resultant concentration in the vicinity of the proposed project.

The FHWA and UMTA have also published a final rule (48 FR 30332, June 30, 1983) which amended the Urban Tranportation Planning regulation (23 CFR Part 450 and 49 CFR Part 613). Those revisions include a reference to the procedures in this regulation in order to tie the planning process to the air quality conformity and priority process. For the same reason, the provisions of §§ 770.208 and 770.210 of this regulation include references to the urban transportation planning process and the corresponding regulation.

Section 770.210 of this regulation also refers to 23 CFR Part 630, Subpart A, Federal-Aid Programs Approval and Project Authorization, which provides for FHWA review and approval of programs and projects proposed by State highway agencies. This regulation will be revised. Language will be included in the revised regulation to require that "(p)rojects shall reflect implementation priority if they have been identified as Transportation Control Measures (TCM) in the State Implementation Plan (SIP) (23 CFR Part 770) revised pursuant to Part D of Title I of the Clean Air Act (42 U.S.C. 7506)."

Administrative Matters

The FHWA and UMTA have detemined that this proposed rule is not a major rule under Executive Order 12291. However, it is a significant regulation under DOT Regulatory Policies and Procedures because the amendments involve important departmental policy. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting any of the individuals listed above under the heading "For Further Information Contact."

The Administrators certify under the Regulatory Flexibility Act that this proposed rule will not have a significant economic impact on a substantial number of small entities. It is possible that application of this proposed rule could have an adverse economic impact on small governmental jurisdictions located in areas where transportation plans or programs are subject to Federal assistance limitations or do not conform the the SIP. However, the potential impacts derive primarily from the CAA and not from the procedures contained in this proposed rule. An additional consideration with respect to the Federal-aid highway program is that highway projects have been subject to the analogous consistency requirement of 23 U.S.C. 109(j) since 1970. This proposed rule is not subject to Section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of any new data. The proposed rule only requires the States to make use of existing data and information that they have already collected under regulations issued by the EPA.

This proposed regulation would apply to both FHWA and UMTA actions. It would be published as Part 770 of Title 23, CFR with a cross-reference in Part 623 of Title 49, CFR. No amendments would be required to the provisions of 49 CFR Part 623.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Improvement Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; 20.505, Urban Mass Transportation Technical Study Grants; 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Nonurbanized Areas; 23.003, Appalachian Development Highway Systems; 23.008, Appalachian Local Access Roads. The regulations implementing Executive Order 12372 regarding intergovernmental

consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 770 and 49 CFR Part 623

Air pollution control, Grant programs—transportation, Highways and roads, Mass transportation.

Issued on: September 1, 1988.

Robert E. Farris,

Federal Highway Administrator.

Alfred A. DelliBovi,

Urban Mass Transportation Administrator.

In consideration of the foregoing, it is proposed to revise Part 770 of Chapter 1 of Title 23, CFR, as set forth below:

PART 770—AIR QUALITY PROCEDURES FOR USE IN FEDERAL-AID HIGHWAY AND FEDERALLY FUNDED TRANSIT PROGRAMS

Subpart A—Federal Highway Assistance Limitation

Sec.

Subpart B—Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs

Authority: 23 U.S.C. 109 (h) and (j), 315; 42 U.S.C. 4332, 7401 and 7506; 49 CFR 1.48(b).

Subpart A—Federal Highway Assistance Limitation

§ 770.100 Purpose.

The purpose of this subpart is to set forth the policy and procedures for implementing section 176(a) of the Clean Air Act (CAA) of 1970, as amended (42 U.S.C. 7401, *et seq.*) with respect to the Federal Assistance Limitation of Title 23, U.S.C., funds, in nonattainment areas where transportation control measures are needed to attain primary national ambient air quality standards.

§ 770.102 Definitions.

The following definitions apply to Subparts A and B:

"Air Quality control region" is an Interstate or intrastate area designated by the Administrator of the Environmental Protection Agency (EPA) pursuant to section 107 of the CAA (42 U.S.C. 1857).

"Annual (or biennial) element" means a list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period.

"National Ambient Air Quality Standards" (NAAQS's) are those standards established pursuant to section 109 of the CAA (42 U.S.C. 7409).

"Nonattainment area" is any portion of an air quality control region for which any pollutant exceeds the NAAQS's for the pollutant as designated pursuant to section 107 of the CAA (42 U.S.C. 7407).

"State Implementation Plan (SIP)" is the plan required by section 110 of the CAA (42 U.S.C. 7410 to attain and maintain a NAAQS. An approved SIP is the implementation plan or most recent version of this plan which has been approved or promulgated by the EPA under section 110 of the CAA.

"Transportation control measure (TCM)" is any measure in a SIP directed toward reducing emissions of air pollutants from transportation sources.

"Transportation improvement program (TIP)" means a staged multiyear program of transportation improvement including an annual (or biennial) element.

§ 770.104 Policy.

It is the policy of FHWA to ensure that the requirements of section 176(a) of the CAA are met where the EPA Administrator makes a finding pursuant to section 176(a) and limitations on Title 23, U.S.C., funds are applicable.

§ 770.106 Applicability.

The policy established under section 176(a), with respect to Title 23 funds, applies in all nonattainment areas where TCM's are needed to attain primary NAAQS's when EPA finds that the Governor has not submitted a plan which considers each of the elements required by section 172 of the CAA, or is not making reasonable efforts to submit such a plan. Safety, mass transit, and transportation improvement projects related to air quality attainment and maintenance are excluded from Federal assistance limitations. Assistance limitations are not applicable to transportation projects administered by UMTA under Title 49, U.S.C.

§ 770.108 Federal highway assistance limitation: Application.

Upon publication by EPA of a final section 176(a) finding in the **Federal Register** indicating that an implementation plan has not been submitted or that reasonable efforts toward submitting such a plan are not being made, the FHWA Division Administrator will not approve any project or award any grant other than those exempt from highway sanctions for those areas included in the EPA **Federal Register** notice. The FHWA Division Administrator will provide FHWA and EPA Regional Administrators with information on those exempt projects advanced in areas affected by the Federal assistance limitation.

§ 770.110 Federal highway assistance limitation: Removal.

The FHWA Division Administrator may resume approval of projects and grants on the effective date of EPA's final notice which is published in the **Federal Register** to indicate that the Federal assistance limitation is no longer applicable.

§ 770.112 Exemptions.

(a) The following safety projects, mass transit projects, and transportation improvement projects related to air quality improvement or maintenance are exempted from the Federal assistance limitation without subsequent action under paragraph (b) of this section.

(1) Safety projects which are proposed for construction to correct existing safety hazards, to replace bridges or to eliminate high hazard locations or roadside obstacles. These improvements include railroad/highway crossings, intersection channelization, increasing sight distance, widening narrow pavements, shoulder improvements, adding medians, pavement resurfacing and/or rehabilitation, skid treatments, widening or reconstructing bridges, changes in vertical or horizontal alignment, railroad/highway crossing warning devices, traffic signals and other traffic control devices, guardrails, median barriers, crash cushions, lighting improvements, safety rest areas, truck climbing lanes, and emergency relief projects authorized under 23 U.S.C. 125.

(2) Mass transit projects which provide funds for planning assistance, operating assistance, or capital assistance for mass transit services, equipment and facilities, and related facilities and services such as fringe parking lots, high-occupancy vehicle lanes and carpool/vanpool programs.

(3) Transportation improvement projects which are related to air quality improvement or maintenance. These projects include transportation and air quality planning and research studies carried out under 23 U.S.C. 134 and 307, bicycle lanes and bicycle and pedestrian facilities; those projects which have been included in an approved

transportation control portion of a SIP; those projects which are specifically identified as transportation measures related to air quality improvement or maintenance in an annual (or biennial) element of a current TIP reviewed by EPA and for which EPA has not submitted negative comments within 30 days; and projects for which a microscale air quality analysis for Carbon Monoxide (CO) and a burden analysis for Hydrocarbons (HC) indicate that the build condition results in an improvement over the no-build condition in the near and long term. The scope and complexity of this analysis is to be determined after consultation between Federal, State, and local transportation and air quality agencies, as appropriate.

(b) Except as provided in paragraph (a) of this section, a recommendation by an applicant to exempt a safety, mass transit, or air quality improvement project from the Federal assistance limitation shall be submitted for approval by the FHWA Regional Administrator.

(c) Exemption of a transportation project from the Federal assistance limitation does not waive any applicable requirements under the National Environmental Policy Act.

Subpart B—Air Quality Conformity and Priority Procedures For Use in Federal-Aid Highway and Federally Funded Transit Programs

§ 770.200 Purpose.

The purpose of this subpart is to set forth the policy and procedures for implementing section 176 (c) and (d) of the CAA of 1970, as amended (42 U.S.C. 7401, *et seq.*) and the consistency requirement of 23 U.S.C. 109(j).

§ 770.202 Definition.

The following definitions apply to Subpart B.

"Categorical exclusions" are actions which meet the criteria contained in 23 CFR 771.117.

"Metropolitan planning organization" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of sections 3(e)(1), 5(l), 8(a), 8(c), and 9(e)(3)(G) of the UMTA Act [49 U.S.C. 1602(e)(1), 1604(l), 1607(a) 1607(c) and 1607a(e)(3)(G). The metropolitan planning organization is the forum for cooperative transportation decisionmaking.

§ 770.204 Policy.

It is the policy of FHWA and UMTA that transportation agencies responsible for the planning and implementation of transportation facilities and services pursuant to Titles 23 and 49, United States Code, consult with the Federal, State, and local air pollution control agencies, as appropriate; ensure that plans, programs, and projects conform with approved SIP's; and that priority is given to implementing the TCM's included in the SIP.

§ 770.206 Applicability.

The procedures in § 770.208 and § 770.210 of this subpart apply to activities in nonattainment areas or portions thereof, as designated under section 107(d) of the CAA, and in air quality maintenance areas where State and local officials have determined that TCM's are needed to attain and maintain the primary NAAQS and have placed in the SIP. TCM's that are developed, programmed, and implemented through the Urban Transportation Planning Process. The procedures in § 770.212 of this subpart apply to all construction projects constructed with UMTA or FHWA funds. Conformity determinations made under § 770.208 of this subpart also satisfy the air quality consistency requirement of 23 U.S.C. 109(j).

§ 770.208 Conformity.

(a) *Conformity of transportation plans and programs.* (1) Conformity of plans and programs will be determined and documented by FHWA and by UMTA as part of the TIP/annual (or biennial) element review (23 CFR Part 450, and 49 CFR, Part 613). The determination will be based upon the following:

(i) State and metropolitan planning organization certification developed pursuant to 23 CFR 450.114(c); and

(ii) The FHWA and UMTA determination that the transportation plan and TIP contribute to reasonable progress in implementing the TCM's contained in the SIP.

(2) Prior to making a conformity determination FHWA and UMTA will consult with EPA, as appropriate. If conformance criteria are not being met, UMTA and FHWA will meet with EPA and affected Federal, State, and local jurisdictions, agencies, and metropolitan planning organizations to discuss problem resolution. If UMTA and FHWA determine that an area's transportation plan and/or TIP/annual (or biennial) element does not conform to the SIP, transportation program approvals will be limited in the area to preliminary engineering and environmental impact studies; advance land acquisition for hardship and protective buying as defined in 23 CFR 712.204(d) and advance land acquisitions under section 3(b) of the UMT Act, which qualify for categorical exclusions under 23 CFR Part 771; and those projects that are exempt from sanctions (§ 770.112 in Subpart A of 23 CFR Part 770) until the deficiencies are corrected and a conformity finding is made.

(b) *Conformity of Transportation Projects.* A project conforms to a SIP if:

(1) It is a TCM from the SIP; or

(2) It comes from a conforming TIP; or

(3) It is a project exempt from TIP requirements by the State and metropolitan planning organization in accordance with 23 CFR 450.202(b); or

(4) It is processed as a "categorical exclusion" under 23 CFR Part 771.

(c) *Projects not subject to further conformity review.* After approval of a final environmental impact statement (EIS) or after a finding of no significant impact, a project will not be subject to further conformity review unless a supplemental EIS significantly related to air quality considerations is undertaken.

(d) *Conformity during subsequent SIP revision.* When EPA requests a SIP revision, UMTA and FHWA will continue to base their conformity determinations on the then currently approved SIP until a revised SIP is formally approved or promulgated by EPA.

§ 770.210 Priority.

(a) Section 176(d) of the CAA requires Federal agencies with authority to support or fund transportation-related activities to give priority to implementing the TCM's in the SIP.

(b) The FHWA will meet this requirement through implementation of the Federal-Aid Program Approvals Authorization Regulation, 23 CFR Part 630, Subpart A, which provides for FHWA's review and approval of programs and projects. A review of progress will be made by FHWA prior to 105 program approval to ensure the timely programming and implementation of those TCM's in the SIP which will be funded by FHWA.

(c) The UMTA will meet this requirement through the review of the annual (or biennial) element of the TIP in accordance with 49 CFR Part 613. A reveiw of progress will be made by UMTA as part of its review of the TIP/annual (or biennial) element to ensure the timely programming and implementation of those TCM's in the SIP which will be funded by UMTA.

(d) The FHWA and UMTA will consult as appropriate with EPA in carrying out this requirement.

§ 770.212 Construction.

(a) The transportation agency receiving funds from FHWA, UMTA, or both, shall take steps to assure that its current specifications, and any revisions thereof, and the use of specific equipment and/or materials associated with construction conform with the approved SIP. This shall be accomplished in coordination with the State's air pollution control agency.

(b) The transportation agency shall assure that changes in the SIP are reviewed to determine if revisions to the construction specification will be necessary.

[FR Doc. 88-20401 Filed 9-8-88; 8:45 am]
BILLING CODE 4910-22-M

federal register

Friday
September 9, 1988

Part IV

Office of the United States Trade Representative

Generalized System of Preferences (GSP); Revised Schedule for Public Hearings and Written Submissions; Notice

Digest

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Revised Schedule for Public Hearings and Written Submissions

Notice is hereby given of a revised schedule for public hearings and the submission of written materials for all petitions accepted for the 1988 Annual Review of the Generalized System of Preferences (GSP), as previously announced at 53 FR 27433 and 33208.

The revised schedule is as follows:

Hearings will be held November 15–17 beginning at 10 a.m. in the Commerce Department Auditorium, 14th and Constitution Avenue, NW., Washington, DC. Requests to present oral testimony at the hearings, along with 20 copies, in English, of all written briefs or statements should be submitted as required in the previous **Federal Register** notices. For public petitions, that deadline is no later than close of business, September 12. For country practice petitions, that deadline is no later than close of business, September 19. In addition, all interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization by close of business, September 19.

Post-hearing briefs or statements will be accepted if submitted in 20 copies, in English, no later than close of business, December 1. Rebuttal briefs should be submitted in 20 copies, in English, by close of business, December 15. Parties not wishing to appear at the public hearings may submit written briefs or statements in 20 copies, in English, by close of business, December 1.

Additional information on the requirements for the submission and public review of hearing briefs or statements is contained in the **Federal Register** notices cited above.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 88–20742 Filed 9–8–88; 11:52 am]

BILLING CODE 3190–01–M

Reader Aids

Federal Register

Vol. 53, No. 175

Friday, September 9, 1988

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

Data base and machine readable specifications	523-3408
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, SEPTEMBER

33801-34012.....1
34013-34272.....2
34273-34478.....6
34479-34710.....7
34711-35060.....8
35061-35190.....9

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
August 17, 1988.....34711
Presidential Determinations:
No. 88-20 of July 26, 1988.....33801
Proclamations:
5851.....35061
5852.....35063
5853.....35065

5 CFR

300.....34273
531.....34273
Proposed Rules:
581.....34305
890.....34305

7 CFR

252.....34013
301.....34014
354.....34021
401.....34022
907.....34022, 34026
908.....34022, 34026
920.....33801, 34033
931.....34479
932.....34479
981.....34035
982.....34480
989.....34713
999.....34713
1421.....33803
1944.....35067
1951.....38904
3404.....34481
Proposed Rules:
210.....35083
225.....34761
226.....34761
401.....34762
910.....34107
945.....34764
987.....34108
1006.....34766
1012.....34766
1013.....34766
1124.....33823

9 CFR

78.....34035
92.....34037
97.....35068
Proposed Rules:
317.....35089

12 CFR

790.....34481
791.....34481
Proposed Rules:
8.....34307
615.....34109

13 CFR

115.....34872

14 CFR

1.....34198
13.....34646
21.....34274
23.....34194
25.....34274
27.....34198
29.....34198
33.....34198
39.....34038, 34040
71.....34041, 34042, 34276, 34277
73.....34277
97.....34039
99.....34043
Proposed Rules:
39.....34116, 34117
129.....34874

16 CFR

Proposed Rules:
13.....34307, 34776

17 CFR

211.....34715

18 CFR

161.....34277
250.....34277
284.....34277
Proposed Rules:
4.....34119
16.....34119
101.....34545

20 CFR

901.....34481
Proposed Rules:
603.....34120

21 CFR

12.....34871
175.....34278
176.....34043

22 CFR

204.....33805

23 CFR

Proposed Rules:
770.....35178

24 CFR

8.....34634
200.....34279
203.....34279

204.....34279
213.....34279
220.....34279
221.....34279
222.....34279
234.....34279
235.....34279
240.....34279
511.....34372
570.....34416
813.....34372
882.....34372
887.....34372
888.....34372
960.....34372
964.....34676

Proposed Rules:
111.....34668

26 CFR

1.....34045, 34194, 34284, 34488, 34716, 34729
31.....34734
602.....34045, 34194, 34488, 34729, 34734

Proposed Rules:
1.....34120, 34194, 34545, 34778, 34779
154.....34194
602.....34120

27 CFR

Proposed Rules:
71.....35093

28 CFR

Proposed Rules:
2.....34546

29 CFR

502.....35154
1910.....34736

Proposed Rules:
103.....33934
1910.....33823, 33807, 34708, 34780
1915.....33823, 34780
1918.....33823, 34780
1952.....34121

30 CFR

208.....34737
250.....34493
816.....34636
817.....34636

Proposed Rules:
925.....34128

32 CFR

199.....33808, 34285

33 CFR

100.....35069, 35070
117.....34076

Proposed Rules:
117.....34129, 34130, 35094
160.....35095

34 CFR

367.....35071

36 CFR

Proposed Rules:
1228.....34131

38 CFR

21.....34494, 34739
36.....34294

40 CFR

52.....33808, 34077, 34500
81.....34507, 35071
167.....35056
180.....33897, 34508–34512
186.....34513
260.....34077
264.....33938, 34077
265.....33938, 34077
270.....34077
271.....34758, 34759
300.....33811
761.....33897
795.....34514
799.....34514

Proposed Rules:
52.....33824, 33826, 34132, 34310–34318, 34550, 34780–34788
60.....34551
62.....34549
81.....34318, 34557, 34791
180.....34792, 34794

44 CFR

64.....34087
67.....34089

46 CFR

1.....34532
2.....34532
4.....34532
6.....34532
30.....34296, 34532
31.....34532, 34872
32.....34532
35.....34532
42.....34532
46.....34532
50.....34296, 34532
67.....34532
69.....34296, 34532
70.....34296, 34532
71.....34532
90.....34296, 34532
91.....34532, 34872
93.....34532
98.....34532
107.....34532
110.....34532
147.....34296
150.....34532
151.....34532
153.....34532
154.....34532
154a.....34532
159.....34532
160.....34532
161.....34532
162.....34532
164.....34532
167.....34296
169.....34296
170.....34532
171.....34532
172.....34532
188.....34296, 34532
189.....34532
401.....34532
550.....34298

47 CFR

1.....34538
73.....34299, 34300, 34538–34542

Proposed Rules:
1.....34558
69.....33826
73.....34559, 34560

48 CFR

Ch. 12.....34301
Ch. 63.....34104
1.....34224
3.....34224
7.....34224
9.....34224
10.....34224
19.....34224
29.....34224
31.....34224
36.....34224
47.....34224
52.....34224
204.....34090
252.....34090
519.....33812
542.....34089

Proposed Rules:
Ch. 16.....34320
548.....34871
552.....34871

49 CFR

544.....35073
571.....33898, 35075
1342.....33813

Proposed Rules:
571.....35097
623.....35178
641.....34560
644.....34560

50 CFR

17.....33990, 34696–34701, 35076
23.....33815
32.....34301
33.....34301
227.....33820
661.....34543, 34760
674.....34303, 35080
675.....35081

Proposed Rules:
13.....34795
14.....34795
17.....34560
611.....34322
672.....33897, 34322
675.....34322

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 30, 1988