12-19-88
Vol. 53 No. 243
Pages 50911-51088

# federal register

Monday
December 19, 1988

**Briefings on How To Use the Federal Register—**
**For information on briefings in Washington, DC, and Los Angeles, CA, 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 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. 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.

**WHERE:**

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:** January 26, at 9:00 a.m.
**WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
**RESERVATIONS:** 202-523-5240

### LOS ANGELES, CA

**WHEN:** January 12, at 9:00 a.m.
Room 8544,
Federal Building,
300 N. Los Angeles St.,
Los Angeles, CA
**RESERVATIONS:** Call the Federal Information Center.
Los Angeles 213-894-3800

# Contents

Federal Register

Vol. 53, No. 243

Monday, December 19, 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. 243
Monday, December 19, 1988

# Presidential Documents

Title 3—

The President

Executive Order 12659 of December 15, 1988

## Delegation of Authority Regarding the Naval Petroleum and Oil Shale Reserves

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3 and sections 7427 and 7428 of title 10 of the United States Code, and in order to meet the goals and requirements of the Naval Petroleum and Oil Shale Reserves, it is hereby ordered as follows:

**Section 1.** The functions vested in the President by sections 7427 and 7428 of title 10 of the United States Code are delegated to the Secretary of Energy.

**Sec. 2.** On or before June 30, 1991, the Secretary of Energy shall prepare and submit to the President a comprehensive report of the agreements and programs executed under the authority granted under this Order. The authority delegated herein expires after October 1, 1991.

Ronald Reagan

THE WHITE HOUSE,
*December 15, 1988.*

[FR Doc. 88-29206
Filed 12-16-88; 10:15 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 53, No. 243
Monday, December 19, 1988



## GENERAL ACCOUNTING OFFICE

## 4 CFR Part 81

## Freedom of Information; Records

**AGENCY:** General Accounting Office.

**ACTION:** Final rule.

**SUMMARY:** This rule revises GAO's regulations regarding the public disclosure of GAO records. Fees have been raised to reflect current costs. Minor editorial changes clarify and correct. Hours of the public reading room, Office of the General Counsel, have been updated to reflect current practice. The exemption pertaining to law enforcement records and the fee waiver standard have been revised to bring these sections into accord with the spirit of the Freedom of Information Reform Act of 1986, Pub. L. 99-570.

**EFFECTIVE DATE:** December 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nola Casieri, Office of Policy, United States General Accounting Office, 441 G Street NW., Room 6800, Washington, DC 20548, 202/275-1970.

**SUPPLEMENTARY INFORMATION:** GAO is revising Part 81 to bring the law enforcement and fee waiver standard into accord with the spirit of the Freedom of Information Reform Act of 1986, Pub. L. 99-570. Fees have been raised to reflect current costs. Minor editorial changes clarify and correct.

The following is a section-by-section description of the revisions to the regulations.

Section 81.6(g) is revised to change the description of the records included within the exemption from "investigatory files" to "records and information."

Section 81.7(b)(3) (i) and (ii) are revised to increase the fees charged for both clerical and professional personnel.

Section 81.7(e) is revised to incorporate the requirement that a waiver or reduction of fees is to be granted only if the release of the requested records is in the public interest and not primarily in the commercial interest of the requester.

Sections 81.6(j) and 81.7(c) are reprinted to correct spelling errors.

Section 81.8 is revised to change the hours of operation to 8:30 a.m. to 5:00 p.m. Due to organizational and title changes, the reference to the Chief, Legal Information and References Services, is deleted.

### List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Freedom of Information, Records.

For the reasons set out in the preamble Title 4, Part 81 of the Code of Federal Regulations is amended as follows:

## PART 81—PUBLIC AVAILABLILITY OF GENERAL ACCOUNTING OFFICE RECORDS

1. The authority citation for Part 81 continues to read as follows:

**Authority:** 31 U.S.C. 711.

2. Section 81.6 is amended by revising paragraphs (c), (g), and (j) to read as follows:

### § 81.6 Records which may be exempt from disclosure.

* * * * *

(c) Records related solely to the internal personnel rules and practices of an agency. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of an agency function. Examples within the purview of this exemption are guidelines, and procedures for auditors, investigators, or examiners.

* * * * *

(g) Records and information compiled for law enforcement purposes.

* * * * *

(j) Inter-agency or intra-agency memoranda, letters or other materials that are part of the deliberative process. For example, this exemption includes internal communications such as GAO or other agency draft reports, and those portions of internal drafts, memoranda and workpapers containing opinions, recommendations, advice or evaluative remarks of GAO employees. This exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency function.

* * * * *

3. Section 81.7 is amended by revising paragraphs (b)(3) and (e) to read as follows:

### § 81.7 Fees and charges.

* * * * *

(b) * * *

(3) Search for records by Office personnel.

(i) Clerical personnel—$10 an hour.

(ii) Professional personnel—$20 an hour.

* * * * *

(e) Fees established by this section may be waived or reduced upon a determination by the Director, OP, that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commerical interest of the requester. Persons seeking such waiver or reduction of fees may be required to submit a statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations pursuant to this subsection are solely within the discretion of GAO.

4. Section 81.8 is revised as follows:

### § 81.8 Public reading facility.

A public reading facility shall be maintained by the General Accounting Office at 441 G Street NW., Washington, DC. The facility, under the control of the Office of the General Counsel, shall be open to the public from 8:30 a.m. to 5:00 pm. except Saturdays, Sundays, and holidays.

**Charles A. Bowsher,**
*Comptroller General of the United States.*

[FR Doc. 88-29022 Filed 12-16-88; 8:45 am]
BILLING CODE 1610-01-M

**DEPARTMENT OF AGRICULTURE**

**Federal Grain Inspection Service**

**7 CFR Part 68**

## United States Standards for Whole Dry Peas

**AGENCY:** Federal Grain Inspection Service, USDA.[1]

**ACTION:** Final Rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS or Service) is revising the United States Standards for Whole Dry Peas to make the current rounding procedures for percentages consistent with rounding performed by calculators, computer applications and other FGIS standards.

**EFFECTIVE DATE:** January 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telephone (202) 475–3428.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

### Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

### Final Action

On August 15, 1988 (53 FR 30685), FGIS proposed to revise Subpart F—United States Standards for Whole Dry Peas, of the Part 68 regulations (7 CFR Part 68) to change the current rounding procedures for percentages. The current rounding procedures for percentages provides that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g. 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.54 is reported as 0.5; when figures that are even are followed by the figure 5, the even figure is retained; and when a figure is odd and followed by the figure 5 the figure is rounded to the next higher even figure, e.g., 0.45 is reported as 0.4, 0.35 is reported as 0.4.

The proposed rounding rules simply stated provided that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next higher figure, e.g., report 0.35 as 0.4, 6.46 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.34 as 8.3. This procedure is consistent with rounding performed by calculators and in computer applications. It is also a more generally accepted mathematical rounding procedure and would facilitate the understanding and usage of the standards.

This final rule also revises the heading of Part 68 (7 CFR Part 68) for clarity, as proposed.

Interested parties were invited to participate in the rulemaking process by submitting written comments on the proposed rule. During the comment period one supporting comment from an academe was the only comment received.

### List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Whole dry peas.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

### Subpart F—United States Standards for Whole Dry Peas

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. The heading for Part 68 is revised to read as follows:

### PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

3. Section 68.405 Percentages, is revised to read as follows:

**§ 68.405 Percentages.**

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g. report 6.36 as 6.4, 0.35 as 0.4, and 2.45 as 2.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.34 as 8.3, and 1.22 as 1.2.

(b) *Recording.* All percentages shall be stated in whole and tenth percent to the nearest tenth percent.

Date: November 29, 1988.

W. Kirk Miller,

*Administrator.*

[FR Doc. 88–29030 Filed 12–16–88; 8:45 am]

BILLING CODE 3410-EN-M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

---

**Agricultural Marketing Service**

**7 CFR Part 906**

**[Docket No. FV-88-131]**

## Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Establishment of Identifying Marks and Terms and Conditions of Use in Connection With Promotion and Advertising Activities

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department is adopting without modification as a final rule an interim final rule which authorized handlers of Texas oranges and grapefruit to use two additional identifying marks, "Texas Choice" and "Texas Fancy," utilized by the Texas Valley Citrus Committee (committee) in promotional and advertising projects. Use of identifying marks by handlers is voluntary, but if these marks are used the fruit must meet certain minimum quality requirements. This action is designed to assist in the development and expansion of markets for Texas oranges and grapefruit.

**EFFECTIVE DATE:** December 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090–6456; telephone: (202) 475–3918.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under the Marketing Agreement and Marketing Order No.

906, as amended [7 CFR Part 906], regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 78 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order and approximately 2,500 orange and grapefruit producers in Texas. The number of handlers has been changed to 78 from 22 and the number of producers to 2,500 from 3,000 in this final rule, from that in the interim final rule, reflecting analysis of pertinent statistical data. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

An interim final rule amending §§ 906.137 and 906.340 was issued October 12, 1988, and published in the Federal Register [53 FR 40397, October 17, 1988]. The interim final rule provided that interested persons could file comments through November 16, 1988. No comments were received.

Currently, § 906.137 allows handlers to use the identifying marks "Texasweet" and "Sweeter by Nature" under certain conditions in connection with committee promotional and advertising projects undertaken to increase shipments of Texas oranges and grapefruit. Paragraph (a)(1) of § 906.137 allows handlers to affix these marks severally or jointly to containers of grapefruit or to individual grapefruit comprising a lot only if the grapefruit grades at least U.S. No. 1. Paragraph (a)(2) of that section prescribes specifications for oranges. Handlers can only affix these marks on containers of oranges or to individual oranges if the oranges grade at least U.S. Combination, with not less than 60 percent, by count, of the oranges in each container grading at least U.S. No. 1 and the remainder, U.S. No. 2. Section 906.137 is established pursuant to § 906.37 of the order.

The interim final rule revised paragraph (a) of § 906.137 to establish a new identification mark "Texas Choice" for oranges and grapefruit and the mark "Texas Fancy" for grapefruit, to be used by handlers in connection with committee promotional and advertising projects. The use of these marks is limited to high quality, attractive looking fruit. This is intended to enhance the image of Texas oranges and grapefruit, and to augment the committee's promotional and advertising efforts to expand sales of Texas citrus. This action is based on a unanimous recommendation of the committee, which works with the Department in administering the marketing order.

The identifying mark "Texas Choice" established for oranges may only be affixed to containers of oranges or to individual oranges comprising a lot, if the oranges at least meet U.S. No. 2 requirements, and the oranges possess more yellow surface color than specified for U.S. No. 2 grade fruit. Also, the yellow or orange color must predominate over the green color on at least 75 percent (instead of the currently prescribed two-thirds for U.S. No. 2) of the fruit surface in the aggregate which is not discolored.

The use of "Texas Choice" for grapefruit is limited to U.S. No. 2 or better fruit, but less color discoloration is allowed than is allowed for U.S. No. 2. To use the identifying mark "Texas Choice", no more than 60 percent of the surface may be affected by discoloration. Under U.S. No. 2 specifications, not more than two-thirds of the surface of the grapefruit in the aggregate may be affected by discoloration. "Texas Fancy" is authorized for containers of grapefruit or individual grapefruit if the fruit meets U.S. No. 1 or better grade requirements, with less color discoloration than allowed for U.S. No. 1. Also, only 40 percent of the surface may be affected by discoloration instead of the current maximum of 50 percent for U.S. No. 1.

The terms relating to the U.S. grades have the same meaning as those specified in the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) [7 CFR 51.620 through 51.653] and in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona) [7 CFR 51.680 through 51.714].

The interim final rule also made a conforming change in paragraph (a)(3) of § 906.340 so that handlers do not have to affix container grade markings if the handlers properly utilize the identifying marks "Texas Choice" and "Texas Fancy" pursuant to § 906.137. The committee indicated that the use of grade markings like "U.S. No. 2", together with the identifying marks "Texas Choice" or "Texas Fancy", would cause confusion in the marketplace. In addition, an obsolete proviso currently in paragraph (a)(3) was deleted.

The industry is gradually recovering from the devastating freezes of the early 1980's. Total Texas orange production increased 61 percent from 38,000 tons (875,000 boxes) in 1986–87 to 61,000 tons (1,430,000 boxes) in 1987–88. Based on production trends since the 1983 freeze, it is expected that production for the 1988–89 season will show a relatively large increase over the previous season due to an increase in yields and bearing acreage. Shipments of fresh Texas oranges increased by 34 percent from 33,363 tons (785,000 boxes) in 1986–87 to 44,800 tons (1,054,000 boxes) in 1987–88. Total Texas grapefruit production increased by 97 percent from 77,000 tons (1,925,000 boxes) in 1986–87 to 152,000 tons (3,800,000 boxes) in 1987–88. The positive trend in production since the 1984–85 season is expected to continue into the 1988–89 season. Fresh shipments increased by 57 percent, from 62,000 tons in 1986–87 to 97,160 tons in 1987–88.

As supplies return to normal, strong efforts will be needed by the Texas citrus industry to regain its markets. The use of these new identifying marks in conjunction with the committee's efforts to promote and expand markets is designed to improve the image of Texas oranges and grapefruit in the marketplace and help regain markets.

Therefore, the Department's view is that the changes implemented by the interim final rule should be finalized and that the impact of this action will be beneficial to producers and handlers because it continues to provide handlers additional marketing flexibility by allowing them to conduct their marketing operations more closely in line with the committee's promotion and advertising activities. This should result in the more successful use of the committee's promotion funds and help handlers sell more fruit.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the final rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers of Texas oranges and grapefruit are aware of this action, which is based on a unanimous recommendation of the committee made at a public meeting, and they are prepared to continue operating in accordance with the requirements; (2) this use of these identifying marks is voluntary, not mandatory; (3) the shipment of the 1988–89 season Texas orange and grapefruit crops is currently underway; (4) handlers should be able to continue to utilize the additional marketing tools provided by the interim final rule; (5) the interim final rule provided a 30-day comment period, and no comments were received; and (6) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

### List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas grapefruit, oranges.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 906 is taken:

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

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

2. Accordingly, the interim final rule amending §§ 906.137 and 906.340, which was published in the **Federal Register** [53 FR 40398, October 17, 1988], is adopted as a final rule without change.

[Note: This section will appear in the Code of Federal Regulations]

Dated: December 14, 1988.

**Robert C. Kenney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–29112 Filed 12–16–88; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 1004**

**[DA-89-004]**

## Milk in the Middle Atlantic Marketing Area; Order Terminating Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of rules.

**SUMMARY:** This action terminates the advertising and promotion program of the Middle Atlantic milk marketing order. Termination of the program was requested by the individual members of the Pennmarva Dairymen's Federation, Inc., an organization of cooperative associations representing more than 90 percent of the dairy farmers who are producers under the order. Since a majority of the producers on the market request the removal of the advertising and promotion provisions from the order, the program should be terminated.

**EFFECTIVE DATE:** Effective February 1, 1989—Amendments to § 1004.61(b) (3) and (7) with respect to milk marketing on and after January 1, 1989. Effective March 31, 1989—Remove §§ 1004.105, 1004.106 and 1004.110 through 1004.122 and the centerheading preceding them.

**FOR FURTHER INFORMATION CONTACT:** Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Divison, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7311.

**SUPPLEMENTARY INFORMATION:**

### Determinations

It is hereby determined that termination of the advertising and promotion program of the Middle Atlantic order is favored by a majority of the producers engaged in the production of milk for sale in the marketing area in the representative period, determined to be September 1988, and that such producers produced more than 50 percent of the milk produced for sale in the Middle Atlantic marketing area during such representative period.

It is also determined that notice of proposed rulemaking and public procedure thereon is impractical and unnecessary. Section 608c(16)(B) of the Agricultural Marketing Agreement Act of 1937, as amended, requires that if a majority of the producers engaged in the production of milk for sale in the marketing area in a representative period determined by the Secretary favor termination of an order and such producers produced more than 50 percent of the milk produced for sale in the marketing area during the representative period, such order shall be terminated. Section 608c(5)(I) of the Act authorizing advertising and promotion provisions in Federal milk orders also provides that the order provisions of the advertising and promotion program may be terminated separately from the other terms of the order regulating the handling of milk whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in section 603c(16)(B).

### Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby ordered that the funding provisions of the advertising and promotion program of the Middle Atlantic order (in § 1004.61(b) (3) and (7), the sentence "Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e).") be terminated February 1, 1989, with respect to milk marketed on and after January 1, 1989. The remaining provisions of the advertising and promotion program (§§ 1004.105, 1004.106, and 1004.110 through 1004.122 and the centerheading preceding them) are hereby terminated effective March 31, 1989.

### List of Subjects in 7 CFR Part 1004

Milk marketing order, Milk, Dairy products.

Therefore, 7 CFR Part 1004 is amended as follows:

## PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

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

**§ 1004.61 [Amended]**

2. In § 1004.61, paragraphs (b) (3) and (7) are amended by removing the sentence which reads, "Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e)."

**§§ 1004.105, 1004.106 and 1004.110 through 1004.122 [Removed]**

3. Sections 1004.105, 1004.106 and 1004.110 through 1004.122 and the centerheading preceding them are removed.

Signed at Washington, DC, on: December 9, 1988.

Kenneth A. Gilles,

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 88–29110 Filed 12–16–88; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 1135**

**[DA-89-003]**

## Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends portions of the Southwestern Idaho-Eastern Oregon Federal milk order for the months of December 1988 through May 1989. The suspended provisions relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association that represents a majority of the producers supplying the market to prevent uneconomic movements of milk.

**EFFECTIVE DATE:** December 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued November 15, 1988; published November 21, 1988 (53 FR 46875).

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

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 21, 1988 (53 FR 46875) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. no comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of December 1988 through May 1989 the following provisions of the order to not tend to effectuate the declared policy of the Act:

In § 1135.13, paragraphs (f) (3), (4), (5) and (6).

### Statement of Consideration

This action removes for the months of December 1988 through May 1989 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The provisions suspended provide that a cooperative association may divert up to 80 percent of its total member milk received at all pool plants or diverted therefrom during any month. Similarly, the operator of a pool plant may divert up to 80 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during any month.

Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested the suspension. DCA indicated that operation of the 80-percent diversion limit would mean that over 2,000,000 pounds of milk must be unloaded and re-loaded each month at the Meridian, Idaho, pool supply plant to be transferred to nonpool manufacturing plants. According to the cooperative such unnecessary handling would be undertaken for the sole purpose of meeting the delivery requirements of the order. The cooperative stated that such unnecessary unloading and re-loading would take employees' time and require additional cleaning of lines and tanks.

Western Dairymen Cooperative, Inc., (WDCI) filed comments supporting the requested suspension. WDCI stated that the suspension would greatly reduce hauling costs, as well as reducing the cost of operating the supply plant.

For the first nine months of 1988, daily receipts of producer milk pooled under the Southwestern Idaho-Eastern Oregon order have increased nearly 28 percent over the same period of the previous year. At the same time, producer milk used in Class I has increased less than 6 percent.

Given the marked increase in the volume of producer milk pooled under the order, the requested suspension will allow the pooling of producers who stand ready to supply the fluid milk requirements of the marketing area to be handled without undue expense. There is no indication that the suspension would encourage association with the order of the milk of producers who are not bona fide suppliers of the bottling needs of the market.

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

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that without extensive unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

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

### List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the following provisions in § 1135.13 of the Southwestern Idaho-Eastern Oregon order are hereby suspended for the months of December 1988 through May 1989:

## PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for 7 CFR Part 1135 continues to read as follows:

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

§ 1135.13 [Suspended in Part]

2. In § 1135.13, paragraphs (f) (3), (4), (5) and (6) are suspended.

Signed at Washington, DC, on: December 14, 1988.

**Robert Melland,**

*Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.*

[FR Doc. 88-29111 Filed 12-16-88; 8:45 am]

BILLING CODE 3410-02-M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 741

### Nonmember and Public Unit Accounts

**AGENCY:** National Credit Union Administration.

**ACTION:** Interim Final Rule.

**SUMMARY:** This amendment adds a new provision to Part 701 limiting the amount of public unit and nonmember accounts that may be maintained by Federal credit unions to 20 percent of total shares. To the extent that federally-insured state-chartered credit unions are authorized to accept such accounts, a new amendment to Part 741 would provide the same limitation. Exceptions to the limitation may be obtained from the appropriate NCUA Regional Director when warranted.

The NCUA has determined that the accumulation of large amounts of public unit and nonmember funds, amounts far in excess of that needed to provide services to a credit union's members, results in an unsafe and unsound condition, poses substantial risks to the credit union system and the National Credit Union Share Insurance Fund, and has already cause significant losses to both the Fund and credit unions.

In addition, although no specific language is included in this document, the NCUA Board is considering a proposal to require any federally-insured credit union that accepts nonmember accounts to obtain an annual CPA audit and disclose the audit to its nonmember accountholders. The Board requests comments on this issue as well as the interim final amendment.

**DATES:** Effective December 19, 1988. Comments must be received on or before February 20, 1989.

**ADDRESS:** Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** D. Michael Riley, Director, Office of Examination and Insurance, or James J. Engel, Deputy General Counsel, at the above address or telephone: (202) 682-9640 (Mr. Riley) or 682-9630 (Mr. Engel).

**SUPPLEMENTARY INFORMATION:**

#### Scope

The limitation contained in this amendment applies to all Federal credit unions that accept accounts of public units and nonmembers, including nonmember credit unions. Generally, public unit accounts will be nonmember accounts. (For purposes of this discussion the term "account" means a share, share certificate, or share draft account.) It also applies to those Federal credit unions that, having been designated low-income credit unions by NCUA, maintain accounts for other nonmembers in addition to credit union and public unit accounts. To the extent any federally-insured state-chartered credit unit is authorized to accept public unit and nonmember accounts, the limitation is applicable to them as well.

Although corporate credit unions are subject to the 20% limitation, due to the fact that the majority of their accounts are from member credit unions, this amendment should have little effect on their operations.

Federally-insured credit unions are also authorized to act as depositories and fiscal agents of the U.S. Treasury and maintain special accounts on its behalf. *See* 12 U.S.C. 1767 and 1789a; 12 CFR 701.37-1 and 701.37-2. This amendment does not apply to or affect those accounts.

#### Background

All Federal credit unions are authorized to accept and maintain certain types of nonmember accounts. Section 101(5) of the Federal Credit Union Act ("the Act"), 12 U.S.C. 1752(5), defines "member account" to include, *inter alia,* the accounts of nonmember credit unions and the accounts of nonmember units of Federal, state, or local governments and the political subdivisions of such units. The term also includes—*but only* in the case of a credit union that serves predominantly low-income members *and* that has received a low-income designation from NCUA—accounts of any nonmember. The terms "predominantly" and "low-income members" are defined in Part 700 of NCUA's regulations. Thus, NCUA designated "low-income" Federal credit unions can accept accounts from any nonmember, whereas other Federal credit unions can only accept nonmember accounts from other credit unions or public units.

#### Discussion

It is important to realize that the authority to accept nonmember accounts does not include the authority to provide credit union services to nonmembers. The funds maintained in nonmember accounts are to be used only for the purpose of serving the credit union's membership. Nonmember accounts are not designed to merely expand a credit union's share base or to simply provide another investment medium for large accountholders. They are to be used to fund the basic purpose of credit unions: *promoting thrift and creating a source of credit for the members,* whether in the form of loanable funds or through increased earnings on investments that in turn are paid out to members in the form of dividends.

The NCUA's concern with nonmember accounts stems from the fact that such accounts tend to represent large sums of money, often in excess of the $100,000 insurance limit, invested by both public units and institutional investors. In most credit unions, it is only the public unit accounts that come into play. In low-income credit unions, however, both public units and institutional investors can establish accounts. These large accounts have traditionally been sensitive to interest rate fluctuations. In order to keep these accounts, some credit unions have had to pay higher than market dividend rates. Large influxes of funds into credit unions cause asset/liability management problems that are often not within management's expertise to control. In some cases, the total amount of such accounts is far in excess of the amount necessary to meet the legitimate needs of members and is used to fund high risk loans—often to insiders—and questionable investments. As in the problem case credit unions identified below, we have seen management aggressively pursuing these types of accounts.

These practices have a direct bottom line effect on all federally-insured credit unions. Money from the National Credit Union Share Insurance Fund ("Fund") that would otherwise be used to build Fund equity or pay dividends to credit unions on their 1% Fund deposit is used to cover losses sustained due to liquidations and mergers. The credit union system also suffers when large accountholders, primarily public units, sustain losses on accounts in excess of the insurance limit. The public units suffer the monetary loss; credit unions suffer from a loss in confidence. The investment managers of these public units don't make distinctions between credit unions. Their future investments will go to a different market.

Past experience—problem cases.

Franklin Community FCU—Losses to the Fund may exceed $40 million. We extimate that accountholders will lose between $2.5 and $3 million because of amounts in excess of the $100,000 insurance limit.

Zionic FCU—Cost the Fund $4.5 million to liquidate. Nonmember accounts totalled $18 million as compared to $250,000 in member accounts.

American Free Enterprise FCU—Merged with another credit union at a cost of $898,000.

New American FCU—Liquidated at a cost of $3.1 million.

United Methodist FCU—Liquidated at a cost, to date, of $2.3 million.

Financial Services CU—Cost to liquidate in excess of $1 million.

Center Place Savings CU—A purchase and asssumption cost the Fund $150,000.

While the total of the above losses may, at first glance, appear to be within acceptable limits when considering the overall size of the Fund and the insured credit union system, it is not. These are losses resulting solely from the utilization of a legitimate authority in an unsafe and unsound manner for purpose beyond the authority's design and intent. Credit unions expect their Fund to be used to cover legitimate insurance risks, e.g., losses caused by economic conditions. They should find losses such as those caused by mismanagement and misuse of authority, particularly when it places the system in a bad light, to be intolerable. The Fund has a statutory duty to protect members, but it also has responsibility to the credit unions it insures to take steps to reduce losses when there are means within its control. This amendment is such a step.

The purpose of the 20% limitation contained in this amendment is to control the amount of these nonmember funds that flow into credit unions. For the most part, there should be no real affect on the majority of credit unions. The amendment recognizes that a credit union may have the ability to manage funds in excess of that proposed and may have a legitimate need for exceeding the limit. Some military credit unions, for example, act as the local base depository and may exceed the 20% cap in performing that function. A credit union can seek an exemption from the appropriate NCUA Regional Director. It will have to provide an explanation of a need for the exemption and provide the Region with a copy of its loan and investment policies.

In selecting the 20% figure, NCUA looked to past practice. From May 1975, through April 1982, Federal credit unions were permitted to accept up to a total of 20% of assets in public unit accounts; no more than 5% from any one public unit. The NCUA Board proposed expanding the limits in November 1981. The issue generated only eight comments, all in favor of the proposal but none of them indicating that the limits then in effect were burdensome or otherwise causing any problems for credit unions. The Board decided to eliminate the limits altogether but cautioned, "* * * volatile share capital such as public unit funds should be balanced with short-term assets in which the credit union earns a positive return." 47 FR 17979 (April 27, 1981).

Although the 20% limit in this amendment is based on shares as opposed to total assets, the Agency does not believe that this represents a material difference. The previous asset-based limitation imposed no hardship on credit unions. Individual situations will be addressed by the Regional Directors upon application of the affected credit unions.

**Effective Date; Interim Rule; Comment Period**

Although this amendment is being issued as an interim final rule and is effective immediately, the NCUA Board encourages credit unions to submit comments. Comments may be submitted on or before February 20, 1989.

The Board finds it necessary and appropriate to act quickly in this matter in order to limit further losses and reduce additional risk. Such losses affect all federally-insured credit unions due to their interest in the Fund and the need to maintain confidence in the system. Any delay in the effective date of this rule is contrary to the best interests of federally-insured credit unions. It is expected, however, that this rule will have no restraining effect on the operations of the vast majority of credit unions. Those credit unions that currently exceed the 20% limit need only notify their NCUA Regional Director and then, within 60 days, either request an exemption or provide a statement that they are in compliance.

**State Regulators**

As previously mentioned, this interim amendment applies to those federally-insured state chartered credit unions that accept public unit and nonmember accounts. Therefore, during the 60 day comment period, the Board intends to work with the State credit union regulators to obtain their guidance regarding their participation in the administration of the rule. The NCUA Board specifically requests their comments and recommendations on this rule and on the proposal set forth below.

**Request for Comments**

The NCUA Board is also requesting comments on a related issue currently being considered. The issue is whether or not all federally-insured credit unions that accept nonmember accounts should be required to obtain annual CPA audits and disclose the audits to the nonmember accountholders. In choosing to accept such accounts, a credit union opens itself as an investment medium to a broader constituency and may be assuming an obligation beyond that owed to its members. Such a requirement not only benefits the nonmember accountholders but also, and more importantly, it will, in the long run, benefit the entire credit union system.

As previously mentioned, the largest nonmember accounts are rate sensitive. Frequently, those nonmembers do not analyze the institutions into which they place their funds as long as it is federally insured and is paying the highest available rate. Although this may be their own shortcoming, when they suffer losses they tend to look to other industries or markets for fund placement. This removes those credit unions that can adequately manage these funds, and may well need them to meet their own member's needs, from being considered as a viable investment option. Disintermediation occurs and the credit union system is the loser.

If credit unions wish to compete for these funds, they must be willing to accept additional responsibilities. The fact that CPA audits are required and available can only help to bolster confidence in what credit unions already know is a sound system.

While any new requirement is viewed with skepticism and as additional paperwork, the acceptance of nonmember accounts is not mandatory. Only those credit unions that opt to deal with such accounts would be affected. Many credit unions already utilize CPA audits. Designated low-income credit unions, those that might view the requirement as burdensome since they are more likely to rely on nonmember accounts than do other types of credit unions, will benefit the most. It is their reliance that subjects them to the closest scrutiny. Fiduciaries of public units and charitable or community development groups will have more confidence in providing funds to these credit unions when independent audits are available.

Comments on this proposal must be received on or before February 20, 1989.

**Regulatory Procedures**

*Regulatory Flexibility Act*

This interim final rule imposes a limitation on the amount of funds that a federally-insured credit union may accept in the form of public unit and nonmember accounts. However, the rule also provides a method for obtaining an exemption from the limitation upon a showing of need and ability to manage the funds in these accounts. For that reason, the NCUA Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required pursuant to 5 U.S.C. 605(b).

*Paperwork Reduction Act*

This interim final rule contains one paperwork requirement: any credit union requesting an exemption from the 20% limitation must submit an explanation of the need to raise the limit and must provide copies of its lending and investment policies. This requirement will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments on this rule should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20530, ATTN: Jerry Waxman.

*Executive Order 12612*

The NCUA Board has considered the fact that this interim final rule will affect federally-insured state-chartered credit unions (FISCU's) that accept public unit and nonmember accounts. It does not impose any additional costs or burdens on the states, nor does it affect the states' ability to discharge traditional state government functions. The benefits provided and protection afforded by the NCUSIF is the same for FISCU's as it is for Federal credit unions. It is protection afforded through a Federal system and the responsibility for administering that system lies with the NCUA Board. All federally-insured credit unions, whether Federal or state chartered, will be subject to the same requirement. To the extent that the practices of all credit unions are the same, i.e., acceptance of public unit and nonmember accounts, and have the same effect on their insuring fund, those practices must be subject to the same requirements. The acts and practices subject to this interim final rule have implications for the entire federally-insured credit union system and its insurer and are not unique to only one type of charter.

**List of Subjects**

*12 CFR Part 701*

Credit unions, Public units, Nonmember accounts.

*12 CFR Part 741*

Credit unions, Public units, Nonmember accounts.

By the National Credit Union Administration Board on December 14, 1989.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA amends its regulations as follows:

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789.

2. By adding a new § 701.32 to read as follows:

**§ 701.32 Payments on shares by public units and nonmembers.**

(a) A federal credit union may, to the extent permitted under section 107(6) of the Act, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in § 745.1) and nonmembers, including nonmember credit unions.

(b) Unless a greater amount has been approved by the Regional Director, the maximum amount of all such accounts shall not, at any given time, exceed 20% of the total shares of the Federal credit union. A Federal credit union seeking an exemption from the 20% limit must present, at a minimum, an explanation of the need to raise the limit and copies of its lending and investment policies.

(c) The limitations herein do not apply to accounts maintained in accordance with §§ 701.37–1 (Treasury Tax and Loan accounts) and 701.37–2 (Treasury Depository or Financial Agent accounts.)

## PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for Part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1781, and 1789.

**§§ 741.5 through 741.10 [Redesignated as § 741.6 through 741.11]**

4. By redesignating §§ 741.5 through 741.10 as §§ 741.6 through 741.11.

5. By adding a new § 741.5 to read as follows:

**§ 741.5 Maximum public unit and nonmember accounts.**

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act, must adhere to the requirements of § 701.32 regarding public unit and nonmember accounts, provided it has the authority to accept such accounts.

[FR Doc. 88–29079 Filed 12–16–88; 8:45 am]

BILLING CODE 7535-01-M

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 88-ASW-2; Amdt. 39-6058]

## Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206L and 206L-1 Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires the installation of more reliable fuel system flow switches and the relocation of the in-line fuel filters on Bell Model 206L and 206L–1 helicopters. The AD is needed to prevent failures in the fuel system which could result in an engine flameout and subsequent loss of the helicopter.

**DATE:** *Effective Date:* January 18, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 18, 1989.

*Compliance:* Required within the next 250 hours' time in service after the effective date of this AD, unless already accomplished.

**ADDRESSES:** The applicable Alert Service Bulletin, No. 206L–88–52, dated June 10, 1988, may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support, or may be examined at the Regional Rules Docket, Office of the Regional Counsel, FAA Southwest Region, 4400 Blue Mound Road, Forth Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW–170, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5177.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the installation of more reliable fuel system flow switches and the relocation of the in-line fuel filters on Bell Model 206L and 206L-1 helicopters was published on May 25, 1988, in the **Federal Register** (53 FR 18854).

The proposal was prompted by reports of certain part number fuel system flow switches installed on Bell Model 206L and 206L-1 helicopters malfunctioning due to small particulate matter which is typically found in the fuel system. The malfunctions, in some cases, were found to have caused failures in the fuel system which subsequently resulted in engine flameout. Consequently, the proposal called for the installation of more reliable fuel system flow switches and the relocation of the in-line fuel filters on the Bell Model 206L and 206L-1 helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation only involves 200 helicopters, and the approximate cost to each helicopter is $2,200 which would result in a total cost of $440,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Bell Helicopter Textron, Inc. (BHTI):** Applies to Model 206L helicopters, S/N's 45001 through 45153 and S/N's 46601 through 46617, and to Bell Model 206L-1 helicopters, S/N's 45154 through 45840, certificated in any category, with fuel system flow switches, P/N's 206-063-635-001, 206-064-601-001, -003, -101, or -103 installed. (Airworthiness Docket No. 88-ASW-2).

Compliance is required as indicated, unless already accomplished.

To prevent a possible fuel system failure due to the malfunction of the fuel system flow switches which could result in an engine flameout and subsequent loss of the helicopter accomplish the following:

(a) Within the next 250 hours' time in service after the effective date of this AD, remove and replace the fuel system flow switches, P/N's 206-063-635-001, 206-064,601-001, -003, -101, or -103, whichever is installed, with fuel system flow switch retrofit kit, P/N 206-703-004-101 and relocate the in-line fuel filters, P/N 206-063-693-001, in accordance with Bell Helicopter Textron, Inc., Alert Service Bulletin No. 206L-88-52, dated June 10, 1988.

(b) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

The procedure shall be done in accordance with Bell Helicopter Textron, Inc., Alert Service Bulletin No. 206L-88-52, dated June 10, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective January 18, 1989.

Issued in Fort Worth, Texas, on October 21, 1988.

**L.B. Andriesen,**

*Manager, Rotocraft Directorate, Aircraft Certification Service.*

[FR Doc. 88-29070 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 75**

**[Airspace Docket No. 88-ACE-10]**

## Establishment of Jet Route J-233, Iowa

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes new Jet Route J-233 located in the vicinity of Waterloo, IA. This route will bypass the arrival/departure routes in the Chicago terminal area. This action improves the traffic flow in the Chicago area, aids flight planning and reduces delays.

**EFFECTIVE DATE:** 0901 u.t.c., February 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### History

On October 31, 1988, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish Jet Route J-233 located in the vicinity of Waterloo, IA (53 FR 43898). The route establishes a routing to/from Minneapolis, MN, through the Chicago area that will provide a safe, orderly and expeditious flow of traffic. This action saves fuel, aids flight planning, and controller coordination. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

### The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes new Jet Route J-233 located in the vicinity of Waterloo, IA. The route establishes a routing to/from Minneapolis, MN, through the Chicago area that will provide a safe, orderly and expeditious flow of traffic. This action saves fuel, aids flight planning, and controller coordination.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is note a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 75**

Aviation safety, Jet routes.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

## PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 75.100 [Amended]**

2. Section 75.100 is amended as follows:

**J-233 [New]**

From Waterloo, IA; INT Waterloo 184° and St. Louis, MO, 318° radials; to St. Louis.

Issued in Washington, DC, on December 13, 1988.

**Harold W. Becker,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 88-29071 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 15

## Reports; General Provisions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") has amended § 15.03(a), 17 CFR 150.3(a) (1987), of its regulations which affects reports filed by contract markets, futures commission merchants ("FCMs"), foreign brokers and traders ("large-trader data"). A Commission review of the reporting levels set forth in § 15.03(a) of the regulations indicates that the reporting levels in futures traded on feeder cattle, long-term (6½–10 year) U.S. Treasury notes, cocoa and crude oil can be raised from their current levels and that the reporting levels in futures traded on copper, the New York Stock Exchange Composite Index and the Value Line Average Index should be lowered from the current levels.

**EFFECTIVE DATE:** January 18, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC, Telephone (202) 254-3310.

**SUPPLEMENTARY INFORMATION:** While the Commission has determined that this final rule does not affect the existing paperwork burden previously approved by OMB the public reporting burden for this collection of information is estimated to average .1492 hours per response, including 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 suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038-0009), Washington, DC 20503.

Reporting levels are set in commodities to ensure that the Commission receives adequate information to carry out its market surveillance programs that include detection and prevention of market congestion and price manipulation and enforcement of speculative limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, used of the markets by foreign participants and other matters of public and/or Congressional concern.

Generally, Parts 17 and 18 of the regulations require reports from members of contract markets, FCMs or foreign brokers and traders, respectively, when a trader holds a "reportable position," *i.e.*, any open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations. See, § 15.00(b), 17 CFR 15.00(b) (1988).

Members of contract markets, FCMs and foreign brokers who carry accounts in which there are "reportable positions" of traders are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a Form 103 showing positions and transactions in the commodity specified in the call.

The Commission reviews information concerning trading volume, open interest and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage is adequate for effective market surveillance. In cases where coverage appears more than required, the Commission may propose to raise reporting levels as part of its ongoing effort to reduce the reporting burden. In other cases, where the current reporting level appears too high for adequate coverage, the Commission may proposed to lower the reporting level.

On the basis of its most recent review of reporting levels, the Commission proposed to change the reporting levels in certain commodities as follows: [1] in Feeder Cattle, and increase from 25 contracts to 50 contracts; in Long-term Treasury Notes, an increased from 200 contracts to 300 contracts; in Cocoa, an increase from 25 to 50 contracts; in Crude Oil, an increase from 200 to 250 contracts; in copper, a decrease from 200 contracts to 100 contracts; in the Value Line Average Index and in the New York Stock Exchange Index, a decrease from 100 contracts to 50 contracts.

Two futures exchanges commented on the Commission's proposal. The Coffee, Sugar and Cocoa Exchange supported the Commission's efforts to reduce reporting burden on industry members and stated that the 50-contract level for futures traded on cocoa would be adequate for Market Surveillance. The New York Mercantile Exchange (NYMEX), however, opposed the Commission's proposal to raise reporting level in crude oil futures from 200 contracts to 250 contracts.

[1] See 53 FR 39103 (October 5, 1988).

NYMEX rules stipulate that reporting levels set by the exchange for its own reporting system are adjusted in tandem with changes in the Commission's reporting levels unless the President of the exchange determines otherwise.[2] The exchange stated that the current 200 contract level for crude oil futures was an appropriate level to support the exchange's surveillance activities, in particular for financial surveillance, and to monitor the delivery process. In view of this, NYMEX indicated that it would exercise its discretion to maintain the 200 contract level in crude oil futures for its reporting system if the Commission adopted as final the proposed amendments to Rule 15.03. NYMEX further opined that adoption of the proposed amendments by the Commission may require persons to complete duel sets of records for reporting.

Commodity exchanges which maintain futures large trader systems similar to the Commission's sometimes exercise independent discretion in setting reporting levels that appear tailored to their individual market surveillance programs. Certain exchanges also use their large-trader reports for other purposes, such as financial surveillance. At present, one exchange has set reporting levels in certain markets lower than the Commission's levels, while another exchange has set some reporting levels higher than the Commission's. Exchanges' individual determinations to collect more, or in some cases fewer, reports than the Commission appears reasonable in light of differences in the characteristics of some contract markets and different purposes underlying the data collection efforts. Moreover, FCMs and firms which are members of these exchanges have not expressed any compelling reasons to require that exchange and Commission reporting levels be set at the same levels in all cases. Given these current practices, the Commission believes that when it has identified circumstances such as those that exist in crude oil futures, where the Commission can accomplish its purposes with fewer reports from the industry, it is obliged to raise the reporting level. In view of this, the Commission has determined to adopt its rule amendments as proposed.

### The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[3] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders, futures commission merchants and other similar entities such as foreign brokers and foreign traders. The Commission has defined "small entities" as used by the Commission in evaluating the impact of its rule in accordance with the RFA. 47 FR 18618 through 18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and futures commission merchants are not considered to be small entities for purposes of the RFA. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. Nonetheless, the Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operations. No comments were received concerning this matter.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission previously submitted rules associated with this information collection requirement to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on September 14, 1988 and assigned OMB control number 3038–0009 to the collection. The Commission has determined that this final rule does not affect the burden approved by OMB at that time. The OMB approved burden is as follows:

| | |
|---|---|
| Average burden hours per response | .1492 |
| Number of Respondents | 4,133 |
| Frequency of response | ([1]) |

[1] Daily and weekly.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038–0009), Washington, DC 20503, (202) 395–7340.

### List of Subjects in 17 CFR Part 15

Brokers and large traders, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for Part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 6, 6a (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C 552, and 552(b), unless otherwise noted.

4. Section 15.03 is revised to read as follows:

**§ 15.03 Quantities fixed for reporting.**

The quantities for the purpose of reports filed with Parts 17 and 18 of this chapter are as follows:

| Commodity | Quantity |
|---|---|
| Wheat (bushels) | 500,000 |
| Corn (bushels) | 500,000 |
| Soybeans (bushels) | 500,000 |
| Oats (bushels) | 300,000 |
| Cotton (bales) | 5,000 |
| Soybean oil (contracts) | 150 |
| Soybean meal (contracts) | 150 |
| Live cattle (contracts) | 100 |
| Feeder cattle (contracts) | 50 |
| Hogs (contracts) | 50 |
| Sugar No. 11 (contracts) | 200 |
| Sugar No. 14 (contracts) | 100 |
| Cocoa (contracts) | 50 |
| Copper (contracts) | 100 |
| Gold (contracts) | 200 |
| Silver bullion (contracts) | 150 |
| Platinum (contracts) | 50 |
| No. 2 Heating oil (contracts) | 150 |
| Crude oil (contracts) | 250 |
| Unleaded gasoline (contracts) | 100 |
| Long-term U.S. Treasury bonds (contracts) | 500 |
| GNMA (contracts) | 100 |
| Three-month (13-week) U.S. Treasury bills (contracts) | 100 |
| Long-term U.S. Treasury notes (contracts) | 300 |
| Three-month Eurodollar time deposit rates (contracts) | 400 |
| Foreign currencies (contracts) | 200 |
| Standard and Poor's 500 stock price index (contracts) | 300 |
| New York Stock Exchange composite index (contracts) | 50 |
| Amex Major Market Index—maxi (contracts) | 50 |
| Municipal bonds (contracts) | 50 |
| Value Line Average Index (contracts) | 50 |
| All other commodities (contracts) | 25 |

Issued in Washington, DC on December 13, 1988, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–29091 Filed 12–16–88; 8:45 am]

BILLING CODE 6351-01-M

[2] NYMEX Rule 9.34(B).

[3] 5 U.S.C. 801 et. seq.

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 2**

**[Docket No. RM87-34-000; Order No. 500-F]**

## Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanism

Issued December 13, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Statement of Policy; Order Extending Date for Filing Final Tariff Sheets under Alternative Passthrough Mechanism.

**SUMMARY:** In Order No. 500 (52 FR 30,334 (Aug. 14, 1987)), the Federal Energy Regulatory Commission (Commission) set a deadline of December 31, 1988, for the filing of tariff sheets to recover take-or-pay buyout and buydown costs under the alternative passthrough mechanism described in that order. In this order, the Commission is extending the deadline to March 31, 1989. The Commission believes the short extension is necessary and reasonable to permit pipelines and producers to bring their settlement negotiations to an orderly conclusion.

**DATES:** This order is effective December 9, 1988. (5 U.S.C. 553(d)(2) (1982)). An extension of time for filing tariff sheets is granted to and including March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Phone: (202) 357-8274.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

### Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanism

In Order No. 500, 52 FR 30,334 (Aug. 14, 1987), the Commission set a deadline of December 31, 1988, for the filing of final tariff sheets including all take-or-pay buyout and buydown costs eligible for recovery under the alternative passthrough mechanism described therein. Several pipelines in various rate case dockets, as well as the Interstate Natural Gas Association of America (INGAA), have requested extensions of the December 31, 1988 deadline.

The pipelines assert that an extension is necessary to provide them a reasonable opportunity to complete negotiations with natural gas producers and to prevent forced settlements detrimental to themselves and consumers.

The Natural Gas Supply Association, an organization of producers, supports an extension of the deadline date. Amoco Production Company, United Distribution Companies, and, jointly, the Process Gas Consumers Group, the American Iron and Steel Institute, and the Association of Businesses Advocating Tariff Equity have filed opposing the extension on the ground that an extension would delay the prompt resolution of the take-or-pay problem to the detriment of the entire industry.

While the Commission continues to believe that the take-or-pay deterrent to competitive natural gas markets must be eliminated as quickly as possible, the Commission has concluded that, on balance, a short extension of the deadline date is necessary and reasonable to permit pipelines and producers to bring to an orderly conclusion their settlement negotiations. The Commission does not believe that such an extension will prejudice the interests of any segment of the industry. Accordingly, the Commission will extend the deadline date to March 31, 1989.

In addition, for contracts that are in litigation on March 31, 1989, the Commission will permit a pipeline to file by that date to include in its tariffs language permitting the pipeline to pursue the litigation to its natural end (of judgment and final appeal or settlement) and then to file to recover eligible costs resulting from these contracts under the equitable sharing mechanism.[1] The eligible costs do not include punitive damages or penalties.

### List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 792-825r (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); National Environmental Policy Act of 1969, 16 U.S.C. 4321-4370a (1982).

**§ 2.104 [Amended]**

2. In § 2.104, paragraph (c)(1), the words "December 31, 1988" are removed and the words "March 31, 1989" are inserted in their place.

[FR Doc. 88-29035 Filed 12-16-88; 8:45 am]

**BILLING CODE 6717-01-M**

[1] In other words, a pipeline must file by March 31, 1989 tariff language to be eligible to use this provision. *See* El Paso Natural Gas Co., 43 FERC ¶ 61,576 (1988) and Trunkline Gas Co., 44 FERC ¶ 61,407 (1988).

**18 CFR Part 284**

[Docket Nos. RM88-14-001 and RM88-15-000; Order No. 509]

## Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf

Issued December 9, 1988.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334 (1982). In addition, the Commission also revises its interpretative rule on section 5 of the OCSLA (Interpretation of section 5 of the Outer Continental Shelf Lands Act, Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC Reports ¶ 61,006 (Apr. 1, 1988). The final rule provides every jurisdictional interstate natural gas pipeline that transports gas on or across the Outer Continental Shelf (OCS) with a blanket certificate authorizing and requiring nondiscriminatory transportation of national gas on behalf of others, and requires every OCS pipeline to file tariffs to implement that blanket certificate authorization. The service performed under the blanket certificate includes both firm and interruptible transportation service and OCS pipelines must, pursuant to the blanket certificate and section 5 of the OCSLA, provide open and nondiscriminatory access for both owner and nonowner shippers. The final rule requires all OCS pipelines to file new rates, but maintains their current rates in effect until the new rates (and, at the same time, the blanket certificates) become effective.

**EFFECTIVE DATE:** This rule will become effective February 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1] In addition, the Commission also revises its interpretative rule on section 5 of the OCSLA.[2] The final rule provides every jurisdictional interstate natural gas pipeline that transports gas on or across the Outer Continental Shelf (OCS) with a blanket certificate authorizing and requiring nondiscriminatory transportation of natural gas on behalf of others, and requires every OCS pipeline to file tariffs to implement that blanket certificate authorization. The service performed under the blanket certificate includes both firm and interruptible transportation service and OCS pipelines must, pursuant to the blanket certificate and section 5 of the OCSLA, provide open and nondiscriminatory access for both owner and nonowner shippers. The final rule requires all OCS pipelines to file new rates, but maintains their current rates in effect until new rates (and, at the same time, the blanket certificates) become effective.

### II. Background

On April 1, 1988, the Commission issued two orders concerning the OCSLA. The first order (Order No. 491) contained the Commission's interpretation of section 5 of the OCSLA.[3] The second order was a notice of proposed rulemaking (NOPR) that proposed regulations to implement section 5 of the OCSLA.[4]

Section 5(e) of the OCSLA authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf (OCS) for pipelines to transport oil, natural gas, sulphur, or other minerals prescribed by the Secretary. Section 5(e) also gives the Commission certain responsibilities on the OCS by providing that every right-of-way on the OCS be granted:

> upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas, produced from submerged lands or Outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.[5]

In addition, section 5(f)(1) of the OCSLA provides that every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the OCS of oil or natural gas must require that the pipeline be operated in accordance with certain competitive principles. Section 5(f)(1) provides that:

> Except as provided in paragraph (2) every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the Outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:
>
> (A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.
>
> (B) Upon the specific request of one or more owner or non-owner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of

---

[1] 43 U.S.C. 1334 (1982).

[2] Interpretation of Section 5 of the Outer Continental Shelf Lands Act (OCSLA), Order No. 491, 53 FR 14922 (Apr. 26, 1988), 43 FERC Reports ¶ 61,006 (Apr. 1, 1988).

[3] *Id.*

[4] Regulations under Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, 53 FR 14923 (Apr. 26, 1988), IV FERC Stats. & Regs. ¶ 32,459 (Apr. 1, 1988).

[5] 43 U.S.C. 1334(e) (1982).

authority is approved or issued after the date of enactment of this subparagraph. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

Section 5(f)(1) was added to the OCSLA in 1978 as part of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA).[6] The Conference Report on the OCSLAA states that:

The agreed-to subsection (f) provides for open and non-discriminatory access to apply to all pipelines and is a reaffirmation and strengthening of subsection 5(e) which provides for the transport or purchase of all OCS oil and gas "without discrimination".[7]

Section 5(f)(1)(A) provides that an OCS pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers. This requirement is in addition to the express condition in section 5(e) of the OCSLA that OCS pipelines must transport or purchase OCS gas "without discrimination."

Section 5(f)(1)(B) of the OCSLA provides, under very narrow circumstances, for the expansion of pipeline capacity on the OCS upon the specific request of one or more owner or nonowner shippers. Before the Commission can order an expansion of throughput capacity the requesting shipper must agree to be responsible for bearing a proportionate share of the costs and risks related to the expansion and the Commission must, after a full hearing with due notice to the interested parties, find that the expansion is within technological limits and economic feasibility. Moreover, the last sentence of section 5(f)(1)(B) exempts the vast majority of OCS pipelines from the requirement by providing that the subparagraph does not apply to any grant of authority in the Gulf of Mexico or the Santa Barbara Channel.

Section 5(f)(2) of the OCSLA gives the Commission the authority to exempt a pipeline or class of pipelines from any of the requirements in section 5(f)(1) if the pipeline feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated or otherwise processed. Section 5(f)(3) requires the Secretary of Energy and the Commission to consult with, and give due consideration to the views of, the Attorney General on specific conditions to be included in permit, license, easement, right-of-way, or grant of authority in order to ensure that the pipelines operate in accordance with the competitive principles in section 5(f)(1). In preparing such views, the Attorney General is also required to consult with the Federal Trade Commission. Finally, section 5(f)(4) of the OCSLA provides that nothing in subsection (f) shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines operating on the OCS.

In Order No. 491 the Commission indicated that the statutory requirements of the OCSLA were similar to the statutory requirements of the Natural Gas Act (NGA) and concluded that the condition of nondiscriminatory access (open access) placed on the transportation program established in Order Nos. 436 and 500 [8] satisfied, in substantial measure, the nondiscriminatory access requirements in sections 5(e) and 5(f)(1)(A) of the OCSLA.[9] However, in Order No. 491 the Commission viewed the enactment of the specific open access requirement in section 5(f)(1)(A) to require something more than the open access conditions established in Order Nos. 436 and 500 under the Natural Gas Act (NGA).[10] Consequently, the Commission proposed to implement sections 5(e) and 5(f)(1)(A) of the OCSLA by requiring OCS pipelines to offer transportation to all who seek it on a pro rata basis.

On the same day the Commission issued Order No. 491, it also issued the NOPR that proposed regulations to implement its interpretation of sections 5(e) and 5(f) of the OCSLA.[11] The NOPR proposed to require that all jurisdictional interstate natural gas pipelines transporting gas on or across the OCS obtain a blanket certificate under Part 284 of the Commission's regulations authorizing the transportation of natural gas on behalf of others on an open and nondiscriminatory basis. The transportation service was to include firm and interruptible transportation on behalf of owner and nonowner shippers of OCS gas. The Commission also proposed to grant an OCS pipeline a temporary blanket certificate pending the pipeline's application for a permanent blanket certificate. In addition, the Commission proposed regulations that would allow OCS pipelines to establish interim rates for transportation services pending the issuance of the permanent blanket certificate.

The Commission received 13 requests for rehearing of Order No. 491.[12] On June 1, 1988, the Commission issued an order which granted the rehearing requests solely for the purpose of further consideration.[13] The Commission indicated that it would address the issues raised in the rehearing requests on Order No. 491 when it reviewed the comments received on the NOPR.

The Commission received comments from 41 commenters on the NOPR. Commenters included several pipeline companies, producers, distributors, trade associations and industrial end users, as well as the U.S. Departments of Justice, Energy and the Interior.[14] In addition, Indicated Producers filed supplemental comments on Order No. 491 when they filed their comments on the NOPR. Two commenters filed reply comments in response to Indicated Producers' supplemental comments.[15] The Commission has considered all of these comments in issuing the final rule.

---

[6] Pub. L. No. 95–372, 92 Stat. 632 (Sept. 18, 1978).

[7] H.R. Conf. Rep. No. 1474, 95th Cong., 2d Sess. 37, *reprinted in* 1978 U.S. Code Cong. & Admin. News 1674, 1686

[8] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 (1985), *modified*, Order No. 436–A, 50 FR 52217 (Dec. 23, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,675 (1985), *modified further*, Order No. 436–B, 51 FR 6398 (Feb. 24, 1986), III FERC Stats. & Regs. ¶ 30,688, *reh'g denied*, Order No. 436–C, 34 FERC ¶ 61,404, *reh'g denied*, Order No. 436–D, 34 FERC ¶ 61,405, *reconsideration denied*, Order No. 436–E, 34 FERC ¶ 61,403 (1986), *vacated and remanded sub nom.* Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987). On August 7, 1987, the Commission issued Order No. 500, which promulgated interim regulations in response to the Court's remand. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500, 52 FR 30334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶ 30,761, *extension granted*, Order No. 500–A, 52 FR 39507 (Oct. 22, 1987), III FERC Stats. & Regs. ¶ 30,770, *modified*, Order No. 500–B, 52 FR 39630 (Oct. 23, 1987), III FERC Stats. & Regs. ¶ 30,772, *modified further*, Order No. 500–C, 52 FR 48986 (Dec. 29, 1987), III FERC Stats. & Regs. ¶ 30,786, and Order No. 500–D, 53 FR 8439 (Mar. 15, 1988), III FERC Stats. & Regs. ¶ 30,800 (Mar. 8, 1988) *reh'g denied*, Order No. 500–E, 43 FERC ¶ 61,234 (May 6, 1988).

[9] Order No. 491 slip op. at 14, 43 FERC at 61,031 (Apr. 1, 1988).

[10] 15 U.S.C. 717–717w (1982).

[11] *See supra* note 4.

[12] ANR Pipeline Co.; Black Marlin Pipeline Co.; Enron Interstate Pipelines; High Island Offshore System and Interstate Natural Gas Association of America; Natural Gas Pipeline Company of America; Northern Illinois Gas Co.; Producer Associations; Stingray Pipeline Co. and Trunkline Gas Co.; Tarpon Transmission Co.; Tennessee Gas Pipeline Co.; Texas Eastern Transmission Corp.; Transcontinental Gas Pipe Line Corp.; and United Gas Pipe Line Co. and Sea Robin Pipeline Co.

[13] 53 FR 20835 (June 7, 1988).

[14] See Appendix A for a list of the commenters.

[15] *See* Joint Response of High Island Offshore System and Interstate Natural Gas Association, and Response of Texas Eastern Transmission Corporation to Indicated Producers supplemental comments.

## III. Discussion

### A. Public Reporting Burden

Except for the specific information collection burdens discussed below, this rule does not change existing Commission regulations governing interstate pipelines that provide transportation services under Part 284, Subpart G of the Commission's regulations. The rule does, however, extend the requirements of Part 284, Subpart G to a new set of interstate pipelines (*i.e.*, OCS pipelines) in the sense that every OCS pipeline is issued a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations. In addition, every OCS pipeline must have a transportation rate schedule on file that conforms to § 284.7 and to § 284.8(d) for firm service and to § 284.9(d) for interruptible service. These requirements are necessary for the Commission to implement sections (5)(e) and (5)(f) of the OCSLA.

The information collection burden of filing appropriate rates schedules is estimated to be 240 hours per response. The frequency of response is one response per year for the first year, and less frequently thereafter. The number of respondents is estimated to be 43.[16] All respondents will be interstate natural gas pipelines that hold a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Mike Miller (202) 357–9205); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission).

### B. Pro Rata Allocation of Capacity

Virtually all of the comments received by the Commission concern the Commission's proposal to implement section 5 of the OCSLA by requiring pro rata allocation of capacity on the OCS. In general, pro rata allocation of capacity is favored by producers and is opposed by pipelines and distributors. Most of the commenters who oppose pro rata allocation of capacity have two central arguments. First, they assert that mandatory pro rata allocation of capacity would make all OCS pipelines common carriers and that the legislative history of the OCSLA conclusively demonstrates that Congress did not intend that OCS pipelines be common carriers. Second, commenters specified several technical and operational problems in imposing a mandatory pro rata allocation scheme on all OCS pipelines.

The Commission believes that it has the legal authority under the OCSLA to require pro rata allocation of capacity. However, the commenters have identified many significant technical and operational problems associated with generically requiring pro rata allocation for all OCS pipelines. A generic pro rata allocation scheme could result in pro rata reductions of committed capacity that would disrupt a variety of existing transportation arrangements. Many of these arrangements are of long standing; various producers, pipelines, and ultimate customers rely on them. The Commission, as a matter of policy, is reluctant to disrupt ongoing transportation arrangements. Rather, our purpose is to remove impediments to access.

Accordingly, based on the record before us, the Commission has concluded that it can and should implement the nondiscriminatory access mandate in section 5 of the OCSLA without generically imposing, by rule, a pro rata allocation scheme on all OCS pipelines. We believe that it may well be possible to remedy the problems of access on the OCS through less sweeping regulatory actions, as discussed below. If, however, access problems on the OCS continue to exist as OCS pipelines implement the requirements of this rule, the Commission will not hesitate to consider pro rata allocation of capacity on a case-specific basis, taking into account the specific factual context in which such problems arise.

### C. OSCLA Open Access Requirements

In this final rule, the Commission implements sections 5(e) and 5(f) of the OSCLA by issuing to every OCS pipeline an NGA section 7 blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations.[17] Moreover, the Commission is requiring, pursuant to section 5 of the NGA, every OCS pipeline to file tariffs implementing their blanket certificates. The OCS pipelines to whom blanket certificates are issued by this order, and who are required to file implementing tariffs, are listed in Appendix B.[18]

Under the NGA and Order Nos. 436 and 500, onshore pipelines are not required to become "open access" transporters of gas. If, however, an onshore pipeline performs self-implementing transportation service under section 311 of the Natural Gas Policy Act (NGPA) or blanket certificate service under section 7 of the NGA, it must offer such service on a nondiscriminatory basis. Under Order Nos. 436 and 500, the option of offering self-implementing transportation service under NGPA section 311 or blanket certificate service under NGA section 7 is voluntary with the pipeline.

In contrast, section 5(f)(1)(A) of the OCSLA contains a specific statutory mandate that all pipelines that transport gas on or across the OCS must provide open and nondiscriminatory access to both owner and nonowner shippers. This requirement is in addition to the requirement in section 5(e) of the OCSLA that OCS pipelines must transport or purchase OCS gas "without discrimination." [19] While the

---

[16] Some off-shore systems are not certificated as single entities but are jointly owned by several pipelines, each with their own certificates. Consequently, some pipeline companies that own discrete portions of several offshore systems have been counted more than once in computing the total number of likely respondents. *See infra* note 26 and accompanying text; *see also* Appendix B and OCS pipel ne systems numbered 22–28.

[17] Subpart G of Part 284 was adopted in Order Nos. 436 and 500. Order Nos. 436 and 500 established a blanket certificate and abandonment program which permits interstate pipelines to obtain a one-time certificate of public convenience and necessity that authorizes certain transportation of natural gas in interstate commerce and permission and approval to abandon such service, which would otherwise require separate certificate or abandonment authority in each instance. Under the authorizations issued herein, OCS pipelines are authorized to transport natural gas and abandon certain service on a self-implementing basis without further authorization by the Commission. *See* 18 CFR 284.223(a) (1988). For other service, which may potentially require more scrutiny and opportunity for public participation, this authorization is subject to the notice procedure specified in § 157.205 of the Commission's regulations. *See* 18 CFR 284.223(b). Persons having a potential interest in such transactions are on notice to monitor the **Federal Register**. Once a deadline established under § 157.205(d) passes without a protest being filed, the proposed activity is authorized under this order without further action by the Commission.

[18] The Commission recognizes that a number of the OCS pipelines listed in Appendix B already hold Part 284, Subpart G blanket certificates. Such certificates are nevertheless issued to those pipelines by this final rule because, *inter alia*, of the additional certificate and abandonment authority (with respect to reallocation of firm capacity) conferred in the blanket certificates issued to OCS pipelines.

[19] Aside from arguing pro rata allocation, the commenters do not focus on what the open access requirement in section 5(f)(1)(A) of the OCSLA added to the preexisting requirement in section 5(e) of the OCSLA to transport gas without discrimination. Several commenters alleged various infirmities with respect to the Commission's

Continued

Commission has decided against generically imposing pro rata allocation of capacity on OCS pipelines, it cannot implement section 5 of the OCSLA as if the adoption of section 5(f)(1)(A) in 1978 added nothing to the general nondiscrimination provision in section 5(e).

As stated in both Order No. 491 and the NOPR, the Commission believes the condition of nondiscriminatory access placed on the transportation program established in Order No. 436 and 500 satisfies, in large measure, the open access requirement in section 5(f)(1)(A) of the OCSLA. However, unlike onshore pipelines, OCS pipelines cannot voluntarily choose to not participate in the open access program; Congress, through the OCSLA, has made open access a prerequisite to doing business on the OCS. Consequently, the Commission implements the open access mandate of the OCSLA by finding, pursuant to section 7 of the NGA, that the public convenience and necessity require issuing every OCS pipeline a blanket transportation certificate under Subpart G of Part 284 of its regulations, and by issuing such certificates.

Accordingly, § 157.20(a) of the Commission's regulations will not be applied to OCS pipelines. Section 157.20(a) contains conditions regarding the acceptance of certificates by interstate pipelines. An opportunity for OCS pipelines to decline to accept blanket transportation certificates would be inconsistent with the open access provision in section 5(f)(1)(A) of the OCSLA and would defeat the purpose of the final rule. The certificates are effective on the date upon which their implementing rates become effective (discussed below), and can be abandoned only after explicit Commission approval is sought and is granted under section 7(b) of the NGA.

As a general rule, the Commission's policy is not to issue new individual transportation certificates if the transportation in question can be performed under the blanket certificate. In most cases, the authority conferred by the blanket certificate makes certificates for individual transactions unnecessary.[20] The Commission also emphasizes that this rule does not modify or revoke any existing certificates of public convenience and necessity that were issued prior to the effective date of this rule; such certificates remain in effect, and service under them cannot be abandoned except pursuant to the terms of those certificates, pursuant to applicable Commission regulations, or pursuant to specific applications for abandonement.[21]

In addition to issuing every OCS pipeline a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations, the Commission is requiring all OCS pipelines to take the following steps in order to implement an OCS open access program. First, all OCS pipelines are required to conduct an open season for firm transportation capacity with respect to (1) presently uncommitted firm capacity, if any, and (2) firm capacity that existing shippers may be willing to relinquish (to the extent that another shipper is willing to assume the obligations of firm service). Second, OCS pipelines who do not currently hold blanket certificates must also conduct an open season for interruptible capacity. Finally, thereafter, all OCS pipelines must provide a mechanism through which existing shippers can voluntarily relinquish all or a part of their firm transportation capacity rights if present or potential shippers want to use that capacity. Each of these requirements is discussed more fully below.

1. Open Season For Firm Transportation

An OCS pipeline must conduct an open season to facilitate the voluntary reallocation of firm transportation capacity. The only firm capacity that is subject to the open season is uncommitted firm capacity and voluntarily relinquished firm capacity. Prior to conducting its open season, the pipeline must poll its existing firm shippers to determine whether any existing shipper wants to voluntarily relinquish all or part of its firm capacity entitlements. If any existing firm shipper voluntarily requests that part or all of its firm capacity be reallocated, or if an OCS pipeline has any uncommitted firm capacity, then the OCS pipeline must invite existing and potential shippers to submit requests for the available firm capacity.

The open season for firm capacity must be commenced no later than March 1, 1989. The pipeline must provide reasonable notice of the open season and the open season must be for a time period of no less than 10 days and no more than 30 days. If the requests for firm capacity exceed the firm capacity available for reallocation, the OCS pipeline will allocate to each requesting shipper a pro rata share of the available capacity. If the available firm capacity exceeds the request and if part of the available firm capacity is capacity that one or more existing shippers wants to relinquish, each shipper wanting to relinquish firm capacity will be allowed to satisfy the requests on a pro rata basis. In other words, the only portion of an existing firm shipper's capacity that will be released is that portion for which another shipper is prepared to take on the obligations of the firm service agreement.

The Commission recognizes that some OCS pipelines may be configured in such a manner that problems may arise if firm capacity is reallocated exactly according to the particular requests of the shippers concerned without regard to the particular points of entry and exit of their respective quantities of gas. Therefore, in making all of the above determinations, the OCS pipeline shall take into account the capacity available at particular receipt and delivery points specified by the requesting and relinquishing shippers. There is no requirement under this rule for the OCS pipeline to disrupt ongoing transportation for existing shippers using firm capacity.

Finally, in the event that an OCS pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that capacity to shippers requesting capacity before it reallocates the capacity of shippers who seek to relinquish capacity.

2. Open Season for Interruptible Transportation

Concurrent with the open season for firm capacity (and if it does not currently hold a blanket certificate), an OCS pipeline must conduct an open season for interruptible capacity. Prior to conducting its open season, the pipeline may poll its existing interruptible shippers to determine their existing interruptible transportation requirements. The pipeline must provide for reasonable notice of the open season, and the open season must be for a time period of no less than 10 days

implementation of the language in section 5(e) of the OCSLA. In addition, several commenters made arguments with respect to section 5(f)(1)(B) of the OCSLA, which deals with expansion of pipeline capacity (*e.g.*, that Congress could not have intended pro rata allocation of existing capacity because it created a section for expansion of offshore capacity, or that the exemption in section 5(f)(1)(B) for pipelines in the Gulf of Mexico and the Santa Barbara Channel demonstrates that Congress did not intend to make OCS pipelines common carriers).

[20] *See* Tennessee Gas Transmission Co., 43 FERC ¶ 61,042 (1988), *reh'g denied*, 44 FERC ¶ 61,094 (1988).

[21] The one exception is the provision for abandonment of firm service pursuant to the reallocation of firm service discussed below, when existing shippers voluntarily agree to relinquish capacity to new shippers who desire it. *See* discussion, *infra*, in sections III.C.1 and III.C.3 of this preamble.

and no more than 30 days. We omit the requirement of an interruptible open season for OCS pipelines that currently hold blanket certificates because such pipelines are already providing nondiscriminatory interruptible transportation.

After the open season has been conducted, the OCS pipeline may allocate interruptible capacity using any nondiscriminatory means that is acceptable for on-shore blanket certificate transportation. In making that allocation, the OCS pipeline must give priority to interruptible transportation authorized under existing [22] individual certificates (provided that the transportation rates paid by the shippers receiving such service are no lower than the rates paid or to be paid by other interruptible shippers),[23] so as to avoid disrupting on-going certificated service.[24] The mechanism for allocating and scheduling capacity would be specified in the pipeline's tariffs, in the same manner as all other Part 284 blanket transportation certificates.[25]

3. Voluntary Reallocation of Firm Transportation Capacity

At any time after an OCS pipeline has conducted the open season for firm transportation capacity, if a potential firm shipper requests firm transportation service from the OCS pipeline, or if an existing firm shipper requests additional firm capacity, the pipeline must, within 10 days, provide the shipper with a list of all persons who hold firm capacity rights on the pipeline and the capacity they hold. The requesting shipper may then contact the existing shippers to ascertain whether any of them want to relinquish any firm capacity. If a requesting shipper finds an existing shipper who is willing to relinquish some portion of its firm capacity, the OCS pipeline must implement that reallocation.[26]

The blanket certificates issued to OCS pipelines under this rule provide both the authority under section 7(b) of the NGA to abandon service to the existing firm shipper and the certificate authority under section 7(c) of the NGA to provide service for the new firm shipper.[27] Thus, an OCS blanket transportation certificate differs from a typical Part 284 blanket certificate in that it contains additional abandonment authority. Typically, Part 284 blanket certificates provide abandonment authority only for those services that are performed under the blanket certificate itself. This means that pipelines must still seek individual abandonment authority for services authorized prior to the issuance of the blanket certificate. However, with respect to the voluntary reallocation of firm capacity, the Commission is providing OCS pipelines with the authority to abandon services not performed under the blanket certificate. Therefore, if an existing shipper wishes to relinquish a portion of its firm capacity rights as part of a reallocation of capacity to another shipper, the blanket certificate provides the OCS pipeline with the authority to abandon that service even though the service was performed under an individual certificate.

After an OCS pipeline has conducted the open seasons discussed above and has established a mechanism for the ongoing, voluntary reallocation of firm capacity, it may allocate interruptible transportation capacity pursuant to the same Part 284 requirements as apply on-shore. With respect to firm capacity, an OCS pipeline is required to reallocate firm capacity to shippers who desire it, but only to the extent that existing shippers desire to relinquish such capacity. Shippers who wish to relinquish firm capacity have a right to do so, to the extent that other shippers or potential shippers want to obtain that capacity. As noted above, the blanket certificates provide full certificate and abandonment authority to implement such reallocations of firm service without need for further case-specific Commission approval.

While the final rule does not mandate pro rata allocation, OCS pipelines may adopt a pro rata allocation scheme in their tariffs for either firm or interruptible transportation, or both, if they so desire. Any such pro rata allocation scheme must be consistent with the standards and considerations set forth in the OCSLA (*e.g.*, with respect to conservation). Absent such a tariff provision, the final rule adopted herein does not require any firm shipper to relinquish any firm capacity.

In this regard, the OCS pipeline must specify in its transportation rate schedule what method it will use to reallocate firm capacity in the future, after the open season for firm capacity has been concluded. Any nondiscriminatory method may be used. For example, the OCS pipeline may wish to maintain a list of shippers requesting firm capacity, and reallocate firm capacity on a first-come, first-served basis as it becomes available. Or, an OCS pipeline may prefer to reallocate such capacity on a pro rata basis, if and when two or more shippers seek to obtain such capacity at the time that it becomes available.

OCS pipelines are defined as all interstate natural gas pipelines that hold NGA section 7(c) certificates that authorize the construction and operation of facilities on the OCS. Defining an OCS pipeline in this manner assures that this rule will apply to all NGA jurisdictional pipelines that operate on the OCS. If the existing certificate that triggers the application of this rule is held by more than one pipeline company, each pipeline company is provided with a Part 284 blanket transportation certificate.

In this regard, we note that some OCS pipelines are structured in such a manner that several interstate pipelines own undivided shares of the OCS pipeline. In those instances, the blanket certificate is issued to the OCS pipeline, and the open season and reallocation schemes would be conducted by the OCS pipeline itself, as a single entity with a single open season conducted in its own name. On the other hand, some OCS pipelines are structured in such a

[22] Certificates that are in effect on the date that the final rule becomes effective.

[23] Existing interruptible shippers who are paying a lower rate must be afforded an opportunity to continue receiving service by agreeing to pay a matching rate.

[24] The Commission perceives no justification for disparities in the rates paid for interruptible transportation service (even if, as discussed below, there may be a historical justification for such disparity in rates for firm service). Hence, the Commission perceives no justification for according priority of interruptible capacity allocation for ongoing interruptible service unless that service is being performed at rates no lower than the rates paid by other interruptible shippers.

[25] *See, e.g., Colorado Interstate Gas Company*, 42 FERC ¶ 61,380 at 62,124–62,125 (1988); *Northern Border Pipeline Company*, 39 FERC ¶ 61,104 at 61,346, 61,349–61,350 (1987); *Natural Gas Pipeline Company of America*, 39 FERC ¶ 61,153, at 61,595 (1987); and Order No. 436–A, FERC Stats. & Regs. [Regulations Preambles 1982–1985] at 31,685–686. As with the allocation of interruptible capacity, an OCS pipeline may use any curtailment scheme that is acceptable for Part 284 blanket transportation service.

[26] The OCS pipeline itself should be indifferent to the substitution because its total contract demand will remain unchanged. Again, if the OCS pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that uncommitted capacity to the shipper or shippers who desire such capacity before it reallocates the firm capacity of existing shippers. Presumably, such assignment of the OCS pipeline's own uncommitted firm capacity would occur as soon as a new shipper inquired about obtaining new capacity, and before it had occasion to contact existing shippers. Indeed, the blanket certificate itself requires the OCS pipeline to provide transportation on a nondiscriminatory basis to all who request it to the full extent of its available capacity (including firm capacity).

[27] In this regard, we note that both the abandonment of the old firm service obligation and the certificate authority for the new firm service obligation are "permanent", *i.e.*, for an unlimited term. The firm capacity could, of course, be reallocated again in a future transaction pursuant to the regulations. But the relinquishing shipper retains no claim on the capacity, nor does he have any continuing obligations to the pipeline.

manner that the interstate pipeline owners of the OCS pipeline own, control and utilize defined finite portions of the OCS pipeline's capacity. In those instances, separate blanket certificates are issued to each individual interstate pipeline owner of the OCS pipeline, and each of those interstate pipeline owners of the OCS pipeline may wish to conduct separate open seasons (and subsequent reallocations) with respect to that portion of the OCS pipeline's capacity that each owner controls and utilizes.[28]

*D. Rate Requirements*

Under this final rule, all OCS pipelines are subject to Subpart G of Part 284 of the Commission's regulations. This means OCS pipelines are also subject to Subpart A of Part 284.[29] Under Subpart A, a pipeline must have rates that comply with §§ 284.7, 284.8(d) and 284.9(d) of the Commission's regulations.

If an OCS pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service, new § 284.305(b) requires the pipeline to file conforming rate schedules by March 1, 1989, to be effective no later than April 1, 1989. The Commission recognizes, however, that it may wish to suspend those rates for more than a nominal period. If the Commission does not permit those rates to become effective on or before April 1, 1989, the OCS pipeline is required to use its existing rates until the Commission permits the § 284.305(b) rates to become effective. In that event, the blanket certificate would become effective on the date on which the § 284.305(b) rates would be have gone into effect if they had not been suspended.

Every OCS pipeline filing rates under § 284.305(b) is required to file rates supported by an annual cost and revenue study. An OCS pipeline does not have to file a cost and revenue study if it has a pending rate proceeding under § 154.63, 154.38 or 154.303(e) of the Commission's regulations.[30] If the OCS pipeline has a pending rate proceeding, the pipeline may use the base period data from the pending proceeding, so long as the base period ends within 12 months from the date the rates were filed under § 284.305(b).

In its comments, ANR Pipeline Company (ANR) argues that to require transportation rates that conform to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service is illegal because the requirement sets aside existing, approved transportation rates without a hearing or the necessary findings under the NGA. We disagree. As discussed above, in order to implement the open and nondiscriminatory access requirement of the OCSLA the Commission is requiring that all OCS pipelines have a Part 284, Subpart G blanket certificate. All Part 284, Subpart G blanket certificates must be implemented by rates that conform to the general conditions and the rate designs authorized in Subpart A of Part 284.

In addition, as discussed in the NOPR, the rate provisions of this rule are established in accordance with section 5 of the NGA. Section 5 of the NGA requires that if, after a hearing, the Commission finds a rate unjust and unreasonable it shall determine the just and reasonable rate. For the reasons discussed above, the Commission finds that if an OCS pipeline's current rates do not conform to the requirements of §§ 284.7, 284.8(d) and 284.9(d) of the Commission's regulations as well as the regulations in new § 284.305, such rates are unjust and unreasonable. This finding is based, first, on our determination herein that Part 284, Subpart G blanket certificates are required to satisfy the equal access requirements of the OCSLA; and, secondly, on our determinations in Order Nos. 436 and 500 that rates inconsistent with §§ 284.7, 284.8(d) and 284.9(d) are unjust and unreasonable in the context of transportation performed pursuant to such blanket certificates. As discussed in the NOPR, the notice and comment procedures of this rulemaking satisfy the hearing requirement in section 5 of the NGA.[31]

The Commission also finds that it is unduly discriminatory to subject existing shippers on OCS pipelines to a different transportation rate than the rate charged to new shippers on the same pipeline. Such a circumstance could arise in the context of the voluntary reallocation requirements of this rule if the firm transportation rights relinquished by an existing shipper were authorized under a presently existing individual certificate. The new shipper would be subject to Part 284 rates while existing shippers would be subject to Part 154 rates.[32] In order to remedy this inconsistency in rate treatment for comparable service, the rule adopted herein requires that once an OCS pipeline has filed rates that conform to Part 284 of the Commission's regulations and the Commission has made those rates effective, these rates will apply to *all* transportation service performed by the OCS pipeline.[33] The Commission is establishing this requirement under section 5 of the NGA.

The OCSLA obligates OCS pipelines to transport natural gas on an open and nondiscriminatory basis. The blanket certificates issued by this rule are the means the Commission has chosen to implement that requirement and authorize OCS pipelines to provide new open-access transportation service for OCS shippers. Thus, any transportation rate charged by an OCS pipeline that does not reflect this new service will result in different rate treatment for similarly situated customers. Such discriminatory rates are unjust and unreasonable under section 5 of the NGA. This finding with respect to the existing rates of an OCS pipeline becomes effective at the time an OCS pipeline provides the new transportation service required by this rule.

However, the Commission has recognized that individually tailored certificate authority and rate treatment may well be appropriate as a basis for determining the term for depreciation of facilities or for allocating their costs to particular beneficiaries of transportation through such facilities.[34] The Commission recognizes that such factors may pertain to OCS pipelines as well, particularly with respect to historical aspects of the financing, construction and initial operation of certain OCS pipelines. The Commission's purpose is to synchronize the transportation rates of an OCS pipeline under circumstances in which there is no valid basis for charging different rates to similarly situated customers. An OCS pipeline will, however, be permitted to use its current transportation rates for transportation services performed pursuant to existing individually issued certificates if the OCS pipeline demonstrates that such rates are

---

[28] *See* Appendix B, which lists in parenthesis the individual interstate pipeline owners of certain OCS pipelines.

[29] *See* 18 CFR 284.221(c), which provides that any blanket certificate issued under Subpart G is subject to the conditions of Subpart A of Part 284.

[30] *See* new 18 CFR 284.305(c) (1988).

[31] *See* Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985), *cert. denied*, 1065 S. Ct. 1969 (1986).

[32] This example assumes that the existing shippers do not relinquish all their firm transportation rights.

[33] *See* new 18 CFR 284.305(e) (1988).

[34] *See, e.g.*, Tennessee Gas Pipeline Company, 40 FERC ¶ 61,088 (1987); Tennessee Gas Pipeline Company, 41 FERC ¶ 61,375 (1987); *cf.* Transcontinental Gas Pipe Line Corporation, 40 FERC ¶ 61,185 (1987); Transcontinental Gas Pipe Line Corporation, 41 FERC ¶ 61,031 (1987), *reh'g denied*, 42 FERC ¶ 61,279 (1988).

necessary and the maintenance of different rates would not be unduly discriminatory. Under these circumstances, the current rates are just and reasonable.

OCS pipelines who want to continue to charge their current rates for existing individually certificated service should refile those rates, and the justification for them, at the same time that they file their Part 284 rates to implement the service to be provided under the blanket certificates issued herein. The current rates for service under existing individual certificates will remain in effect until they are superseded. This procedure will enable OCS pipelines to continue to provide transportation under their existing cetificates, pursuant to their current rates, without interruption, from the date of issuance of this rule until such time as the current rates have been superseded. In the event that an OCS pipeline refiles its current rates, the current rates will remain in effect (for transportation authorized under existing individual certificates) until such time as the Commission has determined the justness and reasonableness of those rates on a case specific basis.

In this regard, the final rule deletes the provision in the NOPR for interim rates. Interim rates are unnecessary because: (1) The blanket certificates issued herein do not become effective until the date on which Part 284 rates to implement those certificates have become effective (or would have become effective if they had not been suspended); and (2) the current rates for existing individually certificated service remain in effect without interruption until the date on which they are superseded by the effectiveness of new rates for that service.

*E. Comment Analysis*

The overwhelming percentage of the comments filed in this rulemaking center on the effects of generically requiring pro rata allocation of capacity for all OCS pipelines. By not requiring pro rata allocation of capacity, the Commission has responded to, or rendered moot, the vast majority of the comments it received. While OCS pipelines are free to establish a pro rata scheme in their tariffs, subject to the Commission's right to determine proportionate amounts under section 5(e) of the OCSLA, they are not required to do so. OCS pipelines may allocate capacity using any means that the Commission has determined to be acceptable on-shore.

As noted above, the Commission may well require pro rata allocation of capacity on a case-specific basis if and when such regulatory action is necessary and appropriate. However, in light of our determination not to mandate pro rata allocation in the final rule adopted herein, we will not address in this order the extensive comments on the Commission's legal authority to do so. Such analysis would serve no useful purpose in the context of the final rule adopted herein, and would be premature in the context of any future actions the Commission may take. Resolution of these legal issues is best deferred to a future proceeding, involving a specific proposal (if one occurs) to impose a pro rata allocation scheme on a specific pipeline, when the legal issues are framed in the context of a factual record on the nature of the problems identified and the remedies proposed to cure those problems.

1. On-shore/Off-shore Allocation Schemes

Commenters raised several questions concerning how an off-shore pro rata allocation scheme would operate if on-shore capacity was allocated using a first-come, first-served method. As noted above, the Commission is not requiring pro rata allocation to capacity; this eliminates the issues raised regarding the interface between on-shore and off-shore allocation methods.[35]

To the extent that this rule requires open seasons for firm and interruptible transportation on the OCS, these open seasons may result in an allocation of capacity that is different from the allocation of capacity of an on-shore pipeline that connects with the OCS pipeline. However, this is no different from the situation of shippers who must arrange to move gas through several on-shore pipelines; there is no guarantee that sufficient capacity will be available on each pipeline. Off-shore shippers, like on-shore shippers, are responsible for making their own arrangements to obtain transportation capacity from the wellhead to the burner tip. Furthermore, the Commission has not approved tariffs that tie the availability of upstream pipeline capacity to transportation on a downstream system.

2. OCSLA Jurisdiction

Commenters also questioned the extent of the Commission's jurisdiction under the OCSLA. As the Commission stated in the NOPR, the OCS does not include lands covered by nontidal waters within the boundaries of each of the respective states and lands covered by tidal waters up to three miles off the coast line of each state.[36] The Commission also noted in its interpretation of the OCSLA, that it was only implementing the OCSLA with respect to jurisdictional pipelines under the NGA. The Commission believes that allowing OCS pipelines to allocate capacity using any method that is acceptable on-shore will reduce the chance for jurisdictional problems to arise that can frustrate the Commission's implementation of the OCSLA. If problems do arise with respect to either the movement of OCS gas (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted.

3. Definition of an OCS Pipeline

In the NOPR, the Commission proposed to define an OCS pipeline to include facilities from any point on the OCS to the first delivery point on-shore where alternate transportation is, or could be, available.[37]

Several commenters are concerned about the proposed definition.[38] For example, Tennessee Gas Pipeline Company (Tennessee) contends that the proposed definition could result in an unwarranted extension of pro rata transportation well into the on-shore facilities of a pipeline that owns OCS facilities. National Fuel Gas Supply Corporation (National) and Sun Exploration and Production Company (Sun) read the proposed definition as potentially embracing all the on-shore facilities of a pipeline that owns both on-shore and off-shore facilities. This is not the Commission's intent and it has amended the definition of an OCS pipeline in this final rule.

[35] In this regard, with respect to a single pipeline that extends from the OCS to numerous points on-shore, we note that the final rule adopted herein does not apply to the on-shore portion of the pipeline (*i.e.*, the portion of an off-shore pipeline that extends beyond the on-shore interconnection, as defined in § 284.302(b)).

[36] Section 2(a) of the OCSLA defines the Outer Continental Shelf to mean "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1301(a) (1982); *See also* 43 U.S.C. 1301(a) (1982), which defines the term "lands beneath navigable waters."

[37] *See* proposed § 284.302(b), IV FERC Stats. & Regs. ¶ 32,459 at 32,210.

[38] *See, e.g.*, comments of Tennessee Gas Pipeline Company on the NOPR at 16–17; joint comments of Stingray Pipeline Company and Trunkline Gas Company at 9–10; comments of ANR at 5; comments of Texas Gas Transmission Corporation on the NOPR at 6, 21–22; comments of National Fuel Gas Supply Corportion at 6; comments of Sun Exploration and Production Company at 4–5; comments of Indicated Producers at 34–36; and comments of Pelto Oil Company at 10–11.

New § 284.302(b) defines "OCS pipeline" in such a manner as to include within its scope all of the OCS pipeline's facilities that are used or necessary to transport OCS gas from the OCS to the first point of interconnection on the shoreward side of the OCS. The first point of interconnection may be with a gas conditioning or processing plant, another pipeline,[39] a distributor, or an end user. In other words, "OCS pipeline" is defined to include all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA, and that are used or necessary to transport OCS gas off of the OCS to the first point of interconnection with some other entity that receives the gas from the OCS pipeline.[40]

This definition is necessary to ensure that the gas will be transported on an open access basis, not only across the OCS *per se*, but from the OCS to at least some point off the OCS where the gas is capable of exiting from the OCS pipeline. Any narrower definition would nullify the rule (and the OCSLA open access provisions it is designed to implement), because the fundamental purpose of both the OCSLA and this rule is to ensure open access transportation of OCS gas to someplace other than another part of the OCS.

It follows from this definition that the requirements of the rule adopted herein do *not* apply to the facilities of jurisdictional interstate pipelines beyond the first point of interconnection after the pipeline leaves the OCS. Thus, a single interstate pipeline may well have some jurisdictional facilities that fall within the scope of this rule and other jurisdictional facilities that do not.

We recognize that the first point of interconnection may have insufficient capacity to receive all of the gas transported by the OCS pipeline on the OCS. Indeed, the capacity at interconnection points may vary on a seasonal basis. This, however, is the same problem that can occur at the interconnection points of two on-shore pipelines. We do not construe the OCSLA as mandating open access transportation to any and all destinations on-shore (however distant they may be from the OCS); rather, we construe the OCSLA to require only open access transportation to at least some point on-shore.

[39] Such other pipeline may be either jurisdictional or non-jurisdictional (including, *e.g.*, a Hinshaw pipeline or an intrastate pipeline).

[40] Appendix B identifies the shoreward terminus of all currently certificated OCS pipelines.

### 4. Consultation with and Consideration of the Views of the Attorney General

To ensure that OCS pipelines comply with the competitive principles in sections 5(f)(1) and 5(f)(3) of the OCSLA requires the Commission (and the Secretary of Energy) to consult with the Attorney General on the specific conditions to be included in any permit, license, easement, right-of-way or grant of authority on the OCS.[41] Section 5(f)(3) also requires that the Attorney General consult with the Federal Trade Commission (FTC) in preparing his views.

The Commission requested the views of both the Secretary of Energy and the Attorney General on its interpretative rule (Order No. 491) and the NOPR. The Commission also sent copies of Order No. 491 and the NOPR to the Secretary of the Interior and the FTC.[42] The Secretary of Energy and the Attorney General responded to the request and the Commission has considered their comments in issuing this final rule. The approach taken by the Commission in this final rule is fully consistent with the views of both the Secretary of Energy and the Attorney General. The Secretary of Energy states that:

> While the OCSLA certainly permits the adoption of a reasonable "pro-rata" allocation system, we see no requirement in the statute for any particular form of capacity allocation. In fact, the conference report indicates a reasonable allocation system should consider a variety of things, including conservation, prevention of waste, and competition. There is no mandatory system prescribed, however, to achieve these objectives. (Citations omitted.) As a policy matter, allocation by the market place is preferable to a regulatorily imposed rationing scheme.

The Attorney General's comments are to the same effect:

> The Department supports the FERC's proposal to require OCS pipelines to obtain blanket certificates with an open access requirement.
>
> The open access requirement will ensure nondiscriminatory access as required by the OCSLA, 43 U.S.C. 1334(f)(1)(A), and the blanket certificate, which will enable the pipelines to provide transportation without having to obtain the FERC's approval for individual transactions, will give offshore gas producers flexible access to transportation to onshore purchasers.
>
> * * * * *
>
> While the FERC's authority to determine what "proportionate amounts" of gas must be transported is broad enough to allow the FERC to require proration, it does not necessarily mean that proration is required by section 5(e) in all cases. To the contrary, the debate on section 5(f), which was added in 1978, indicates that both proration and first-come, first-served were considered to be possible means of allocation under the statute. *See, e.g.*, 123 Cong. Rec. S. 23,257 (July 15, 1977) (statements of Sen. McClure and Sen. Johnston). The Department thus believes the FERC's authority is broad enough to require proration of capacity on OCS pipelines, but such an allocation system is not compelled by the statute.

[41] 43 U.S.C. 1334(f)(3) (1982).

[42] The Commission received responses to its request from the Secretary of Energy, the Attorney General and the Secretary of the Interior. The Commission also received a copy of the letter the FTC sent to the Attorney General. Copies of all these letters are attached as Appendix C of this rule. Appendix C is not being published in the **Federal Register**, but is contained in copies of the order available through the Commission Public Reference Room (Room 1000).

The Attorney General maintains that the Commission may consider various capacity allocation methods, including the first-come, first-served method used by many on-shore pipelines. The Attorney General believes that the Commission should take into account both the costs of shutting in OCS gas production and the costs of altering contracts between OCS pipelines and current shippers. In addition, the Attorney General states that the Commission may find that proration is necessary to ensure the transportation of casinghead gas that is produced along with oil. The Attorney General concludes that "the Department believes that in most cases blanket certification and the first-come, first-served allocation method currently used by other open access pipelines (or other efficient methods of allocation that may be developed for open access pipelines in the future) will adequately fulfill the requirements of the OCSLA."

The final rule adopted by the Commission herein is fully consistent with the suggestions of the Attorney General and the Secretary of Energy. The Commission is providing every OCS pipeline with a Part 284 blanket certificate and is allowing any allocation scheme that is acceptable for open access transportation on-shore to be used on the OCS. In addition, the Commission agrees with the Secretary of Energy and the Attorney General that it has the authority to require prorationing under the OCSLA, and the Commission is reserving its right to do so on a case-specific basis.

### 5. Requests for Rehearing of the Interpretative Rule

In this order, upon consideration of the requests for rehearing of Order No. 491, the Commission has revised its interpretation of section 5 of the OCSLA.

The Commission noted in Order No. 491 that section 5(e) of the OCSLA requires OCS pipelines to transport gas "without discrimination" and that section 5(f)(1)(A) requires OCS pipelines to "provide open and nondiscriminatory access" to both owner and nonowner shippers of OCS gas. The Commission stated that the conditions of nondiscriminatory access in the transportation program established in Order Nos. 436 and 500 satisfy the nondiscriminatory access requirements in both sections 5(e) and 5(f)(1)(A) of the OCSLA. As discussed above, the Commission reaffirms that determination here.

In Order No. 491, however, the Commission went beyond this interpretation by also interpreting the statutory language in section 5(e) of the OCSLA to require generic pro rata allocation of capacity by all OCS pipelines. Several commenters objected to Order No. 491 on the basis that section 5(e) of the OCSLA does not mandate any particular proportionate allocation of capacity, such as a pro rata allocation. In addition, several commenters argued that the Commission failed to consider the hearing requirement in section 5(e) and that any determination of "proportionate amounts" must take into account the statutory goals of conservation and the prevention of waste.[43]

In proposing a general requirement of pro rata allocation, the Commission also stated in both Order No. 491 and the NOPR that the first-come, first-served method of allocating capacity was not sufficient to implement the OCSLA's open access requirement. Several commenters questioned how a pro rata scheme on the OCS would be reconciled with first-come, first-served allocation onshore.

These concerns have all been rendered moot. The final rule does not require pro rata allocation of capacity and allows OCS pipelines to allocate capacity using any nondiscriminatory means that is acceptable for on-shore blanket certificate transportation, including first-come, first-served allocation. Also, by deferring determinations of pro rata allocation to case-specific inquiries (if and when such inquiries are warranted), the Commission will be able to take into account the statutory goals of conservation and the prevention of waste within the context of a particular set of facts analyzed in a hearing under section 5(e) of the OCSLA. As noted above, discussion of the Commission's legal authority to impose pro rata allocation of capacity on a case-specific basis would be premature in the context of the rule adopted herein, because the rule itself does not impose such allocation. Nevertheless, to the extent that the Commission's discussion and determinations herein are inconsistent with the interpretation of the OCSLA set forth in Order No. 491, the interpretative rule issued therein is revised accordingly, to be consistent with this order.

6. Response to Specific Comments

In issuing this final rule, the Commission has adopted a number of commenters' suggestions. For example, Tennessee Gas Pipeline Company (Tennessee) maintains that any capacity constraints on the OCS, if they exist, do not necessitate pro rata transportation. Tennessee than states that

> assuming *arguendo* that the Commission has the power to require transportation it should consider mandatory open-access transportation by OCS pipelines on a first-come, first-serve basis or other procedure that *preserves the rights of existing customers.*
>
> Once OCS pipelines are open for first-come, first-serve transportation, there should be ample space available to transport gas from all connectable sources without any special pro rata transportation requirements for the OCS.[44]

The Commission's final rule is consistent with Tennessee's suggestions.

Peoples Gas Light Coke Company and North Shore Gas Company (Peoples Gas) support the Commission's efforts to ensure open and nondiscriminatory access to all persons requesting offshore transportation.[45] However, Peoples Gas opposes a generic requirement of pro rata allocation because it would jeopardize the reliability of existing firm pipeline sales service. Under a generic pro rata scheme, pipelines could lose portions of their OCS supply at any time, which could lead to curtailments of existing pipeline customers. Peoples Gas also maintains that despite having to curtail its customers, a purchasing pipeline could become subject to increased take-or-pay liability for failing to take OCS supplies that could be reduced under a general pro rata scheme. In addition, Peoples Gas alleges that as a result of such a scheme local distribution companies (LDCs) would not be able to rely on OCS gas to serve their peak day needs.

Peoples Gas recommends that the Commission not require pro rata allocation for firm capacity, but adopt instead provisions under which existing customers are periodically polled for the purpose of identifying unused capacity. Peoples Gas suggests that customers with unutilized capacity could be offered contract demand reductions and could voluntarily give up capacity to accommodate new firm service. The Commission agrees with Peoples Gas and has adopted a similar approach.

Enron suggests that nondiscriminatory self-implementing transportation on OCS facilities can be achieved through a more narrowly drawn alternative than one proposed in the NOPR. Enron submits that any final rule,

> could instead require OCS pipelines to apply for a blanket transportation certificate under proposed Subpart K itself which would be applicable only to the OCS pipeline's OCS facilities as defined in Subpart K. A pipeline holding a Subpart K blanket transportation certificate could be made subject to the relevant provisions of Subpart A with regard to open, nondiscriminatory firm and interruptible transportation and unbundled rates on the pipeline's OCS facilities only.[46]

While Enron goes on to suggest that the contract demand conversion provisions of Part 284, Subpart A are not relevant to OCS transportation and that a pipeline's acceptance of the blanket certificate should remain a voluntary choice, the Commission's final rule adopts a central element of Enron's suggestion, *i.e.*, that the Commission could require every OCS pipeline to obtain a blanket transportation certificate that applies only to the pipeline's OCS facilities.

Enron also suggests that currently contracted-for and utilized capacity on OCS facilities be left undisturbed and that the Commission could provide for a pro rata allocation scheme for: (1) Currently available, unutilized capacity on existing OCS facilities; (2) released capacity which becomes available in the future on existing OCS facilities; (3) new capacity on existing OCS facilities that becomes available through system expansion; and (4) newly constructed

[43] Section 5(e) of the OCSLA provides, pertinent part: Rights-of-way through submerged lands of the Outer Continental Shelf, whether or not such lands are included in a lease maintained or issues pursuant to this Act, may be granted by the Secretary * * * upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from the submerged lands or Outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

[44] *See* Comments of Tennessee on the NOPR at 9–10.

[45] *See* comments of Peoples Gas on the NOPR at 30.

[46] *See* comments of Enron on the NOPR at 28.

OCS facilities. The final rule is consistent with Enron's suggestions in that contracted-for capacity on the OCS is left undisturbed. In addition, the required open seasons and the voluntary reallocation provisions of the rule provide for allocation of currently available capacity and of capacity released in the future.

The Indicated Producers recommend that the Commission generically grant blanket certificates for the transportation of OCS gas without requiring pipeline-specific certificate applications and approvals.[47] The Indicated Producers urge the Commission to

> grant OCS pipelines whatever blanket transportation authority they need to fulfill their obligations under the OCSLA on a generic basis in this rulemaking. The Commissioin may issue blanket transportation authority under section 7 of the Natural Gas Act in a generic rulemaking proceeding.[48]

The Joint Producers make a similar recommendation that the Commission grant uniform blanket certificates for the transportation of OCS gas without case-by-case application requirements.[49] The Commission has adopted these suggestions in the final rule.

Indiana Public Service Company (Northern Indiana) indicates that its primary concern with Order No. 491 and the NOPR is the generic pro rata allocation requirement for firm and interruptible transportation service. With regard to the requirement that OCS pipelines provide open access transportation under blanket certificates, Northern Indiana states,

> Northern Indiana does not oppose this remedy, and, in fact, considers this an appropriate and measured response to the problem, so long as it is imposed in the same manner on the OCS as onshore. The availability of open access transportation would ensure that uncontracted for capacity would be available on a firm basis and that unused firm capacity could be used for interruptible transportation on a first-come, first-served basis.[50]

Northern Indiana concludes,

> Because of the problems attendant with the Commission's pro rata allocation plan, it should limit its rulemaking to requiring OCS pipelines to obtain blanket certificates. That act alone should be sufficient to prevent the shutting-in of OCS supplies. To the extent that solution ultimately proves inadequate, the Commission can then seek to impose further remedies which are within its legal authority under section 5 of the Outer Continental Shelf Lands Act.[51]

The Commission has adopted Northern Indiana's suggested approach in this final rule.

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia) suggest that a mechanism be employed whereby existing capacity holders are given an opportunity to reduce their capacity entitlements (together with pregranted abandonment authority) before capacity is prorationed.[52] The Commission has adopted Columbia's suggestions. The final rule does not mandate pro rata allocation; provides for the voluntary reallocation of firm capacity by existing shippers if there is another shipper that desires that capacity; and provides that the blanket certificates issued by the rule include the abandonment authority necessary to implement reallocation of firm capacity among shippers.

Texas Eastern Transmission Corporation (Texas Eastern) suggests that the Commission clarify that the blanket certificates only apply to service performed through OCS facilities.[53] The Commission agrees with Texas Eastern and has done so.[54]

a. *Certificate issues.* Texas Eastern contends that the requirement in the NOPR that an OCS pipeline must have a blanket transportation certificate under Part 284, Subpart G is beyond the scope of the Commission's authority under the NGA. ANR Pipeline Company (ANR) argues that the Commission is illegally, retroactively conditioning existing certificates that authorize the construction and operation of facilities on the OCS to require a blanket transportation certificate. For the reasons discussed above, the Commission disagrees. The Commission has determined that, in order to implement the nondiscriminatory access requirement of section 5 of the OCSLA, OCS pipelines must hold blanket transportation certificates. The Commission is implementing that OCSLA mandate through issuance of blanket certificates under the NGA.

Numerous commenters objected to the Commission's determination to prohibit OCS pipelines from applying for and receiving individual certificates under section 7(c) of the NGA.[55] Tennessee contends that the constantly changing terms and conditions of service under a blanket certificate provide no substitute for the security of long-term service under section 7(c) of the NGA. Enron Interstate Pipelines (Enron) assert that prohibiting an OCS pipeline from applying for an individual section 7(c) certificate for any transaction that could be performed under the Subpart G blanket certificate will result in interstate pipelines' being unwilling to invest in the construction or expansion of OCS facilities. Enron states that pipelines historically have entered into long-term firm transportation arrangements under section 7(c) to guarantee an opportunity to earn a return on the pipeline's investment in OCS facilities. Enron maintains that blanket transportation service without regard to the term of service requested means that an OCS pipeline cannot be assured of the revenues to justify its investment in OCS facilities.

As adopted, the final rule does not prohibit applications for individual certificates, especially for the construction and operation of new facilities.[56] We also note that the final rule does not require a generic pro rata allocation scheme. Thus, the final rule does not preclude or inhibit present or future long term contracts for firm capacity. With respect to applications for certificate authority to construct and operate new pipeline facilities on the OCS, applicants may propose whatever financial and operational arrangements they wish; such applications will be considered on their merits, on a case-by-case basis, recognizing that whatever certificate authority is issued will necessarily involve the blanket certificate adopted by this rule.

Enron also contends that the individual section 7(c) application process was envisioned by the drafters of the OCSLA amendments. Section 603 of the OCSLAA [57] directed the

---

[47] *See* comments of Indicated Producers on the NOPR at 12–17.

[48] *Id.* at 3.

[49] *See* comments of Joint Producers on the NOPR at 6, 9–17.

[50] *See* comments of Northern Indiana at 4.

[51] *Id.* at 9. *See also* comments of Petrochemical Energy Group on the NOPR at 2.

[52] *See* Comments of Columbia on the NOPR at 9.

[53] *See* comments of Texas Eastern on the NOPR at 21.

[54] *See* new 18 CFR 284.303.

[55] *See, e.g.*, comments of Stingray on the NOPR at 8; comments of Tennessee Gas Pipeline Company at 21–22; comments of Texas Eastern Transmission Corporation at 22–23; and comments of Enron Interstate Pipelines at 34–35.

[56] If applicants seek individual certificates for OCS transportation based on a particular rate treatment they allege to be more appropriate under the peculiar circumstances of the transportation proposed to be performed, the Commission will consider the applications on a case-by-case basis in the same manner as the Commission has done for on-shore service proposed by blanket certificate holders. *See, e.g.*, Overthrust Pipeline Company, 44 FERC ¶ 61,077 (1988); Trailblazer Pipeline Company, 39 FERC ¶ 61,103 (1987), *reh'g denied and certificate vacated*, 43 FERC ¶ 61,103 (1988); and Northern Border Pipeline Company, 39 FERC 61,104 (1987). *See also supra* note 33 and accompanying text.

[57] *Supra* note 6 and accompanying text.

Commission to promulgate a statement of general policy concerning the transportation of natural gas owned by an LDC from an OCS lease to the service area of the LDC. The purpose of section 603 is to encourage interstate transportation of OCS gas "produced from a lease * * * owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company." [58] Enron views section 603 of the OCSLA as evidence that the OCSLA amendments could not have intended that a blanket certificate would be the only way to achieve nondiscriminatory transportation.

In 1980, the Commission issued Order No. 92,[59] which implemented section 603 of the OCSLAA. By that order, the Commission stated its policy regarding access to OCS pipelines by LDCs holding OCS leases.[60] The policy established a framework for pipelines to acquire transportation authorization. Although the blanket transportation certificates issued to OCS pipelines by this rule were not in existence at the time the Commission issued Order No. 92, the goals of that order and OCSLAA section 603 are furthered by the requirements of this rule in that the open access requirements of the blanket certificates issued under the rule will afford distributors significant opportunities to obtain transportation of their gas.

Natural Gas Pipeline Company (Natural) requests clarification on the following points. First, would an on-shore pipeline that already has a Subpart G blanket certificate and that has OCS facilities be required to file for another Subpart G blanket certificate? Second, would a pipeline with both on-shore and off-shore facilities be able to file for a Subpart G blanket certificate that is only applicable off-shore? As discussed above, the Commission's final rule issues Subpart G blanket certificates to all OCS pipelines, including pipelines that currently hold blanket certificates (because the certificates issued herein contain abandonment authority, and open season and reallocation provisions, not contained in the other Part 284, Subpart G blanket certificates). The blanket certificates issued by this rule only apply to a pipeline's facilities on the OCS (to the first interconnection point off the OCS).

Natural asks whether this policy (of according separate treatment of OCS facilities) is inconsistent with previous Commission holdings, citing *Natural Gas Pipeline Company of America-Texoma.*[61] In that order, Natural asked the Commission for a waiver of Order No. 436 so that it could provide transportation services under Order No. 436 on a discrete segment of its system without subjecting the rest of its system to the requirements of Order No. 436. The Commission denied Natural's petition, stating that in issuing Order No. 436 it had contemplated that pipelines would file blanket certificate applications for their entire systems. The Commission's OCSLA Policy is not inconsistent with its prior holding. If a pipeline holds a Part 284 blanket certificate issued pursuant to an application, that authorization applies to its entire system, including any OCS facilities that the pipeline may have. The blanket certificates issued by this rule, however, only govern pipeline facilities on the OCS, and are mandated by the OCSLA. The OCSLA mandate does not apply on-shore.

The Interstate Natural Gas Association of America (INGAA) alleges that by limiting the right of pipelines to choose whether to apply for certificate authority (and once having received such authority, whether to accept it) the Commission violates section 5(f)(4) of the OCSLA.[62] Section 5(f) (4) states that "[n]othing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf." While the Commission is eliminating, for OCS pipelines, the choice that interstate pipelines have on-shore whether to accept a blanket certificate, such a provision does not limit the authority of the United States under the NGA or any other provision of law.

b. *Rate issues.* Texas Gas Transmission Corporation (Texas Gas) states that it includes all offshore capital costs and operation and maintenance expenses in its systemwide rate base and cost of service and, therefore, these costs are considered in the design of system transportation rates.[63] Texas Gas points out that others (HIOS, ANR, etc.) segment these costs and develop separate rates based on each segment. Texas Gas questions whether there will be "mini rate cases" for each transportation segment and wonders whether it will be required to remove costs from its systemwide rate structure and develop separate rates. The Commission believes that these questions are best addressed on a case-by-case basis in the context of specific facts. The Commission will make these determinations based on the supporting data for the OCS pipeline's proposed rates.

Tarpon Transmission Company (Tarpon) indicates that the requirement that a pipeline submit an annual cost and revenue study is not explicitly limited to those pipelines filling new rate schedules under new § 284.305(b).[64] The Commission agrees with Tarpon that this limitation was intended and therefore the Commission adopts Tarpon's suggested language change. New § 284.305(c) requires the study only if a rate schedule is required to be filed by § 284.305(b).

c. *CD conversion requirements.* Enron contends that subjecting OCS pipelines to Subpart A of Part 284 makes an OCS pipeline's entire system, not just the pipeline's OCS facilities, subject to open access under Order No. 500.[65] In addition, Enron states that under § 284.10 of the Commission's regulations, any interstate pipeline that accepts a Subpart G blanket transportation certificate is deemed to have a agreed to offer its firm sales customers the option to convert their firm sales entitlements under any eligible firm sales service agreement to an equal amount of firm transportation service. Enron argues that the Commission has continually justified the contract demand (CD) conversion provisions of § 284.10 based on the voluntary nature of the Order Nos. 436 and 500 transportation program. Enron concludes that ownership of an OCS facility by an interstate pipeline would negate the fundamental characteristic of the Order Nos. 436 and 500 (*i.e.*, that the program is voluntary) and therefore would negate the Commission's justification for the CD conversion provision.

As discussed above, the blanket transportation certificates issued by this rule only apply to an OCS pipeline's OCS facilities (to the first point of interconnection off the OCS). The CD conversion provisions of § 284.10 apply to OCS pipelines in the same manner as they apply to pipelines on-shore. The

[58] 43 U.S.C. 1862(a) (1982).

[59] Statement of Policy on Distributor Access to Outer Continental Shelf Gas, Order No. 92, 45 FR 49247 (July 24, 1980); FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,173 (July 15, 1980).

[60] *See* 18 CFR Part 284, Subpart H (1988).

[61] 35 FERC ¶ 61,260 (1986).

[62] *See* comments of INGAA on the NOPR at 5.

[63] *See* comments of Texas Gas at 24.

[64] *See* comments of Tarpon on the NOPR at 4 and 5.

[65] *See* comments of Enron on the NOPR at 5 and 24-28.

purpose of those provisions, as explained in Order No. 436, is to ensure that firm sales customers have equal access to transportation capacity.[66] We construe such access to be part of the OCSLA mandate implemented herein. Thus, OCS pipelines are required to comply with § 284.10. That requirement, however, extends only to the OCS portion of a pipeline. If a pipeline operates only on the OCS, then § 284.10 clearly applies. If a pipeline operates facilities both off-shore and on-shore, and if the only Part 284, Subpart G certificate it holds is the one issued by this rule,[67] then § 284.10 applies only with respect to sales of gas that occur off-shore, and not to sales of gas on-shore; in other words, § 284.10 would not apply to sales from the on-shore facilities.

As a practical matter, only one OCS pipeline, Sea Robin Pipeline Co., makes sales of gas from off-shore facilities. (While there are other pipelines who have OCS facilities and who also sell gas, those pipelines also have facilities on-shore, and all of the sales are made on-shore; as explained above, such sales fall outside the scope of the rule adopted herein.) Sea Robin recently accepted a Part 284 blanket certificate. Thus, the issue of the relationship between voluntary acceptance of a blanket certificate and CD conversion rights is effectively moot.

d. *Definitions.* National Fuel Gas Supply Corporation (National) and Sun Exploration and Production Company (Sun) read the definition of an OCS pipeline proposed in the NOPR as potentially embracing all the on-shore facilities of a pipeline that owns both on-shore and off-shore facilities. This is not the Commission's intent and, as discussed above, it has amended the definition of an OCS pipeline in this final rule.

The Indicated Producers ask the Commission to include in its definition of an OCS pipeline all transmission facilities downstream from any point on the OCS to the on-shore point where a shipper has access to facilities that are subject to Order No. 436. The Indicated Producers also request that the definition include the first point on-shore where transportation is genuinely available.[68] The Commission declines to adopt the Indicated Producers' suggestions because they could result in the open access provisions of this rule extending far beyond the first interconnection point off the OCS.

Pelto Oil Company (Pelto) asks the Commission to clarify the phrase "in the vicinity" of the pipeline used in section 5(e) of the OCSLA.[69] That matter, however, is beyond the scope of this rulemaking, and is best addressed on a case-specific basis if and when the question arises.

e. *Scope of OCSLA jurisdiction.* Some producers express concern that the Commission's rule will apply to nonjurisdictional facilities under the NGA. For example, McMoran Oil & Gas Company (McMoran) and Ensearch Exploration, Inc. (Ensearch) both express concern over gathering facilities on the OCS.[70] McMoran is concerned that an OCS pipeline's control of nonjurisdictional gathering facilities could be used to block access to its jurisdictional facilities and thereby evade the open access mandate of the OCSLA. McMoran believes that the enforcement of the open access requirements of the OCSLA should not turn on the classification of a particular segment of an OCS pipeline's transportation system. McMoran wants the Commission to reaffirm that the obligation to provide open access transportation is not limited to jurisdictional facilities but extends to nonjurisdictional gathering lines that operate as an integral part of the OCS pipeline's system.

Ensearch requests that, if the Commission extends the obligation to provide open access transportation to nonjurisdictional gathering lines operated as an integral part of an OCS pipeline's system, the Commission not apply the same open access requirements through a rulemaking to producer-operated gathering facilities. Ensearch believes that application of the open access requirement to producer-operated gathering facilities is best handled on a case-by-case basis.[71]

The Commission stated in Order No. 491 that its interpretation of the OCSLA only extended to interstate natural gas pipelines subject to the NGA; the same is true of this final rule. The Commission agrees with McMoran that all pipelines on the OCS have a duty to provide open and nondiscriminatory access to transportation services. If the Commission receives complaints regarding gathering facilities it will, on a case-specific basis, use its ancillary authority, its authority under sections 4 and 5 of the NGA,[72] and its authority under section 5 of the OCSLA, as appropriate under the circumstances presented.

f. *Order No. 500 crediting mechanism.* Several producer groups urge the Commission not to apply the Order No. 500 take-or-pay crediting mechanism to open access transportation of OCS gas.[73] The Joint Producers state that by requiring OCS pipelines to provide transportation service under a Part 284 blanket certificate the Commission, at least implicitly, proposes to require producers to offer Order No. 500 take-or-pay credits to the OCS pipelines in order to obtain open access transportation rights under section 5 of the OCSLA.[74] The Joint Producers allege that such a requirement is inconsistent with sections 5(e) and 5(f) of the OCSLA because it would force producers to give the OCS pipelines significant economic concessions to obtain their statutorily-mandated OCSLA transportation rights. The Joint Producers note that the Commission, in Order No. 500–C, recognized the unique production requirements for casinghead gas and took steps to prevent the reduction of casinghead production (*i.e.*, the Commission refused to extend take-or-pay credits to include casinghead gas). The Joint Producers maintain that similar action is justified for all natural gas produced on the OCS.[75]

McMoran Oil & Gas Company (McMoran) states that the blanket certificate would be subject to the conditions of Subpart A of Part 284, and that § 284.8(f) and § 284.9(f) authorize pipelines to condition eligibility for

[66] *See* Order No. 436, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665, 31,496–31,497 and 31,518–31,533 (1985) and Order No. 436–A, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,675, 31,640–31,642, 31,657 and 31,661–31,669 (1985).

[67] If a pipeline has both on-shore and off-shore facilities, and holds a Part 284, Subpart G certificate pursuant to an application for one, then § 284.10 clearly applies to its entire system.

[68] *See* comments of the Indicated Producers at 35.

[69] *See* comments of Pelto at 10.

[70] *See* comments of McMoran on the NOPR at 3, 15–17; and comments of Ensearch on the NOPR at 1–6. In addition, Apache Corporation expresses concern that the Commission may change its policy with respect to gathering lines under the NGA; *see* comments of Apache on the NOPR at 6–7. The Commission's policy with respect to gathering under the NGA is beyond the scope of this rule.

[71] *See* comments of Ensearch on the NOPR at 6.

[72] *See, e.g.*, Northern Natural Gas Company, Division of Enron Corp., 43 FERC ¶ 61,473 (1988) and 44 FERC ¶ 61,384 (1988).

[73] *See* comments of the Indicated Producers on the NOPR at 24–33; comments of the Joint Producers on the NOPR at 35–37; comments on McMoran Oil & Gas Company on the NOPR at 4–15; comments of Pelto Oil Company at 7–9; and comments of Natural Gas Supply Association at 5–7.

[74] The crediting mechanism is discussed in Order No. 500, III FERC Stats. & Regs. ¶ 30,761 at 30,779–30,792 (1987). The crediting mechanism was modified in Order No. 500–B, III FERC Stats. & Regs. ¶ 30,772.

[75] Several other commenters discussed the appropriateness of a priority for casinghead gas in any allocation scheme. *See, e.g.*, comments of Sun Exploration and Production Company (Sun) at 4 and comments of the Joint Producers at 3, 21–27.

transportation service on the producer's offering the pipeline credits against its take-or-pay liability to the producer. McMoran also states that the Order No. 500 crediting mechanism was established in response to the remand by the U.S. Court of Appeals in *Associated Gas Distributors v. FERC, supra*, and that in Order No. 436 the Commission was acting in the context of a voluntary regulatory program adopted pursuant to the Commission's discretionary authority under the NGA and the NGPA. McMoran asserts that open access transportation under the OCSLA is different in that it is mandated by statute and that shippers' rights to open access transportation exist independently of any Commission interpretation of the Act.

The Indicated Producers contend that the Order No. 500 crediting mechanism would result in conditional access to OCSLA section 5 transportation. The Indicated Producers assert that there is no statutory basis for such a condition and that Congress never intended for open access transportation on the OCS to be conditioned on a producer's willingness to relinquish certain rights. In addition, the Indicated Producers argue that application of the Order No. 500 crediting mechanism would conflict with the open and nondiscriminatory access condition contained in pipeline right-of-way permits issued by the Department of the Interior. The Indicated Producers allege that to allow OCS pipelines to refuse transportation service to producers unwilling to offer take-or-pay credits would violate the right-of-way permits.

Natural Gas Supply Association (NGSA) agrees with the Indicated Producers and states that if the Order No. 500 crediting mechanism was applied under the OCSLA, it would violate the anti-discrimination provisions in sections 5(e) and 5(f) and would create an irreconcilable conflict with the terms and conditions in the right-of-way permits and easements issued to OCS pipelines by the Department of the Interior.

In Order Nos. 436 and 500, the Commission fully considered both casinghead gas and the producer crediting mechanism. Furthermore, blanket certificates issued under those orders already apply to off-shore gas to the extent that the certificate holder has off-shore pipeline facilities. We perceive no reason to reconsider here the carefully balanced mechanisms adopted in those orders. Thus, casinghead gas will be treated in the same manner under the rule adopted herein as it is treated in the regulations adopted by Order Nos. 436 and 500, for the reasons stated in those orders.[76] There is no priority of capacity allocation for casinghead gas off-shore, just as there is no priority of capacity for such gas on-shore. The treatment of casinghead gas for crediting purposes, as set forth in Order No. 500, continues to apply. In the event that application of those rules raises an issue of potential damage to off-shore wells, the Commission will consider the matter on a case-by-case basis, in the context of the specific facts alleged, pursuant to the standards set forth in section 5 of the OCSLA.

g. *Rationale for rules.* Several commenters assert that the Commission's rationale for implementing the OCSLA was flawed.[77] These commenters contend that the complaints the Commission received about access to available capacity on the OCS were directed to the Commission's policy against capacity brokering on the OCS and that the Commission's proposed rule in Docket No. RM88-13-000 is the appropriate forum in which to address these complaints. We need not discuss here whether those complaints might be appropriately considered in Docket No. RM88-13-000. The Commission has the authority to adopt regulations to implement the OCSLA, and for the reasons discussed above it has determined that there is a need to do so by adopting the final rule.

### IV. Environmental Review

This rule proposes regulations to implement the Commission's responsibilities under section 5 of the OCSLA. The Commission is providing interstate pipelines operating on the OCS with blanket certificates under section 7(c) of the NGA. These certificates involve the transportation of gas and do not authorize the construction of any facilities. The Commission has already determined that actions involving the transportation of natural gas under NGA section 7(c) are not actions that have significant environmental effect.[78] The Commission, therefore, is not preparing an environmental impact statement for this rule.

### V. Regulatory Flexibility Act

The Regulatory Flexibility Act (PFA)[79] requires a rule to contain an analysis of the impact the rulemaking would have on small entities.[80] The RFA is intended to ensure careful and informed agency consideration of the rules that significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to, or burdens on, small entities. This rule applies to jurisdictional natural gas companies whose services or facilities are regulated under NGA or the NGPA. Most of these companies are too large to fall within RFA's definition of a small entity and therefore this rule will not have a "significant economic impact on a substantial number of small entities."

The rule may have a significant impact on those entities who are not providing transportation services on the OCS but who are either producing or shipping OCS gas. Even if these entities may be considered small entities under the RFA, the impact the rule would have would be a beneficial one. Producers or shippers of OCS gas would be given better access to transportation service on the OCS. The Commission does not believe the term "significant economic impact on a substantial number of small entities" as used in the RFA was intended to include regulations that have a beneficial, rather than a negative, impact on small entities.

### VI. Paperwork Reduction Act

The Paperwork Reduction Act (PFA)[81] and the Office of Management and Budget's (OMB) regulations[82] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this final rule will be submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to comply with its statutory responsibilities under sections 5(e) and 5(f) of the OCSLA. Under section 5(e) of the OCSLA, the Commission has the responsibility to ensure that oil and gas pipelines transport and purchase gas produced on the OCS in such proportionate amounts as the Commission determines to be reasonable. Section 5(f) of the OCSLA requires OCS pipelines to provide open and nondiscriminatory access to both owner and nonowner shippers. In order

[76] *See, e.g.,* Order No. 500-C, III FERC Stats. & Regs. ¶ 30,786 at 30,957-30,958 (1987).

[77] *See, e.g.,* Comments of the High Island Offshore System on the NOPR at 5-7; comments of Texas Gas Transmission Corporation at 15-19; comments of Apache Corporation at 3-4; and comments of Union Carbide Corporation at 10-12.

[78] See 18 CFR 380.4(a)(2) *as added by* Order No. 486, 53 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (1987).

[79] 5 U.S.C. 601-612 (1982).

[80] 5 U.S.C. 603 (1982).

[81] 44 U.S.C. 3501-3520 (1982).

[82] 5 CFR 1320-13 (1988).

to implement sections 5(e) and 5(f) of the OCSLA, the Commission is issuing every OCS pipeline a blanket transportation certificate under Part 284, Subpart G of its regulations. In addition, OCS pipelines must have a transportation rate schedule on file that conforms to § 284.7, and to § 284.8(d) for firm service and to § 284.9(b) for interruptible service.

The information collection burden imposed on an OCS pipeline of filing an appropriate rate schedule is estimated to be 240 hours per response. The frequency of response is estimated to be one per year for the first year; thereafter, filing are discretionary on the part of the pipeline. The number of likely respondents is 43.[83] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 [Attention: Mike Miller, Office of Information Resources Management (202) 357-9205]. Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulation Commission).

## VII. Effective Date

This rule will become effective February 17, 1989.

## List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recording requirements.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

**Lois D. Cashell,**
*Secretary.*

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1987 AND RELATED AUTHORITIES

1. The authority citation for Part 284 is revised to read as follows:

**Authority:** Natural Gas Act, U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356 (1982) as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

[83] *See supra* note 16 and accompanying text.

2. In Part 284, a new Subpart K consisting of §§ 284.301 through 284. 306 is added to read as follows:

**Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others**



## Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others

### § 284.301 Applicability.

This subpart implements section 5 of the Outer Continental Shelf Land Act (OCSLA) and applies to any jurisdictional interstate natural gas pipeline that holds a certificate under section 7 of the Natural Gas Act (NGA) authorizing the construction and operation of facilities on the Outer Continental Shelf (OCS).

### § 284.302 Definitions.

For the purposes of this subpart, the term:

(a) "Outer Continental Shelf" (OCS) has the same meaning as found in section 2(a) of the OCSLA (43 U.S.C. 1331(a)); and

(b) "OCS pipeline" means an interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS, and includes all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA to the full extent that such facilities are used or necessary to transport natural gas from the OCS to the first point of interconnection on the shoreward side of the OCS where it delivers natural gas to either:

(1) A natural gas conditioning or processing facility, or

(2) Another pipeline, or

(3) A distributor or end user of natural gas.

### § 284.303 OCS blanket certificates.

(a) Every OCS pipeline (as that term is defined in § 284.302(b)) is issued a blanket certificate authorizing the transportation of natural gas on or across the OCS on behalf of others under Subpart G of this Part. This certificate becomes effective on the date that the OCS pipeline's rates under § 284.305 become effective. However, if the Commission does not permit rates filed pursuant to § 284.305(b) to become effective on or before April 1, 1989, the certificate becomes effective on the date on which the rates filed pursuant to § 284.305(b) would have gone into effect if they had not been suspended.

(b) OCS pipelines must provide open and nondiscriminatory access to the transportation service provided under paragraph (a) of this section.

(c) The certificate issued under paragraph (a) of this section provides an OCS pipeline with the authorization to:

(1) Transport natural gas under section 7(c) of the NGA,

(2) Abandon transportation services that are performed under the blanket certificate, and

(3) Abandon firm transportation services to implement a reallocation of firm capacity under §§ 284.304(a) and 284.304(c) of this part.

(d) The certificate and abandonment authority conferred by this section is conditioned upon the OCS pipeline's compliance with § 157.20(e) of this chapter.

(e) A blanket certificate issued under this section does not authorize the construction of new facilities on the OCS.

### § 284.304 Allocation of firm and interruptible capacity on the OCS.

(a) *Open season for firm transportation.* Not later than March 1, 1989, all OCS pipeline must poll all of their existing firm shippers to ascertain whether any of them want to relinquish any or all of their firm transportation capacity.

(1) If an OCS pipeline has either uncommitted firm transportation capacity or firm transportation capacity that an existing shipper wants to relinquish, it must afford all existing and potential shippers an opportunity to request the available firm capacity.

(2) The OCS pipeline must provide reasonable notice of the open season.

(3) The open season can be for no less than 10 days and no more than 30 days.

(4)(i) If the requests for firm capacity exceed the firm capacity that is available, the OCS pipeline must allocate to each requesting shipper a pro rata share of the available firm capacity.

(ii) If the available firm capacity exceeds the requests for such capacity, and if the available firm capacity includes capacity that one or more existing shippers wants to relinquish, each shipper relinquishing capacity must be allowed to satisfy the requests for firm capacity on a pro rata basis. To the extent that the OCS pipeline itself has uncommitted firm capacity available, it may assign that uncommitted capacity to the new shipper(s) before reallocating the capacity of existing shippers.

(iii) In reallocating firm capacity under paragraph (a)(4)(i) or (a)(4)(ii) of this section, the OCS pipeline must take into account the capacity available at the particular receipt and delivery points specified by both the shippers requesting firm capacity and the shippers voluntarily relinquishing firm capacity.

(b) *Open season for interruptible capacity.* (1) No later than March 1, 1989, all OCS pipelines must commence an open season for interruptible transportation.

(2) The OCS pipeline must provide reasonable notice of the open season.

(3) The open season can be for no less than 10 days and no more than 30 days.

(4) The requirements of paragraph (b) of this section do not apply to any OCS pipeline that has accepted a blanket transportation certificate under Subpart G of this part prior to February 17, 1989.

(5) In establishing an initial priority for interruptible transportation, OCS pipelines shall give priority to transportation currently (as of February 17, 1989) authorized under existing individual certificates (provided that such transportation will be performed at transportation rates no lower than the transportation rates paid or to be paid by other interruptible shippers).

(c) *Voluntary reallocation of firm capacity.* (1) If an OCS pipeline receives a request for firm transportation at any time after it has conducted the open season described in paragraph (a) of this section, it must, within 10 days of receiving the request, provide the requesting shipper with a list of all firm shippers under contract with the pipeline.

(2) If the requesting shipper finds an existing firm shipper that wants to voluntarily relinquish all or a portion of its firm capacity, the OCS pipeline must reallocate that firm capacity. In the event that more than one shipper wants to acquire that firm capacity, the reallocation may be conducted on either a first-come, first-served basis, a pro rata basis, or any other nondiscriminatory method that is consistent with the OCS pipeline's transportation rate schedule on file with the Commission. If the OCS pipeline has uncommitted firm capacity available, it may assign part or all of that capacity before reallocating the capacity of existing shippers.

(3) The blanket certificate issued under § 284.303(a) provides an OCS pipeline with the authority under section 7(b) of the NGA to abandon service with respect to the shipper voluntarily relinquishing firm capacity, even if the service was authorized prior to the issuance of the blanket certificate under § 284.303(a).

### § 284.305 Transportation rates.

(a) Except to the extent explicitly authorized by the Commission on a case-by-case basis pursuant to § 284.305(d)(2), the transportation rate for transportation of gas on the OCS by an OCS pipeline must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7, and to either § 284.8(d) for firm service or to § 284.9(d) for interruptible service.

(b) If an OCS pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7, to § 284.8(d) for firm service and to § 284.9(d) for interruptible service, the OCS pipeline must file conforming rate schedules by March 1, 1989, to be effective no later than April 1, 1989. The OCS pipeline must use it current rates until the Commission permits the rates filed pursuant to this paragraph to become effective.

(c) The rate schedules filed by a pipeline under paragraph (b) of this section must be supported by an annual cost and revenue study in the form required by § 154.303(e) of this chapter. If a pipeline has a pending rate proceeding under § 154.63, 154.38 or 154.303(e) of this chapter, it does not have to submit an annual cost and revenue study and may use the base period data from the proceeding so long as the base period ended within 12 months of the filing of the rates required in paragraph (b) of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, the rates filed under paragraph (b) of this section apply to all transportation services offered by an OCS pipeline.

(2) With respect to transportation performed pursuant to certificates other than Part 284 blanket transportation certificates, an OCS pipeline may restate its current rates for those transactions if it demonstrates to the Commission that such rates are not unjust, unreasonable, or unduly discriminatory. If an OCS pipeline wants to use its current rates for transportation, it should refile those rates by March 1, 1989, to be effective no later than April 1, 1989.

(e) By March 1, 1989, to be effective no later than April 1, 1989, all OCS pipelines must file tariff provisions setting forth the method by which firm transportation capacity will be reallocated under § 284.304(c) in the event that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish.

(f) All rates for transportation on or across the OCS that are in effect prior to February 17, 1989 remain in effect until the date upon which the rates filed pursuant to §§ 284.305 (b) and/or (d) (whichever supersede the existing rates) become effective.

## Appendix A—List of Commenters

Note.—This appendix will not be published in the Code of Federal Regulations.

1. American Gas Association
2. Amoco Production Company, *et al.*
3. ANR Pipeline Company
4. Apache Corporation
5. Arco Oil & Gas Company
6. Associated Gas Distributors
7. Chemical Manufacturers Association, *et al.*
8. Citizens Energy Corporation *et al.*
9. Columbia Gas Transmission Corporation, *et al.*
10. Consolidated Gas Transmission Corporation
11. Elizabethtown Gas Company
12. Enron Interstate Pipelines
13. Ensearch Exploration, Inc.
14. Fertilizer Institute
15. High Island Offshore System
16. Indiana Public Service Company
17. Indicated Producers
18. Interstate Natural Gas Association of America
19. McMoran Oil & Gas Company
20. Meridian Oil, Inc.
21. National Fuel Gas Supply Corporation
22. National Steel Corporation
23. Natural Gas Pipeline Company of America
24. Natural Gas Supply Association
25. Northern Illinois Gas Company
26. Pacific Offshore Pipeline Company, *et al.*
27. Pelto Oil Company
28. Meridian Oil, Inc.
29. Peoples Gas Light and Coke Company & North Shore Gas Company
30. Petrochemical Energy Corporation
31. Producer Associations, *et al.*
32. Southern Natural Gas Company
33. Stingray Pipeline Company *et al.*
34. Sun Exploration and Production Company
35. Tarpon Gas Marketing Ltd., *et al.*
36. Tennessee Gas Pipeline Company
37. Texas Eastern Transmission Corporation
38. Texas Gas Transmission Corporation
39. Transcontinental Gas Pipe Line Corporation
40. Union Carbide Corporation
41. United Gas Pipe Line Company & Sea Robin Pipe Line Company

## Appendix B—OCS Pipelines to Whom Part 284 Blanket Transportation Certificates are Issued by this Order

Note: This appendix will not be published in the Code of Federal Regulations.

*OCS Pipeline and Shoreward Terminus*

1. Blue Dolphin Pipeline Co.
   Onshore terminus at Dow Chemical Co., Freeport, Texas
2. Columbia Gulf Transmission Co.
   Offshore termini of numerous segments, Offshore, Louisiana. *See also* Nos. 23, 25 and 27, below

3. Sabine Pipe Line Co.
Offshore termini at West Cameron 547 South Addition, West Cameron 529 South Addition, and South Timbalier 147, Offshore, Louisiana
4. Seagull Interstate Corp.
Offshore termini at Galveston 213 and Matagorda 526, Offshore, Texas
5. Superior Offshore Pipeline Co.
Offshore terminus at Lowry Gas Plant, Cameron Parish, Louisiana
6. Tarpon Transmission Co.
Offshore terminus at Shipshoal 274, Offshore, Louisiana
7. Sea Robin Pipeline Co.
Onshore terminus at Erath, Louisiana
8. Stingray Pipeline Co.
Offshore terminus at West Cameron 148, Offshore, Louisiana
9. Texas Sea Rim Pipe Line, Inc.
Onshore terminus at Texas Sea Rim Sabine Pass, Separation Plant, Jefferson County, Texas
10. Bayou Interstate Pipeline System
Offshore terminus at West Cameron 289, Offshore, Louisiana
11. Black Marlin Pipeline Co.
Onshore terminus at Union Carbide plant, Texas City, Texas
12. Chandeleur Pipe Line Co.
Onshore terminus at Pascagoula, Mississippi
13. Florida Gas Transmission Co. (FGT)
Interconnection with FGT Kain Lateral, Matagorda County, Texas. *See also* Nos. 24, 26, and 28, below
14. Freeport Interstate Pipeline Co.
Onshore terminus at interconnection with Freeport Intrastate Pipeline on Grand Isle, Jefferson Parish, Louisiana
15. Gasdel Pipeline System, Inc. (Gasdel)
Offshore termini of 11 small offshore pipelines, Offshore, Louisiana and Texas. *See also* No. 22, below
16. High Island Offshore System
Offshore terminus at interconnection with UTOS, West Cameron 167, Offshore, Louisiana
17. Pacific Interstate Offshore Co.
Onshore terminus at metering station at interconnection with Pacific Lighting Service Co. pipeline, Ventura County, California
18. Pacific Offshore Pipeline Co.
Onshore terminus at gas treating plant, Santa Barbara County, California
19. Pelican Interstate Gas System
Onshore terminus at Mobil plant, Cameron Parish, Louisiana
20. Point Arguello Natural Gas Line Co.
Onshore terminus at Chevron Hermosa plant, Santa Barbara County, California
21. U-T Offshore System (UTOS)
Onshore terminus at Johnson's Bayou/Cameron Meadows plant complex, Cameron Parish, Louisiana
22. Padre Island Pipeline System (Transcontinental Gas Pipe Line Co. [Transco]; and Gasdel) [1]
Onshore terminus at dehydration plant near interconnection with Transco's main line, Brooks County, Texas
23. Central Texas Gathering System (Transco; Northern Natural Gas Co. [Northern]; Southern Natural Gas Co. [Southern]; ANR Pipeline Co. [ANR]; Columbia Gulf Transmission Co. [Columbia Gulf]; and Tennessee Gas Pipeline Co. [Tennessee]) [1]
Onshore terminus at Markham plant, Matagorda County, Texas
24. Matagorda Offshore Pipeline System (Northern; Southern; and FGT) [1]
Onshore terminus at liquid separation facility and interconnection with Houston Power and Light Co. pipeline, Tivoli, Refugio County, Texas
25. East Cameron 23 Lateral (Columbia Gulf; and Southern) [1]
Onshore terminus at Amoco South Pecan Lake plant, Cameron Parish, Louisiana
26. Sabine Pass Lateral (Tennessee; and FGT) [1]
Onshore terminus at Johnson's Bayou, Cameron Parish, Louisiana
27. Blue Water System (Tennessee; and Columbia Gulf) [1]
Onshore termini at Pecan Island plant, Vermilion Parish, Louisiana (West leg), and Tenneco Oil Cocodrie plant, Terrebonne Parish, Louisiana (East leg)
28. Southern Pass Cognac Line (Southern; Northern; FGT; ANR; and Transco) [1]
Onshore terminus at interconnection with Southern's Romere Pass pipeline, Plaquemines Parish, Louisiana

[1] The blanket certificates are issued to the individual interstate pipeline owners listed in parentheses.

**Trabandt, Commissioner,** *Concurring*

I concur in this Final Rule with several observations and reservations for further review on rehearing.

*Background*

In my concurring opinion to the Notice of Proposed Rulemaking (NOPR) in this docket, I expressed serious concern that, among other things, the proposed rule was not an effective solution to the real world problem at that time of some shut-in OCS gas resulting from Commission decisions in certain Order No. 436 blanket certificate cases, as documented in correspondence from the Natural Gas Supply Association (NGSA) and Interstate Natural Gas Association of America (INGAA) attached to my concurring opinion. The NGSA and INGAA letters focused on the problem then occurring on joint venture pipelines such as HIOS, U-TOS, Stingray, Trailblazer, Tarpon and others, and was commonly referred to as "third party transportation." According to the letters, the so-called third party transportation problem occurred when a pipeline participating in one of those joint venture pipelines sought to utilize its unused firm capacity in the joint venture pipeline to transport gas for third parties, but was prevented from doing so by the Commission because the activity would be inconsistent with then-current Commission policy prohibiting the brokering of capacity under Part 284 blanket certificate authority.

The prohibited third party transportation would have provided a means for producers to get gas to market that otherwise might, and, in some cases involving Sun and Chevron, for example, already was, shut-in for lack of other available transportation, because the demand for system supply of the interstate pipeline had declined dramatically. Such third party transportation also would provide pipelines with a means to transport released gas for take-or-pay credits and would provide customer access to additional supplies, thus maximizing the efficient use of the joint venture pipelines and reducing transportation costs on a per Mcf basis. Consequently, NGSA and INGAA urged the Commission to act immediately and simply to permit interstate pipelines to allocate capacity controlled on joint venture pipelines to shippers under existing 7(c) certificates and applicable contracts. My tentative conclusion was that the NOPR would not solve immediately or effectively that problem.

Conversely, there did not appear to be any documented real world problem for which the proposed rule was necessary or appropriate as a solution. The NOPR referred briefly and rather obliquely to the shutting-in of gas discussed above (which was the direct result of the Commission action to prohibit generally third party transportation in the Order No. 436 cases) and cited a 1985 request for an OCS rulemaking by the Chemical Manufacturers Assocation. That petition preceded the issuance of Order No. 436 and the emergence of non-discriminatory open access transportation under Part No. 284 and resulting blanket certificates. Rather than that stated, obscure justification and rationale, there was a strong undercurrent that the real motivation for the Order No. 436/500 blanket certificate approach in the OCS NOPR last spring was the desire to use the OCS problem/issue as a "target of opportunity" or excuse to impose on a mandatory basis the blanket certificate requirement, using the OCSLA as a springboard to reach that result. This attempt occurred at a time when interstate pipelines were still strongly resisting blanket certificates, rather than as a completely good faith effort by the Commission to solve the real world, "third party transportation" capacity reallocation problem.

Mandatory imposition of blanket certificates on the OCS would be a precedent of sorts and would demonstrate the disposition of the Commission to impose blanket certificates under any other nondiscriminatory theory. Also, there was the distinct suggestion that the solution to that real world problem was being held "hostage" as the pretext for such mandatory imposition of the blanket certificates on the OCS. The motivation for the NOPR last March is not the issue at this point, but I would hope that the Commission today will give all due consideration to what is the policy direction and regulatory objective for this Final Rule.

More generally, as I understand the current state of affairs on the OCS today, there is virtually no significant transportation access problem and there is no current threat of shut-in gas. In short, gas is moving as necessary from the OCS ashore without any substantial difficulty under the existing arrangements. Also, eight of the OCS pipelines already have blanket certificates and almost all the interstate pipelines with firm capacity allocations on the joint venture pipelines have blanket certificates. Therefore, the current mix of transportation services under blanket certificates and section 7(c) certificates appears to be adequate, even if not optimal under a uniform OCS-wide blanket certificate program.

At the same time, there is some continued enthusiasm on the part of producers and shippers for moving carefully toward a more uniform, non-discriminatory access program, provided that there is no interruption of existing transportation arrangements. That is of considerable importance to many producers, because a large majority of OCS gas purchase contracts have been renegotiated as part of take-or-pay settlements. Interstate pipelines obtained more market responsive prices and take-or-pay relief in exchange for resolution of Order No. 500 credit mechanism requirements, more assured transportation access and services for producers, in addition to other features of the settlements. This Final Rule should not be allowed to have the effect of disrupting those settlement transportation arrangements, denying producers the benefits of the transportation and crediting benefits, or precipitating the necessity of a new round of "conditioned access" negotiations. I am not persuaded that the Final Rule would satisfy that test.

After review of the public comments and requests for rehearing filed in these dockets, and the current state of affairs on the OCS today, I am not completely persuaded that there is a satisfactory rationale and justification to support mandatory imposition of an Order No. 436/500 blanket certificate on all OCS pipelines. I also continue to believe that there is serious potential for uncertainty and disruption with regard to OCS pipeline services, as well as an endless line of clarification and waiver requests, under the Final Rule as adopted. Consequently, I have identified two options: one substantive and one procedural, for our further consideration in these dockets.

*Substantive Option*

As I discussed above, I believe the threshold issue in this rulemaking is the nature of the problem we are trying to solve and the resulting regulatory objective. There is absolutely no doubt that the problem or "crisis" which spurred the initial action in these dockets was the shut-in of OCS gas resulting directly from the Commission's rejection in Order No. 436 cases of requests to authorize downstream onshore pipelines holding firm capacity on upstream OCS pipelines to reallocate capacity. A more detailed explanation is set forth in my concurring opinion to the NOPR and the attached letters from NGSA and INGAA.

The Natural Gas Pipeline of America Order No. 436 case is a primary example of the problem. There the Commission rejected proposals for reallocation authority because of concerns related to capacity brokering and the capacity brokering NOPR then under discussion. Some pipelines, such as Natural, claimed authority for reallocation under their separate certificate authority and proceeded to reallocate despite the rejection of specific authority in the Order No. 436 case. The Commission did not challenge such legal claims, or the associated reallocations, which have apparently proceeded apace since last spring. To that extent, there is a serious question today if, in fact, there is a remaining reallocation problem in the real world that needs to be fixed. In any event, I believe it is quite clear in the record of comments on the NOPR and rehearing petitions for the interpretive rule that mandatory imposition of Order No. 436/500 blanket certificates is not justified to address the initial reallocation problem. The Final Rule totally ignores this threshold issue, largely because there is no persuasive response. (See page 60 of the Slip Opinion.)

If, however, the Commission is persuaded that action must be taken to address the reallocation problem at this point in time, there is a much more narrow and focused approach of providing authority for reallocation of firm capacity on OCS pipelines. A simplified and streamlined mechanism will accomplish that regulatory objective without all of the potential legal, policy and operational problems of the mandatory blanket approach.

Chairman Hesse has already agreed in the *Texas Eastern* Order No. 436 case in September to develop quickly just such a mechanism for nondiscriminatory reallocation onshore of firm capacity on an upstream pipeline held by a downstream pipeline. Her commitment is memorialized in the text of that case, and the Commission made clear its intention to grant such authority, while we develop experience in the generic capacity brokering area with an experiment (possibly United's proposal). Here, the reallocation mechanism need only provide for nondiscriminatory reallocation of firm capacity on an upstream OCS pipeline voluntarily relinquished by a downstream onshore pipeline.

For example, the Commission could simply authorize, but not mandate, OCS pipelines to conduct an open season for any excess and voluntarily-relinquished firm capacity on a one time or periodic basis, with a first-come first-serve mechanism for any subsequent reallocation. The rates for firm transportation services would be those established under existing tariffs approved by the Commission. There would be no need to modify, interfere with, or abrogate any existing arrangements. There also would be no need to address interruptible transportation, which is not the problem in any event.

The Order No. 436/500 blanket certificate program would remain voluntary for OCS pipelines under current regulations and the Commission would process OCS pipeline applications for an Order No. 436/500 blanket certificates under current practice in individual certificate and rate cases. There would be no need for any complicated transitional/grandfather mechanism and there would be absolutely zero possibility of disruption of OCS operations or transactions at any time.

*Procedural Option*

I supported the proposal for delayed effectiveness of the Final Rule, as adopted in the current form, to avoid regulatory-induced disruption during the winter hearing season. Nevertheless, the substantive features of the Final Rule have been adopted and the rehearing process does not generally provide the best vehicle for wholesale reconsideration of a major rule. Also, rehearings can be delayed for extended periods of time with little or no practical recourse for the Full Commission, such that the Final Rule could be in effect and implemented without any prior modifications on rehearing, irrespective of the persuasiveness of the rehearing petitions. As a practical matter, the scheduling of rehearing orders remains a prerogative of the Chairman. Consequently, it is most prudent and responsible that a Final Rule be "our best shot", as it were, at a rule which conceivably will be effective for some extended period; *e.g.*, Order No. 500 Interim Rule.

Given the concerns expressed by Members of the Commission about the potential disruption on the OCS caused by the rule, and also the decidedly fundamental change from the proposed rule (*e.g.*, immediate mandatory imposition of blanket certificates on OCS pipelines), it would be quite appropriate to renotice the NOPR with the new proposal for a short 30-day comment period. Comments could be received early next year, and we could make a final decision to be effective in the same general April/May time frame after the winter heating season. The renoticed NOPR could also seek comment on the substantive option described above for purposes of comparison. In any event, the Final Rule next year resulting from a renoticed NOPR would be "our best shot" at solving the real world problem(s), which ostensibly precipitated this exercise in the first instance, on a "fail-safe" basis.

*The Final Rule*

The majority has decided to proceed with the Final Rule in this order, but also to provide sufficient opportunity to get rehearing comments and act on them before the Rule is implemented. Members of the Commission also stated their intention to ensure that there is no interruption of existing transportation services on the OCS, no disruption of current transportation arrangements, and no shut-in of OCS gas. I am reluctantly prepared to concur in that result, but with several concerns about the Final Rule.

First, I seriously doubt whether the Commission will have adequate time to consider rehearing petitions and adopt an order on rehearing prior to the effective date of the rule (February 1, 1989) or the deadline for tariff filings and open season activities (March 1, 1989), and possibly even the latest effective date for tariffs and latest date for service to begin (April 1, 1989). Assuming that an order on rehearing could be developed and scheduled at the earliest possible date, which is subject to the prerogative of the Chairman and beyond the control of the Full Commission, it probably is simply unrealistic to expect action on rehearing by mid-February. Consequently, if reviewing parties conclude that the Commission should adopt the substantive or procedural option, or amend significantly the Final Rule before implementation, a delay in effectiveness and implementation would be necessary and appropriate. Thus, parties filing rehearing petitions may want to request a further delay in the current schedule to prevent premature implementation of this Rule.

The open season for interruptible transportation potentially may create significant problems (Slip Opinion at page 18 of the preamble text and page 69 of the regulatory text (§ 284.304(b)). First, the OCS pipeline is granted complete discretion to use "any non-discriminatory means that is acceptable for onshore blanket certificate transportation" to allocate interruptible capacity (page 18). That could include, among other options, the lottery method approved for the PGT pipeline. In my judgment, the Commission should not allow that discretion, because it is virtually guaranteed to disrupt existing transportation arrangements.

Second, the Commission does not provide unconstrained grandfather treatment for existing interrruptible transportation arrangements under section 7(c) authorizations. That is a significant and unprecedented departure from Order No. 436 and past practice in the voluntary blanket certificate program. Rather, the Final Rule requires the OCS pipeline to give a priority only where there is interruptible transportation that satisfies two criterion. First, the interruptible transportation must be affirmatively authorized under an existing certificate effective on February 1, 1989. Second, the interruptible transportation shippers must pay transportation rates for such service which are "no lower than the rates paid or to be paid by other interruptible shippers." (parenthetical proviso at page 19 and in § 284.304(b) at page 69).

There is no explanation defining what "other interruptible shippers" must be compared, as between shippers on a single pipeline versus all shippers on the OCS. There also is no explanation of what "rates paid or to be paid" must be considered and how they would be identified. Additionally, this is the first time under the Part 284 program that the Commission has sanctioned the consideration of *price* as a factor in the initial allocation of capacity for non-discriminatory access.

The Commission, by comparison, has approved a form of "bump" rule, whereby a shipper *already having capacity allocated to it* can be bumped if it has a discounted rate, another shipper is willing to pay a higher rate up to the maximum, and the original shipper within five days fails to agree to pay that higher rate. (*See, e.g. Natural Gas Pipeline of America*, 39 FERC ¶ 61,153 at 61,595 (1987).) But, prior to this order, the Commission has wisely refused to allow price to be the determining factor. Here, the clearly ambiguous proviso will create a *de facto* conditioned access capability in the OCS pipeline, will probably frustrate any orderly and systematic grandfather treatment of existing interruptible transportation arrangements of various types, and undoubtedly will create a precedent for allocation determined largely or solely by price, such as the auctioning proposal.

The rationale for adoption of this disruptive and potentially punitive proviso provided in Footnote 24, at page 19, falls of its own weight in the face of these countervailing considerations. In my judgment, there is every justification for an unconstrained priority for pre-existing interruptible transportation arrangements, independent of the prevailing rates or subsequent rate requirements. The interruptible transportation open season should have been modeled on the open season for firm transportation (see p. 16 *et seq.*), without any introduction of the unprecedented and unjustified price factor. The analytical bottom line is that the Commission, with the price proviso, has gutted the grandfather protection for existing interruptible transportation as a practical matter.

I also am concerned that the process and procedures for contemporaneous consideration of all the March 1 rate filings by all OCS pipelines for new Part 284 rates or, in the alternative, their existing rates with a justification for waiver of the Part 284 requirements, will create for the Commission, pipelines, and shippers an administrative nightmare. In addition the massive number of filings also will complicate the open season for interruptible transportation under the price proviso discussed above. Certainly, the Commission will be confronted with an OCS tidal wave of Part 284 rates, terms and conditions. Further, I believe thought should be given to the process and procedures for these filings from the perspective of an orderly and non-disruptive transition to blanket certificate operations.

The Commission rejected a number of modifications to the proposed rule requested by producer commenters. Several of these modifications, in my judgment, should have been adopted. First, the Order No. 500 crediting mechanism should not be applied to open access transportation of OCS pipelines for the reasons stated in the producer comments. I find particularly persuasive arguments setting forth the distinction between OCS transportation under the OCSLA and the voluntary transportation program under Order No. 500. (See discussion at page 57 *et seq.*) I agree that applying the crediting mechanism creates conditioned access in violation of the OCSLA, particularly as the Commission has just interpreted that law in these dockets.

Second, the Commission also should have provided a separate priority in some fashion for casinghead gas as sought by several producer commenters. (See discussion at page 57 *et seq.*) According to the comments, casinghead gas constitutes about eleven percent of total OCS gas production in the Gulf of Mexico. The Final Rule, at page 60, concludes that the Commission will consider on a case-by-case basis any issues of potential damage to off-shore wells that may be raised by these rules. In light of the difficulties already obvious in the open season for interruptible transportation, the case-by-case approach in all likelihood will be too little and too late to prevent such potential damage. The better and more responsible approach is to recognize now the particular sensitivity of the OCS wells and to provide an affirmative priority for casinghead gas. The Commission should not provide the *de facto* conditioned access result and case-by-case hollow gesture adopted in the Final Rule.

Next, the Final Rule, at page 34 and at page 67 (section 284.302(b)) addresses the issue raised by producer commenters about the shoreward delivery interconnection. The specific concern about a potential bottleneck control problem remains unresolved, since the new definition addresses physical interconnection, but not assured regulatory access to transportation services. Notwithstanding the legal technicalities of OCSLA jurisdiction proferred as an apologetic excuse by the Commission for not addressing asssured regulatory access, the Commission has created a legal conundrum of some consequence. If Congress can be deemed to have enacted the requirement for open access transportation on the OCS with such forcefulness in the 1978 Amendments to justify mandatory imposition of Part 284 blanket certificates under the Natural Gas Act on unwilling OCS pipelines, how perforce could Congress not have intended that the Commission use its NGA authority to ensure that the OCS gas could be delivered to a customer for sale beyond the first shoreward bottleneck controlled by a pipeline unwilling to provide voluntarily the necessary transportation service, assuming capacity is available.

The Commission confronted an analogous problem in Order No. 451 with regard to natural gas released under the Good Faith Negotiation procedures for sale to a new customer and concluded, correctly in my judgment, that assured transportation as provided there was an absolutely essential feature. I fail to see why the Commission could not fashion a similar provision for OCS gas using its NGA authorities in response to the Congressional mandate in the 1978 amendments. Put another way, if that mandate is legally satisfactory to justify mandatory imposition of Part 284 blanket certificates, it also should suffice for assured onshore delivery of OCSA gas transported ashore under those blanket certificates.

The Final Rule, at page 20, indicates that generally the Commission will no longer issue section 7(c) certificates to authorize transportation services that otherwise could be performed under the blanket certificates imposed here on OCS pipelines. That portion of the Rule would codify the more general practice for processing of section 7(c) applications, which has evolved over the past year in the voluntary Part 284 program. At the same time, however, the Commission staff apparently has refused to process new section 7(c) applications for OCS gas since the issuance of the NOPR in these dockets. As a result, there are pending today a limited number of such applications which are deemed critical by various producers to provide needed transportation ashore for OCS gas. This inaction results in possibly shutting-in the gas while the implementation of the Final Rule is awaited. The Commission should issue at least limited-term certificates for the transport of that gas during this winter and the pendency of operational blanket certificates. There is no justification for further delay.

Some producer commenters recommended that the Commission adopt special balancing and penalty provisions that would better reflect the technical and operational situation on the OCS pipelines, rather than those approved for onshore pipelines. The Final Rule does not address this recommendation directly, but does indicate more generally in several places that the terms and conditions approved in other onshore blanket certificates will be acceptable under the mandatory OCS blanket certificates. The Commission should consider these concerns and recommendations with regard to balancing and penalties, in order to ensure that the mandatory blanket certificates have terms and conditions which are not discriminatory nor unfair to offshore producers.

The Final Rule, at page 23, provides that, where interstate pipeline owners of the OCS pipeline own, control and utilize defined finite portions of the OCS pipelines capacity, separate blanket certificates are issued to each individual interstate pipeline owner. And, each of those interstate owners may conduct separate open seasons and subsequent reallocations for that portion of the OCS pipeline. I am concerned about the impact of separate rates, terms, conditions, and allocation methodologies on portions of a single OCS pipeline, in terms of operations, balancing, penalties, accounting and non-discriminatory access. Such OCS pipelines, and shippers on them, should carefully consider the practical ramifications of such separate, but potentially different, blanket certificates on the same pipeline. For example, should there be a requirement for uniformity, in whole or in part as to certain aspects, as between separate blanket certificates on the same OCS pipeline?

Finally the rate requirements of the Final Rule are established in accordance with section 5 of the NGA and impose an obligation that the rates for all new *and* existing transportation services must conform to the requirements of Part 284, effective at the time an OCS pipeline provides the new transportation service required by this rule. (Pages 25 and 26.) This general requirement is subject to an exception where an individual OCS pipeline can demonstrate that its current transportation rates are necessary, because of the historical factors associated with project financing and other features, and the maintenance of different rates would not be unduly discriminatory. These rate requirements, and the implementation process for them, could potentially present the Commission and interested parties with a complicated and difficult administrative process across the spectrum of OCS pipelines required on March 1, 1989, to make tariff filings for the mandatory blanket certificates. Also, I am not persuaded that the Commission should mandate Part 248 rates on all existing transportation services, subject to the stated case-by-case exception. Interested parties should consider carefully the impact of the Part 284 rates, in terms of both pricing and access impact, and particularly with regard to the interruptible transportation price factor in the mandatory open season for existing interruptible transportation.

*Conclusion*

I am convinced that the substantive option described above will solve any real world OCS problem that may remain today, independent of any gamesmanship associated more generally with broader acceptance of Order No. 436/500 blanket certificates by interstate pipelines, onshore or on the OCS. The procedural option described above would provide a quick opportunity to get additional and current comments on the fundamentally changed proposal in the draft order and also would provide some needed calibration today of the rationale and justification for any action, as well as the substantive option. If, in the end, this turns out to be an exercise largely intended to establish a precedent for mandatory imposition of blanket certificates on interstate pipelines or to simply impose blanket certificates under the rubric of the OCSLA, rather than solve an OCS problem after all, I only hope the Commission Members will acknowledge that result. Finally, if the Commission decides to proceed with implementing the Final Rule, I would recommend strongly that the order be reviewed further and modified as discussed above to minimize the potential confusion and disruption resulting from the wholesale OCS-wide imposition of blanket certificates effective on a date certain *and* the processing at the same time of all resulting OCS pipeline rate cases.

I look forward to discussion of these recommendations, the procedural option, and the substantive option during the rehearing process.

For these reasons, I concur.

Charles A. Trabandt,

*Commissioner.*

[FR Doc. 88-29034 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

---

## 18 CFR Part 385

[Docket No. RM87-24-001; Order No. 502-A]

## Procedures for the Assessment of Civil Penalties; Order on Rehearing

Issued: December 13, 1988.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final Rule; Order on Rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 502, a final rule establishing procedures for the assessment of civil penalties under section 31 of the Federal Power Act. (53 FR 32,035, Aug. 23, 1988.) Four petitions for rehearing were filed in this rulemaking docket. Applicants have failed to raise any new material issues of fact.

**EFFECTIVE DATE:** This order is effective December 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested person an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electric bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

### Order on Rehearing

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 502, a final rule establishing procedures for the assessment of civil penalties under section 31 of the Federal Power Act (Act), enacted by section 12 of the Electric Consumers Protection Act of 1986 (ECPA).[1]

The Commission issued Order No. 502 on August 17, 1988.[2] Four petitions for rehearing of Order No. 502 were filed, on September 15 and 16, 1988.[3] For the

---

[1] Pub. L. No. 99-495, 100 Stat. 1243 (1986) (codified at 16 U.S.C. 823(b) (1982)).

[2] 53 FR 32,035 (Aug. 23, 1988), III FERC Stats. & Regs. ¶ 30,828 (Aug. 17, 1988).

[3] Joint Request for Rehearing of Edison Electric Institute, National Hydropower Association, American Public Power Association, American Paper Institute and National Rural Electric Cooperative Association (EEI); Georgia Power Company (Georgia Power); Orange and Rockland Utilities, Inc. (Orange & Rockland); and Upper Peninsula Power Company (Upper Peninsula).

reasons discussed below, the Commission denies rehearing of Order No. 502.

*Scope of the Rule*

Order No. 502 concluded that the civil penalty provisions of section 31, which literally apply to "licensees, permittees, and exemptees," likewise apply to those who operate as licensees or exemptees without bothering to obtain the necessary authority from the Commission. The Commission emphasized that a contrary interpretation would impute to Congress the irrational intent of favoring those who completely disregard the law over those who are at least in partial compliance. It would mean that a project owner who went through the process of obtaining a license but violated the terms and conditions of the license or a Commission rule or order would be subject to civil penalties, but one who operated in exactly the same way without a license (or with an expired or revoked license) would be immune from civil penalties even if the project endangered public health, safety or the environment.

The Commission found that the statutory language does not compel such a result and, indeed, that the legislative history shows Congress was concerned about unlicensed operations, expected the Commission to assure compliance with the licensing structure, and gave it enhanced authority, in the form of civil penalty powers, to enforce the law.

All four applicants for rehearing argue that section 31 of the Federal Power Act authorizes civil penalties only against holders of a license, permit or exemption. They maintain that Order No. 502 ignores the plain meaning of section 31(c) and misinterprets the legislative history. [4] They contend that Congress specified the class of entities against whom penalties are available under section 31(c) and that Congress' use of broader language elsewhere in the Federal Power Act and in other civil penalty legislation compels a narrower reading of section 31(c).[5]

While the commenters focus on the use of the phrase "licensees, permittees, and exemptees" in section 31(c), they ignore language in the enforcement provision indicating that those words should be construed broadly. Apart from the duty to "monitor and investigate compliance with each license and permit," section 31(a) provides separately that "[t]he Commission shall conduct such investigations as may be necessary and proper in accordance with this Act." This responsibility is broad, encompassing the "Act" as a whole and, fairly read, extends to investigations not only of licensed but unlicensed jurisdictional operations as well.

Given the broad authority to investigate, the Commission's authority to issue compliance orders cannot reasonably be restricted to enforcing only the terms of particular licenses, permits or exemptions that have already been issued. Under section 31(a), "[a]fter notice and opportunity for public hearing," the Commission may issue such orders as necessary to require compliance with the "terms and conditions of licenses and permits issued under this Part and with the terms and conditions of exemptions granted from any requirement of this Part." This language is broad and logically encompasses actions necessary to require compliance not only with particular existing licenses but with the licensing structure that is at the heart of the Act and through which the Commission exercises its regulatory responsibilities to protect public health, safety and the environment.

Section 31(c) provides for the civil penalty remedy against those who violate or fail to comply with Commission orders under subsection (a). Given the broad language of section 31(a), however, section 31(c) cannot be read narrowly as petitioners claim, but must be understood as encompassing Commission orders intended to bring unlicensed operators into compliance.[6]

Moreover, the language of section 31(c) itself provides further indication that the words "licensee, permittee, or exemptee" were not meant to be construed narrowly and literally.

While section 31(c) mentions civil penalties against a licensee, permittee or exemptee, it instructs the Commission in determining the amount of any penalty to consider remedial "efforts of the licensee" but fails to mention remedial efforts by exemptees or permittees. Since there is no rational basis for considering remedial efforts by the one but not by the others, Congress plainly intended no distinctions between them. No commenter has suggested the Commission should follow the literal language and therefore recognize remedial efforts by licensees but not by exemptees and permittees. Congress was using the word "licensee" in a broad and not a literal sense to include all jurisdictional operators. Similarly, the phrase "licensee, permittee or exemptee" may be read to encompass anyone engaged in conduct requiring a license or exemption.

At the very least, the language of sections 31(a) and 31(c), read together, reveals an ambiguity about the intent of Congress that justifies recourse to legislative history as an aid to construction. The Commission therefore has the latitude and the responsibility to look behind the words of section 31 to determine and implement the intent of Congress. Moreover, the commenters' arguments about "plain meaning" ignore the Supreme Court's pronouncement in *American Trucking* and other judicial decisions cited by Order No. 502.[7] As *American Trucking* holds, where the literal words of a statute lead to "absurd or futile" results, the courts look "beyond the words to the purpose of the act," and even when the language does not "produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole,'" the courts follow "the purpose rather than the literal words."[8] When aid to construction of the meaning of statutory words is available "there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' " [9]

This approach is likewise reflected in *Commodity Futures Trading Commission v. Savage*, where the U.S. Court of Appeals ruled that certain trading violations under the Commodity Exchange Act, applicable by statute to persons "registered under this Act," also covered trading advisors who should have registered but had failed to do so. "It would be anomalous, indeed," said the Court, "if an advisor could escape the fiduciary duties of [the statute] by avoiding required registration." [10]

---

[4] *See, e.g.*, EEI Orange & Rockland and Upper Peninsula.

[5] *See, e.g.* EEI and Orange & Rockland.

[6] The legislative history confirms that Congress intended the civil penalty remedy to be available for any problem covered by subsection (a) of section 31. According to the House Committee, civil penalties could be applied "for failure or refusal to comply with a subsection (a) order or any matter referenced in subsection (a) or for violations of such matters or orders." H.R. Rep. No. 99-507; 99th Congress, 2nd Sess. at 40.

[7] U.S. v. American Trucking Associations, Inc. *et al.*, 310 U.S. 534 (1940); Commodity Futures Trading Commission v. Savage, 611 F.2d 270 (9th Cir. 1980).

[8] American Trucking at 543. *See also* Trans Alaska Pipeline Rate Cases, 436 U.S. 631, 643 (1978), where the Court said: This Court, in interpreting the words of a statute, has "some 'scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning would lead to absurd results * * * or would thwart the obvious purpose of the statute' . . . [b]ut it is otherwise 'where no such consequences would follow and where * * * it appears to be consonant with the purposes of the act * * *'" (citations omitted)

[9] American Trucking, 310 U.S. at 543–545.

[10] Commodity Futures Trading Commission v. Savage at 281–282. At the time of the alleged trading

Continued

Likewise, the Commission believes it would be anomalous if the operator of a jurisdictional project could escape civil penalties even in the most egregious circumstances by avoiding required licensing.

Petitioners' reading leads to the result that while the Commission's authority to investigate is broad, its authority to enforce its investigations is narrow. This reading of the statute leads to absurd results and is contrary to the legislative history. As order No. 502 found, the legislative history of section 31 indicates that Congress intended civil penalties to apply not only to holders of licenses or exemptions but also to those who are required to have a license but have failed to secure one. The civil penalties section originated in the House. When the divergent views of the House and Senate were reconciled in conference, the resulting conference report had no specific discussion of civil penalties. Rather, that conference report addressed "the principal differences between the Senate bill, the House amendment and the substitute agreement." [11] Consequently, the House Committee Report is the most authoritative legislative history as to the civil penalties provisions. The House Committee explained that the purpose of the enforcement section was to buttress and improve the Commission's capability in dealing with certain concerns. The very first concern highlighted by the House Committee Report was the problem of unlicensed hydroelectric projects, a problem the Committee described by quoting from certain testimony by Edward G. Horn, chief ecologist for the New York State Department of Environmental Conservation.

EEI argues the Commission misconstrued the legislative history. On the basis of a single reference to "grandfathered" projects near the end of a 20-line quotation that otherwise deals exclusively with unlicensed operations, EEI claims Mr. Horn's testimony was really a plea not for more enforcement remedies against unlicensed projects but for an amendment of the Act to require licenses for grandfathered projects. EEI's contention is inaccurate and also beside the point. Mr. Horn's full testimony [12] on this issue indicates he was concerned both about unlicensed projects and grandfathered projects and recommended additional enforcement powers for the Commission to deal with unlicensed operations as well as new legislation to subject grandfathered projects to Commission regulation. In terms of the legislative history of section 31, however, what is significant is not Mr. Horn's testimony, per se, but the point the Committee was making by quoting from it. The Committee italicized the portion of the quote it found most significant as follows:

> *At the present time, numerous hydroelectric stations throughout the country, particularly in the Northeast, are being operated without licenses or exemptions from licensing.* [13]

It is obvious that the Committee was using the Horn quotation to explain its concern about unlicensed jurisdictional projects, not grandfathered projects which require no license. Congress was not proposing to change the status of grandfathered projects and can hardly have intended a lawful activity to be the focus of greater enforcement effort.

EEI next argues that when the House Committee said it expected the Commission "to locate projects that are being operated without legal authority and to enforce the law" [14] it was merely exhorting the Commission to use its preexisting powers to seek compliance with the Act. Order No. 502 reads the language to imply that the new enforcement authority (*i.e.*, civil penalties) could be used to bring unlicensed jurisdictional projects into compliance. EEI's contrary contention ignores the context of the Committee's statement.

The Committee first quoted a number of concerns about enforcement that had been mentioned by Mr. Horn in his testimony (including the problem of unlicensed projects), and then concluded:

> *These concerns* * * * indicate that FERC enforcement efforts need buttressing and improvement. *That is the purpose of this section.* [15]

Therefore, the Committee clearly contemplated that the new enforcement tools of section 31 of the Act would be used to improve the Commission's enforcement efforts in dealing with the concerns that had already been identified, including the problem of unlicensed operations.

Finally, EEI advances policy arguments against imposing civil penalties on unlicensed operators. It argues that the failure to seek Commission authority may result from a good faith disagreement over difficult jurisdictional issues, and that the threat of civil penalties may unfairly prompt unlicensed operators to submit to Commission jurisdiction despite having serious doubts about that jurisdiction.

The Commission is not persuaded by EEI's policy arguments. There may indeed be circumstances in which it will be inappropriate to impose civil penalties on unlicensed operators just as there will be situations when it may be unfair to impose penalties in connection with violations by holders of a license, permit or exemption. However, the fact that civil penalties may sometimes be inappropriate is not a valid argument for exempting unlicensed operators from civil penalties in all circumstances—even, for example, where a jurisdictional determination has been made by the Commission and the project is harmful to public health, safety or the environment. This rule does not purport to decide the precise circumstances in which civil penalties will be imposed or the amount of those penalties. Such determinations will be made by the Commission in particular factual contexts and on the basis of numerous considerations, including the broad factors listed in § 385.1505 of the Commission's regulations.[16] The Commission retains ample discretion to assure fair treatment while also meeting its responsibility to protect public health, safety and the environment.

Moreover, the argument that civil penalties should never apply to unlicensed operators because their failure to seek a license may result from a disagreement with the Commission on intricate questions of jurisdiction ignores the fact that disputes about difficult legal or factual issues are hardly unqiue to unlicensed operators.[17] Allegations that a license holder has violated the terms or conditions of its license or a Commission rule or order

---

violations, the Commodity Act made it unlawful for a trading advisor "registered under this Act" to employ various fraudulent devices. Subsequently, the phrase "registered under this Act" was removed from the statute to make clear that persons required to register but failing to do so were covered. Savage argued that because he was not registered at the time of the alleged violations and because Congress had not yet changed the law, the provision did not apply to him. The court acknowledged that the subsequent deletion of the troublesome phrase might suggest that a gap existed prior to the amendment. It concluded, however, that the statute should always have been interpreted to apply to persons *required* to register and that the amendment merely clarified that interpretation.

[11] H. Rep. No. 99-934, 99th Cong., 2nd Sess. at 21.

[12] Hearings before the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce on H.R. 44, H.R. 1815, H.R. 1959, and H.R. 2605, 99th Cong., 1st Sess., 85-102 (1985) (statement of Edward G. Horn, New York State Department of Environmental Conservation).

[13] H.R. Rep. No. 99-507, 99th Cong., 2nd Sess. at 39 (1986) (emphasis in original).

[14] *Supra* note 12.

[15] *Supra* note 13 (emphasis added).

[16] 18 CFR 385.1505 (1988).

[17] Also, violations of other Commissions orders may be committed by unlicensed operators who do not dispute jurisdiction and may indeed be in the process of applying for a license.

may also give rise to difficult legal and factual questions and to assertions by the licensee that it simply has a good faith disagreement with the Commission or its staff. The Commission's experience with civil penalties under the Natural Gas Policy Act of 1978 indicates that arguments of this kind are frequently made by natural gas companies as well. Such arguments, however, do not support blanket immunity from civil penalties. A civil penalty will not be imposed until after a final determination by the Commission that the project in question is jurisdictional [18] and is being operated without legal authority, but may be assessed back to the effective date of ECPA. Unlicensed operators are provided with ample procedural opportunities to challenge any element of the alleged violation including the issue of jurisdiction.

EEI's concern that the threat of civil penalties may persuade an unlicensed operator to submit to Commission jurisdiction is really a general objection to civil penalties as a remedy, especially where, as here, Congress has fixed a maximum penalty for each day the violation continues.[19] The classic purpose of civil penalties is to encourage compliance with the law. It is therefore not surprising that civil penalties do give the Commission greater enforcement authority which should encourage greater compliance both by license holders and by those who operate as licensees. This is what Congress intended. As the Commission observed in Order No. 502, because "the stakes are now higher," persons should be more inclined to request a jurisdictional determination from the Commission before embarking on the construction or operation of a hydropower project that may be jurisdictional.

Similarly, the Commission rejects EEI's argument that while civil penalties may be imposed for violations of any rule or regulation under Part I of the Act, violations of the terms or conditions of licensees, permits and exemptions under Part I or violations of a compliance order, section 31 bars the Commission from assessing penalties for violations of Part I itself. We do not accept the artificial distinction EEI attempts to draw between the statute and regulations and licenses under the statute of orders designed to assure compliance with the statute. Violations of Part I of the Act are already embraced in the other actions specified as subjecting persons to civil penalties, and Commission rules, regulations and compliance orders cover not only the holders of a license but those who are required to have a license. In other words, any person who violates a rule or regulation issued under Part I, who violates the terms and conditions of a license, permit or exemption under Part I, or who violates an order requiring compliance with Part I, is violating Part I. The artificial character of EEI's argument is underscored by the fact that the Commission can at any time formally incorporate the statutory standards into its own regulations. Whether or not civil penalties are available as a remedy does not turn on such arid formalism.

*Assessment of Civil Penalties From ECPA's Enactment Date*

EEI and Georgia Power contend that the Commission should revise the civil penalties rule so that it applies only to prospective violations. They claim that they should not face penalties under a new set of rules for violations that may have occurred before the rule issued. They argue that although ECPA provided a framework within which civil penalties would be assessed, many aspects of the civil penalties rule could not be foreseen based on a reading of ECPA, and that, therefore, retroactive application of the civil penalties rule would be unjust.

ECPA provides the Commission the authority to assess civil penalties as a means to enforce the Act. Project owners were on notice from the enactment of ECPA that they might be subject to civil penalties for violations of the Act. The Commission's regulations simply established the procedures for assessing these civil penalties. The Commission explained in its notice of proposed rulemaking (NOPR) in this docket that section 31(c) is silent as to whether Congress intended to give the Commission authority to assess a civil penalty for violations of the Act occurring prior to the enactment of ECPA.[20] The Commission, therefore, proposed in § 385.1503 to apply the civil penalty provisions of section 31 of the Act prospectively, and declared that the rules would apply to conduct occurring only on or after enactment of ECPA, even if that conduct began before that date.

It is disingenuous for those subject to the requirements of the Act to claim that prior to adoption of our regulations here, they had no notice that violations of the Act could subject them to assessment of civil penalties. ECPA clearly places violators of the Act at risk for assessment of civil penalties, and those operating under the Act should have known upon its enactment that as of that date they ran the risk of being assessed civil penalties for improper conduct. Accordingly, we affirm that licensees, permittees, or exemptees are subject to assessment of civil penalties for improper conduct occurring on or after the date of enactment of ECPA. Regarding projects that should have a license or exemption but do not, civil penalties will be assessed in these situations after issuance of an order establishing Commission jurisdiction, but the liability for civil penalties will extend to improper conduct occurring on or after the date of enactment of ECPA.

*Section 31(a) Compliance Order Procedures*

Section 31 of the Act has four subsections. Subsection (a) affirms the Commission's authority to monitor and investigate compliance with licenses, permits and exemptions issued for hydroelectric projects. This subsection also provides the Commission authority to issue compliance orders which, if violated, provide the basis for enforcement action under subsections (b) or (c). Subsection (b) states the conditions under which the Commission may issue an order revoking a license or exemption. Subsection (c) sets forth the persons subject to a civil penalty, the conduct which may subject those persons to a civil penalty, and factors which the Commission will take into account in determining the amount of the proposed penalty. Subsection (c) also provides that no civil penalty will be assessed where revocation is ordered. Subsection (d) establishes alternative civil penalty assessment procedures.

EEI argues that the Commission should provide guidelines and procedural protections for the issuance of compliance orders pursuant to section 31(a) of the Act. It is concerned

[18] For the purposes of discussion in this order, "jurisdictional" means required to be licensed pursuant to section 23(b)(1) of the FPA, 16 U.S.C. 817(1). *See* Cooley v. FERC, 843 F.2d 1464 (D.C. Cir. 1988).

[19] Georgia Power also argues that the Commission should not assess civil penalties until there has been a final, nonappealable determination that a project is subject to the Act. Order No. 502 already concluded that the Commission would not stay its penalty orders on a generic basis, but would exercise its administrative discretion on a case-by-case basis. Order No. 502 also stated, at p. 31,221, that "the mere filing of an appeal does not free any person from liability for engaging in unlawful conduct that is subject to civil penalty."

[20] *See* Procedures for the Assessment of Civil Penalties under section 31 of the Federal Power Act, Notice of Proposed Rulemaking, 52 FR 29,216 (Aug. 6, 1987), FERC Stats. & Regs. [Proposed Regulations 1982–1987] ¶ 32,450 (Aug. 3, 1987).

particularly with those situations where the owner or an unlicensed project is faced with the assessment of civil penalties for not having a license, and the question of whether penalties should be assessed is one of Commission jurisdiction over the project. EEI requests the Commission to identify: (1) the factors or circumstances that may lead the Commission to issue a compliance order; (2) the Commission staff member or members with authority to issue the orders; and (3) the procedural protections that will be afforded project owners before any order is issued.

Additionally, EEI argues that if a compliance order must issue, it should be under sufficient guidelines, and with sufficient procedural protections, to ensure that the project owner gets a fair result. According to EEI, at a minimum project owners must be notified of an impending compliance order and given an opportunity to respond in writing. The Commission should also provide that it will consider the project owner's response before issuing a compliance order and that it will base its decision on the entire public record before it, including the owner's response. Upper Peninsula argues further that section 31 of the Act and its legislative history require a formal evidentiary hearing prior to issuance of a compliance order pursuant to section 31(a) of the Act.

It is unnecessary to establish regulations for issuing compliance orders pursuant to section 31(a).[21] Presently, the Office of Hydropower Licensing (OHL) initiates a compliance order proceeding by sending the project owner a letter indicating that the owner may be subject to action pursuant to section 31 of the Act. The letter identifies the problems the project owner must address and indicates that the owner must respond within a specified period of time. The owner then has the opportunity to respond to the letter in writing, setting forth reasons why the proposed action, including assertion of Commission jurisdiction over a project, should not be taken. The Director of OHL then either terminates the action or issues a compliance order pursuant to § 375.314 of the Commission's regulations. An owner's failure to comply with the compliance order will subject the owner to civil penalties under Subpart O of Part 385 of the Commission's regulations. The Commission believes these procedures will give project owners ample notice and opportunities to respond in writing prior to triggering the procedures for assessment of civil penalties.[22]

*Consideration of Additional Factors*

EEI argues that the Commission should revise the list of factors in § 385.1505 that it will consider when determining the amount of a proposed penalty to: (1) exclude consideration of a project owner's history of past violations, (2) exclude consideration of unknowing violations and (3) indicate that the economic benefits factor will only be considered if a project owner knowingly engaged in a violation with the goal of economic gain. EEI argues further that, at the very least, the Commission should consider only those past violations that occurred on the project owner's watch at the project in question and relevant to the violation in question. EEI contends that to consider alleged violations at projects other than the one under consideration would unfairly prejudice multiple project owners, for whom the risk of past violations is higher in proportion to the number and size of their projects.

The Commission assesses civil penalties based on a careful weighing of the seriousness of the violation and any mitigating factors that may be present. The Commission explained in Order No. 502 that in considering the nature of a present violation it will take into account the violator's compliance history. An increased penalty is necessary for a repeat violator in order to encourage compliance and to protect the environment and provide greater public safety. In contrast, a first time violator should not be penalized as severely as a repeat violator.

Next, the Commission will not adopt by generic regulation a knowing violation standard that Congress did not impose. There is no statutory requirement that a violation be a knowing one before being subject to civil penalties.

The Commission is sensitive to the fact that its enforcement actions must be fair as well as effective. Whether a violation is knowing will therefore be an important consideration in the individual proceedings that will determine what civil penalties, if any, are applied in specific factual circumstances. However, in the absence of more extensive experience with civil penalties, the Commission is not prepared to adopt on its own as a universal requirement a particular legal standard that carries with it an extensive judicial gloss and has the potential to encourage prolonged disputes that a concern for fairness may not require.

By the Commission. Commissioner Trabandt dissented with a separate statement attached.

**Lois D. Cashell,**

*Secretary.*

**Trabandt, Commissioner,** *Dissenting*

The majority has largely ignored the legal arguments I presented in my August 17, 1988 dissent in this proceeding as well as several persuasive legal and policy concerns contained in the petitions for rehearing, and for this reason I must again dissent.

The first six pages in my August 17th dissent discuss *current* standards of statutory construction. "Plain meaning" principles of statutory construction were also discussed in the joint petition for rehearing filed by the Edison Electric Institute, the National Hydropower Association, the American Paper Institute, and the National Rural Electric Cooperative Association (EEI Petition) at pages 7–10, as well as in the petition for rehearing filed by Orange & Rockland (O&R) at pages 6–12. Both petitions highlight the conclusion contained in my dissent that recent case law establishes current standards for statutory interpretation.

However, the majority insists on *U.S. v. American Trucking Ass'n, Inc.*, 310 U.S. 534, 543 (1940) as dispositive precedent for statutory interpretation (slip op. at 5–7) and ignores the 48 years of Supreme Court cases since *American Trucking* which have sharpened the focus on the plain meaning of the statute, in order to fulfill what the majority has determined to be one of the "purposes" of the Electric Consumers

[21] *See* Regulations Delegating Authority, 53 FR 16,058 at (May 5, 1988); III FERC Stats. & Regs. ¶ 30,814 at 31.119 (1988), where the Commission stated:

The Commission is delegating to the Director [of Hydropower Licensing] the authority to require a licensee or an applicant to take actions necessary to comply with the Commission's dam safety regulations or actions that are otherwise necessary to protect human life, health, property, or the environment. This delegation would make enforcement action by the Commission more rapid and effective. (citations omitted)

Specifically, § 375.314(h) of the Commission's regulations authorizes the Director to:

For any unlicensed or unexempted hydropower project, take the following actions.

(1) Conduct investigations to ascertain the Commission's jurisdiction,

(2) Make preliminary jurisdictional determinations, and

(3) If a project has been preliminarily determined to require a license, issue notification of the Commission's jurisdiction; require the filing of a license application; and require that actions necessary to comply with Part 12 of this chapter or otherwise protect human life, health, property, or the environment are taken.

[22] Georgia Power complains that certain self-reporting requirements regarding license violations recently imposed in a Commission compliance letter to it are inconsistent with the notice and hearing requirements in section 31(a), with language in the preamble to the Commission's final rule and with section 6 of the Federal Power Act, which requires agreement of the licensee prior to any alteration of the license. Georgia Power mischaracterizes the letter as one requiring compliance. In fact, the letter represents only a contact with Georgia Power regarding violations of the terms of a project license that had no adverse consequences and about which no further action was deemed necessary.

Protection Act of 1986 (ECPA). In so doing, the majority is usurping the role of Congress. As O&R pointed out in its Petition at page 22, the Supreme Court cautioned that the "broad purposes" of legislation must not be invoked at the expense of the actual terms of the statute. In *Board of Governors of Federal Reserve System v. Dimension Financial Corporation*, 474 U.S. 361 (1986), the Court reasoned:

Application of 'broad purposes' of legislation at the expense of specific provisions ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action. Congress may be unanimous in its intent to stamp out some vague social or economic evil; however, because its Members may differ sharply on the means for effectuating that intent, the final language of the legislation may reflect hard fought compromises. Invocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself takes no account of processes of compromise and, in the end, prevents the effectuation of congressional intent. *Id.* at 373. *See also* EEI Petition at page 15 and cases cited therein.

In addition to the legal flaws contained in the majority's order, there are factual ones as well. As discussed in my August 17th dissent (slip op. at 8–11) and in EEI's Petition (at 7–9), the majority misuses the Congressional testimony of Edward G. Horn, chief ecologist for New York State Department of Environmental Conservation, which was contained in the House Report on ECPA. As EEI's Petition points out, all of Mr. Horn's concerns apply equally to lawfully unlicensed projects and unlawfully unlicensed projects. In the instant order, the majority once again distorts the legislative history by using Mr. Horn's remarks for the proposition that Congress intended section 31(c) penalties to apply to unlicensed owners. Moreover, delving into the legislative history at the expense of the plain words of the statute treads dangerous ground as the D.C. Circuit Court recently opined in *Abourezk v. Reagan*, 785 F.2d 1043 (D.C. Cir. 1986):

[W]e think it plainly wrong as a general matter * * * to regard committee reports as drafted more meticulously and as reflecting the congressional will more accurately than the statutory text itself. Committee reports, we remind, do not embody the law. Congress, as Judge Scalia recently noted, votes on the statutory words, not on different expressions packaged in committee reports. *Hirschey v. FERC*, 777 F.2d 1, 7–8 & n.1 (D.C. Cir. 1985) (Scalia, J., concurring).

EEI's Petition also highlights other administrative civil penalty statutes and pointed out that these enactments including section 31(c), are similar in form and, because they address the same subject matter—administrative enforcement by civil penalty—should be read together to ascertain the meaning of any one (EEI Petition at 10–15). Examples cited are section 234(a) of the Atomic Energy Act of 1954, and section 11901 of the Interstate Commerce Act as extensively amended in 1978. EEI argues that there is no reason to suggest that Congress meant anything other than what it said in section 31(c) inasmuch as Congress has in other enactments taken care precisely to delimit the scope of civil penalty liabilities in terms of the entities against which penalties may be assessed. The instant rehearing order fails to address this important point.

I do not wish to diminish the genuine concern with which my colleagues view the unlicensed projects issue, though in my view at least this should not concern us as much as my colleagues seem to think. However, notwithstanding our disagreement on the gravity of the problem, it is important to note that the Commission for many years has had procedures in place to effectively deal with unlicensed projects without the use of civil penalties, another fact the majority completely ignores.

For example, in the so-called *Androscoggin* decision, *Public Service Co. of New Hampshire*, 27 F.P.C. 830 (1962), the Commission identified three principal factors to be taken into account when considering cases involving the unlicensed project issue: (1) to the extent feasible, it is the burden of a sound licensing policy to minimize the inequity of an unlicensed project owner reaping a windfall from a delay in filing for a required license; (2) the Commission's past failure, for want of funds or manpower, to enforce general compliance and the large number of projects that had operated without a license since 1935 indicated the need for a discriminating approach in order to effectively address the unlicensed project issue; and (3) in regard to termination date of a license, it was reasonable to shorten the license term to take account of significant 1943 decisions holding navigable a stream usable for log transport, and thus giving notice of the perils of further unlicensed operation to the owner of a project in such a stream. So the Commission fixed December 3, 1993—fifty years after that 1943 notice—as the termination date of the Androscoggin license.

Moreover, several years after *Androscoggin*, the D.C. Circuit Court enhanced the Commission's ability to deal effectively with the unlicensed project issue by citing with approval the *Androscoggin* decision and by expressly holding that the Commission has statutory authority to assign an effective date for licenses issued to a project owner earlier than the date of issuance of license when the project involved was one constructed or maintained without a license in violation of law. *See Niagara Mohawk Power Corporation v. FPC*, 379 F.2d 153 (D.C. Cir. 1967). This procedure could include in appropriate cases the assessment of substantial back payments of annual charges. In addition, if unlawful construction of projects is the majority's concern, the Commission has ample authority to enjoin such violation of the Act under section 314(a) of the Federal Power Act of which the Commission's enforcement staff has availed itself in recent years. Clearly, the Commission is not defenseless and instead has developed a formidable arsenal of procedural weaponry to encourage unlicensed project owners to file for licenses if required by law.

In any event, the 1986 amendments to the Federal Power Act made by the Electric Consumers Protection Act (ECPA) *do not* in any substantive way address unlicensed hydroelectric operation. Indeed, the House Report which is so enthusiastically embraced as justification for the majority's decision, refers to unlicensed operation as an "alleged problem." The House Committee Report *does not* recommend or even suggest that the Commission must or should apply civil penalties to unlicensed hydroelectric projects. Instead the House Report merely opines that it expects the Commission to locate projects that are being operated without legal authority and to enforce the law, and directs the Commission to make a "report to the Committee within six months about this *alleged problem*." (Emphasis added.) It is hard to fathom that Congress would have prescribed such a punitive measure without some specific discussion as to why it is necessary, particularly in light of the House Committee's request to obtain further information in the form of a Commission Report on the "alleged problem." I for one have never seen the report, and in any event, if Staff did send such a report, Congress has not seen fit to act or acknowledge a need for the Commission to act.

At the November 16, 1988, Commission Meeting, all of my colleagues agreed that the imposition of civil penalties of $10,000 a day with possibly retroactive effect to October 16, 1986, the date ECPA became law, is an extraordinary measure with serious due process implications. Yet, without any hard evidence that extraordinary measures are needed, the majority has adopted a flawed interpretation of section 31 of the FPA that will have the effect of chilling efforts to legitimately offer counter arguments to Commission determinations of jurisdiction. I submit that such an effect is clearly not in the public interest.

This persuades me that the more rational approach is to continue with the procedures already in place for dealing with unlicensed projects which have been effectively implemented for many years. By staying this course, we will be able to perform our responsibilities and, at the same time, abandon the strained interpretation of section 31 that will unnecessarily and illegally permit the Commission to use civil penalties as a cudgel to coerce unlicensed projects to accept Commission determinations of jurisdiction.

Charles A. Trabandt,

*Commissioner.*

[FR Doc. 88-29108 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 14

## Advisory Committees

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its advisory committee regulations to provide that, when a member of the uniformed services, including a member of the Commissioned Corps of the Public Health Service, is appointed to serve on an advisory committee, he or she is not appointed as a special Government employee. Rather, the person's advisory committee duties would be regarded as part of the person's assigned functions as a member of the Commissioned Corps or other service.

**EFFECTIVE DATE:** December 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

**SUPPLEMENTARY INFORMATION:** With some exceptions, existing regulations provide that persons selected to serve on FDA's advisory committees are appointed as special Government employees. In staffing its advisory committees, FDA sometimes wishes to select appropriately qualified persons who are members of the uniformed services, including the Commissioned Corps of the Public Health Service. However, an obstacle to this course of action is that members of the uniformed services may not hold dual Government appointments. Accordingly, FDA is amending its regulations to provide that, when members of the Commissioned Corp or other uniformed services serve on FDA's advisory committees, they do so as part of their assigned functions in the Federal Government or the Commissioned Corps or other service, without appointment as special Government employees.

Because this rule relates to agency management and personnel, it is exempt from the usual requirements of notice, public procedure, and delayed effective date. (See 5 U.S.C. 553(a)(2).)

### List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 14 is amended as follows:

## PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: 5 U.S.C. 5332 note; 15 U.S.C. 1451 et seq.; 21 U.S.C. 41 et. seq.; 141 et seq., 321-371, 467f(b), 679(b), 821, 1031 et seq.; 42 U.S.C. 201 et seq.; 257a; 21 CFR 5.10.

2. Section 14.80 is amended by revising paragraphs (a)(2) and (b)(l)(ii) to read as follows:

**§ 14.80 Qualification for members of standing policy and technical advisory committees.**

(a) * * *

(2) Are subject to the conflict of interest laws and regulations either as special Government employees or as members of the uniformed services, including the Commissioned Corps of the Public Health Service (the Commissioner has determined that, because members representing particular interests, e.g., a representative of labor, industry, consumers, or agriculture, are included on advisory committees specifically for the purpose of representing these interests, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services which the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services); and

* * * * *

(b) * * *

(l) * * *

(ii) Except for members of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), are subject to the conflict of interest laws and regulations either as special Government employees or as members of the uniformed services, including the Commissioned Corps of the Public Health Service.

* * * * *

3. Section 14.95 is amended by revising paragraph (a) to read as follows:

**§ 14.95 Compensation of advisory committee members.**

(a) (1) Except as provided in paragraphs (a) (2) and (3) of this section, all voting advisory committee members shall, and nonvoting members may, be appointed as special Government employees and receive a consultant fee and be reimbursed for travel expenses, including per diem in lieu of subsistence, unless such compensation and reimbursement are waived.

(2) Members of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) are not appointed as special Government employees. Any member of TEPRSSC who is not a Federal employee or member of the uniformed services, including the Commissioned Corps of the Public Health Service, shall receive a consultant fee and be reimbursed for travel expenses, including per diem in lieu of subsistence, unless such compensation and reimbursement are waived.

(3) Voting and nonvoting advisory committee members who are members of the uniformed services, including the Commissioned Corps of the Public Health Service, provide service on Food and Drug Administration advisory committees as part of their assigned functions, are not appointed as special government employees, but are reimbursed by the Food and Drug Administration for travel expenses.

* * * * *

Dated: December 12, 1988.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-29029 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

---

### 21 CFR Part 14

## Advisory Committees; Establishment and Termination

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment of the Dental Products Panel and the termination of the Dental Devices Panel. This document revises the agency's list of standing advisory committees to show these actions.

**EFFECTIVE DATE:** December 19, 1988.

Authority for the Panel will remain in effect until amended or terminated by the Commissioner of Food and Drugs.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

**SUPPLEMENTARY INFORMATION:** Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 and 21 CFR 14.40(b)), FDA announces the establishment of the Dental Products Panel (the Panel). The Panel will review and evaluate available data concerning the safety and effectiveness of dental devices currently in use and advise the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification of these devices into one of three regulatory categories: Class I (general controls), class II (performance standards), or class III (premarket approval); recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, advise on any possible risks to health associated with the use of devices; advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; review classification as appropriate; recommend exemptions to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advise on the necessity to ban a device; and respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Panel also will function at times as an over-the-counter (OTC) drug advisory panel. As such, the Panel will review and evaluate data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use and the adequacy of their labeling, and will advise the Commissioner on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The Panel will evaluate data and make recommendations concerning the approval of new drug products for human use and whether various prescription drug products should be changed to OTC status.

Because this is a technical amendment to Part 14, the Commissioner finds under 21 CFR 10.40(c), (d), and (e) that notice, public procedure, and delayed effective date are unnecessary and contrary to the public interest.

Concurrently with the establishment of this Panel, the Commissioner terminated the Dental Devices Panel.

**List of Subjects in 21 CFR Part 14**

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 14 is amended as follows:

## PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

**Authority:** 5 U.S.C. 5332 note; 15 U.S.C. 1451 et seq.; 21 U.S.C. 41 et. seq.; 141 et seq., 321–371, 467f(b), 679(b), 821, 1031 et seq.; 42 U.S.C. 201 et seq.; 257a; 21 CFR 5.10.

2. Section 14.100 is amended by revising paragraph (d)(1)(iv) to read as follows:

**§ 14.100 List of standing advisory committees.**

* * * * *

(d) * * *

(1) * * *

(iv) *Dental Products Panel.* (*a*) Established March 5, 1988.

(*b*) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. Reviews and evaluates data concerning the safety and effectiveness of over-the-counter (OTC) drug products for human use and makes appropriate recommendations to the Commissioner.

* * * * *

Dated: December 13, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88–29049 Filed 12–16–88; 8:45 am]

BILLING CODE 4160-01-M

---

## 21 CFR Part 176

**[Docket No. 85F–0427]**

## Indirect Food Additives: Paper and Paperboard Components

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the copolymer of acrylic acid and 2-acrylamido-2-Methylpropanesulfonic acid, including its ammonium/alkali metal mixed salts, as a scale inhibitor in the manufacture of paper and paperboard intended for use in contact with food. This action responds to a petition filed by Calgon Corp.

**DATES:** Effective December 19, 1988; written objections and requests for a hearing by January 18, 1989.

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

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

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of October 17, 1985 (50 FR 42095), FDA announced that a petition (FAP 5B3886) had been filed by Calgon Corp., Pittsburgh, PA 15230, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of the copolymer of acrylic acid and 2-acrylamido-2-methylpropanesulfonic acid as a scale inhibitor in the manufacture of paper and paperboard in contact with food. Subsequently, in a notice published in the Federal Register of August 19, 1986 (51 FR 29612), FDA announced that the filing of the petition by Calgon Corp. had been amended to include the use of ammonium/alkali metal mixed salts of the copolymer in addition to the acid form of the copolymer.

FDA has reviewed the safety of both the additive and the starting materials used to manufacture the additive as well as the byproducts associated with the manufacturing process. Although the additive itself has not been found to cause cancer, it has been found to contain minute amounts of unreacted acrylonitrile monomer (a carcinogenic reactant used in the manufacture of the additive). Residual amounts of reactants and manufacturing aids, such as acrylonitrile monomer, are commonly found as contaminants in chemical products including food additives.

### I. Determination of Safety

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

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

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

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

## II. Safety of Petitioned Use

The agency calculated the estimated daily intake of the copolymer of acrylic acid and 2-acrylamido-2-methyl-propanesulfonic acid, including its ammonium/alkali metal mixed salts, based on several factors, including the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles. The agency estimated the daily intake of the additive to be less than 15 micrograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing in this case. However, the agency has reviewed available data from acute toxicity studies on the additive. No adverse effects were reported in these studies.

Because the additive, which may contain acrylonitrile monomer, has not been shown to cause cancer, the anticancer clause does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (49 FR 13018; April 2, 1984). The risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

### *A. Acrylonitrile Monomer*

Based on the fraction of the daily diet that may be in contact with surfaces containing the copolymer of acrylic acid and 2-acrylamido-2-methyl-propanesulfonic acid, including its ammonium/alkali metal mixed salts, and on the level of acrylonitrile monomer that may be present in the additive, FDA estimated the hypothetical worst case exposure to acrylonitrile monomer from this use of the additive as a scale inhibitor in the manufacture of paper and paperboard to be 15 nanograms per person per day (Ref. 3). The agency used data from two carcinogenicity studies on acrylonitrile monomer fed to rats to estimate the upper bound limit of lifetime human risk from this chemical stemming from the proposed use of the additive (Ref. 4). The results of the bioassays on acrylonitrile monomer showed that the material was carcinogenic for rats under the conditions of the studies. The test material caused significantly increased incidence of carcinogenic tumors at many tissue sites.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on acrylonitrile monomer. The committee further concluded that an estimate of the upper bound level of human risk from potential exposure to acrylonitrile monomer stemming from the proposed use of the additive could be calculated from the bioassays.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiments to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of 15 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to acrylonitrile monomer from the use of the subject additive is $3 \times 10^{-8}$ or less than 3 in one hundred million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to this impurity is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to acrylonitrile monomer that might result from the proposed use of the additive.

### *B. Need for Specifications*

The agency has also considered whether specifications are necessary to control the amount of acrylonitrile monomer that may be present in the additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which acrylonitrile monomer may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than an extremely low level, and (2) the upper bound limit of lifetime risk from exposure to acrylonitrile monomer, even under worst case assumptions, is very low, less than 3 in 100 million.

*C. Conclusion on Safety*

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and effective, and that the regulations should be amended as set forth below.

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

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

**III. References**

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs," in "Food Safety: Where Are We?", Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," Eds., F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated October 24, 1986, from Regulatory Food Chemistry Branch to Indirect Additive Branch, "Acrylonitrile (AN) monomer, exposure estimate."

4. Memorandum of Conference dated November 24, 1981, of the Cancer Assessment Committee, "Acrylonitrile Risk Assessment."

5. Memorandum dated October 30, 1986, from Additive Evaluation Branch to Indirect Additive Branch, "Acrylic acid/2-acrylamido-2-methyl propane sulfonic acid (60:40) as scale inhibitor. [176.170]"

**IV. Objections**

Any person who will be adversely affected by this regulation may at any time on or before January 18, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulations to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 176**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

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

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry in the table to read as follows:

**§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.**

* * * * *

(a) * * *

(5) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | |
| Acrylic acid copolymer with 2-acrylamido-2-methylpropane-sulfonic acid (CAS Reg. No. 40623-75-4) and/or its ammonium/alkali metal mixed salts. The copolymer is produced by polymerization of acrylic acid and 2-acrylamido-2-methylpropane-sulfonic acid in a weight ratio of 60/40, such that a 28 percent by weight aqueous solution of the polymer has a viscosity of 75–150 centipoises at 25 °C as determined by LV-series Brookfield viscometer (or equivalent) using a No. 2 spindle at 60 r.p.m. | For use only as a scale inhibitor prior to the sheet-forming operation in the manufacture of paper and paperboard and used at a level not to exceed 1.0 kilogram (2.2 pounds) of copolymer per 907 kilograms (1 ton) of dry paper and paperboard fibers. |
| * * * * * | |

* * * * *

Dated: December 12, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-29045 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

---

## NEIGHBORHOOD REINVESTMENT CORPORATION

### 24 CFR Part 4100

### Organization and Channeling of Functions

**AGENCY:** Neighborhood Reinvestment Corporation.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Freedom of Information Act (FOIA), the Corporation may impose search and duplication fees in response to FOIA requests. This final rule amends the Corporation's rules on fees and fee waivers so that (1) the fees will reflect more accurately the Corporation's direct (actual) costs of providing the services and (2) the fees will conform with the Freedom of Information Act of 1986.

**DATE:** January 18, 1989.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Nance Frazier, Director of Communications, Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005, telephone (202) 376-3224.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Corporation's existing Freedom of Information Act fee regulations appear at 24 CFR 4100.4(d). They provide in essence, that fees will be charged for

FOIA services at a rate of $10.00 per hour for searching and $.10 per page for copying. The regulations also provide that such fees may be waived or reduced when the Executive Director determines such a waiver or reduction "is in the public interest because furnishing the information can be considered as primarily benefiting the general public." When the charge will total less than $3.00, the fee may be waived.

The Corporation now wishes to amend its FOIA fee regulations pursuant to the Freedom of Information Reform Act.

**B. Discussion**

The Corporation received one public comment on its proposed FOIA fee amendments. This comment, from The Reporters Committee for Freedom of the Press, raised four issues.

First, the commentator questioned the appropriateness of the definition of "news" contained in § 4100.4(d)(1)(iii) of the proposed regulations, suggesting that it would require the Corporation to determine what information is "about current events" or is "of current interest to the public." This was not the intention of the Corporation and it therefore amends the definition of representative of the news media to refer to any person actively gathering "information for an entity that is organized and operated to publish or broadcast news to the public" and deletes the definition of "news" from the regulation.

Second, the commentator objected to the factors that may be considered by the Corporation when reviewing requests for fee waivers or reduction of fees outlined in § 4100.4(d)(8) of the proposed regulations, commenting that these factors reflect the guidance of the Department of Justice and are in conflict with the legislative history of the Reform Act. In this instance, the Corporation believes that the factors listed are not necessary and therefore deletes them.

Third, the commentator objected to the provision permitting the Corporation to require advance payment of estimated charges in certain situations, suggesting that this will interfere with the Corporation's prompt provision of information and the media's timely dissemination of information. In response, the Corporation has further limited the instances in which an advance payment may be required.

Finally, in response to the commentator's objection to the proposed duplication charge of $.30 per page for paper photocopies of existing paper records, the Corporation has reviewed its direct cost calculations and amends § 4100.4(d)(9)(iv)(A) to reflect a new figure of $.10 per page.

**List of Subjects in 24 CFR Part 4100**

Organization and channeling of functions, Freedom of Information.

**Carol J. McCabe,**

*Secretary.*

The Neighborhood Reinvestment Corporation hereby amends Part 4100, Chapter 25 of Title 24, Code of Federal Regulations, as set forth below:

## PART 4100—ORGANIZATION AND CHANNELING OF FUNCTIONS

1. The authority citation for Part 4100 is revised to read as follows:

**Authority:** Title VI, Pub. L. 95-557, 92 Stat. 2115 (42 U.S.C. 8101 *et seq.*); as amended by sec. 315, Pub. L. 96-399, 94 Stat. 1645; sec. 710, Pub. L. 97-320, 96 Stat. 1544; and sec. 520, Pub. L. 100-242, 101 Stat. 1815.

**§ 4100.4 Inquiries.**

2. In § 4100.4, paragraph (a) is amended to change the Corporation's address from "1850 K Street NW., Suite 400, Washington, DC 20006" to "1325 G Street NW., Suite 800, Washington, DC 20005".

3. In § 4100.4, paragraph (c)(1) is amended to remove the last sentence.

4. In § 4100.4, paragraph (d) is revised to read as follows:

(d) *Fees for providing copies for records.* Fees shall be assessed pursuant to the Freedom of Information Act (5 U.S.C. 552) in order to recover the full allowable direct costs of providing copies of records. For purposes of this section, the term "direct costs" means those expenditures which the Corporation actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a Freedom of Information Act ("FOIA") request. Direct costs include, for example, the salaries of the employees performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The term "review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to exise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. A schedule based on these principles is set forth in paragraph (d)(9) of this section.

(1) *Categories of requesters.* Fees will be assessed according to the category of the requester. There are four categories:

(i) *Commercial use requesters.* For purposes of this section, the term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the Corporation shall seek additional clarification before assigning the request to a specific category.

(ii) *Educational and noncommercial scientific institution requesters.* For purposes of this section, the term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis, as that term is used in paragraph (d)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is made as authorized by and under the auspices of a qualifying institution, and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requesters who are representatives of the news media.* For purposes of this section, the term "representative of the news media" refers to any person actively gathering information for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look at the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester must meet the criteria above, and his or her request must not be made for a commerical use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(iv) *All other requesters.*

(2) *Limitations on fees to be charged*— (i) *Commercial use requesters.* Commercial use requesters shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at paragraph (d)(9) of this section. Commercial use requesters are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational and noncommercial scientific institution requesters.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for search or review.

(iii) *Requesters who are representatives of the news media.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. Requesters in this category may not be assessed fees for research or review.

(iv) *All other requesters.* Requesters who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(v) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(vi) *Additional Copies.* The Corporation will normally furnish only one copy of any record. The allowance of 100 free pages of duplication under paragraphs (d)(2) (ii), (iii), and (iv) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each such additional copy.

(3) *Charges for unsuccessful search.* Where applicable under paragraph (d)(2) of this section search fees may be assessed for time spent searching, even if the Corporation fails to locate the records or if records located are determined to be exempt from disclosure.

(4) *Notice of anticipated fees in excess of $25.00.* Unless the person making the request states in his or her initial request that he or she will pay all costs regardless of amount, the Corporation will notify him or her as soon as possible if there is reason to believe that the cost for obtaining access to and/or copies of such records will exceed $25. If such notice is given, the time limitations contained in the Freedom of Information Act shall not commence until the person making the intitial request agrees in writing to pay such cost.

(5) *Advance Payments.* The Communications Director is authorized to require an advance payment of an amount up to the full estimated charges whenever he or she determines that:

(i) The allowable charges that a requester may be required to pay are likely to exceed $250 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or

(ii) A requester has previously failed to pay a fee charged in a timely manner. If such a payment is required, the time limitations contained in the Freedom of Information Act shall not commence until payment is made.

(6) *Charging Interest.* The Corporation will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Receipt of the fee by the Corporation, even if not processed, will stay the accrual of interest. Interest is not chargeable for unpaid advance payments under paragraph (d)(5) of this section.

(7) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation may aggregate any such requests and charge accordingly.

(8) *Waiver or reduction of fee.* The Corporation will furnish documents without charge or at a reduced charge when it is determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commercial interest of the requester. In making a request for a waiver or reduction of fees, a requester should include a clear statement of his or her interest in the requested documents: The proposed use for the documents and whether the requester will derive income or other benefit from such use; and a statement of how the public will benefit from such use. Determinations concerning waiver or reduction of fees shall be made by the Executive Director, or his or her designee.

(9) *Schedule of fees.* Fees for searching for, reviewing, duplicating, and providing records and information of the Corporation under this section will be assessed in accordance with the following schedule:

(i) *Manual search.* For each quarter hour or fraction thereof: $3.37.

(ii) *Computer search.* For each quarter hour or fraction thereof: $3.37.

(iii) *Review.* For each quarter hour or fraction thereof: $4.87.

(iv) *Duplication.*

(A) For a paper photocopy of an existing paper record, $.10 per page.

(B) For duplication of records other than existing paper records (such as computer-stored information, audio or video tapes, microfiche or microfilm), the fee shall equal the actual direct cost of production and duplication of the records or information in a form that is reasonably usable by the requester.

(10) *Processing Costs*. The Communications Director will waive payment in instances in which the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

[FR Doc. 88—29031 Filed 12–16–88; 8:45 am]

BILLING CODE 7570-01-M

## VETERANS ADMINISTRATION

### 38 CFR Part 4

### Addition of Metric Measurements to the Table of Ratings of Central Visual Acuity Impairment

**AGENCY:** Veterans Administration.

**ACTION:** Technical amendment.

**SUMMARY:** On October 2, 1978, the Veterans Administration (VA) published a final rule in the **Federal Register** on pages 45348 through 45362. Part of the rule added metric measurements to the Table for Ratings of Central Visual Acuity Impairment. In Table V, the VA neglected to include the percentage "30" in the block in which vision measured as 20/70 (6/21) in each eye intersects. That error is hereby corrected.

**EFFECTIVE DATE:** September 22, 1978.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

**SUPPLEMENTARY INFORMATION:**

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

38 CFR Part 4 is amended as set forth below:

### PART 4—[AMENDED]

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

Authority: 72 Stat. 1125; 38 U.S.C. 355.

§ 4.84a [Amended]

2. Table V of § 4.84a is amended by adding the percentage "30" in the block in which vision measured as 20/70 (6/21) in each eye intersects.

Dated: December 12, 1988.

C.G. Verenes,

*Acting Chief, Directives Management Division.*

[FR Doc. 88-28910 Filed 12-16-88; 8:45 am]

BILLING CODE 8320-01-M

### 38 CFR Part 21

### Extension of Independent Living Services Program

**AGENCY:** Veterans Administration.

**ACTION:** Final regulatory amendments.

**SUMMARY:** These final amendments change vocational rehabilitation regulations governing the provision of programs of independent living services. The Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986 extended the period during which programs of independent living services may be furnished eligible veterans under the vocational rehabilitation program through September 30, 1989. The final regulatory amendments implement the changes contained in the law and make other related changes designed to improve administration of these services.

**EFFECTIVE DATES:** These amendments are effective October 28, 1986, except for the changes contained in §§ 21.162(c) and 21.294(b). Those changes are effective December 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2886.

**SUPPLEMENTARY INFORMATION:** At pages 9125 through 9128 of the **Federal Register** of March 21, 1988, the Veterans Administration (VA) published proposed regulations implementing provisions of the Omnibus Veterans' Improvement and Health Care Authorization Act of 1986 and to make related changes in rules governing the program of independent living services. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. We received one comment. The commenter suggested that the program could be improved if the law (38 U.S.C. 1520) was amended to allow utilization of for-profit facilities to provide the entire program of independent living services to veterans the VA had determined to be in need of such a program.

Under the law, programs of independent living services may only be furnished by public or private not-for-profit agencies. The commenter indicated he realized that his suggestion was probably beyond the scope of suggestions which could be considered, but he wished to draw attention to the issue. The commenter is correct in his assumption that recommendations for changes in these statutory provisions cannot be made within the context of considering suggestions or objections to these regulations. Several editorial and technical changes were made to the text. Neither of the changes made are of such a nature as to significantly amend the substance of the original proposal and republication of the final regulations for comment is not necessary. Therefore, these rules are adopted.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These final regulatory amendments are retroactively effective, except for §§ 21.162(c) and 21.294(b), which are effective upon the date of publication. These are interpretative rules which, with the exception of §§ 21.162(c) and 21.294(b), implement certain provisions of Pub. L. 99-576. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The final amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy. The final regulatory amendments which enable the VA to utilize private, for-profit agencies to provide independent living services as a part of a vocational rehabilitation program will only affect the few agencies providing these services and will not have any significant effect on small businesses. Other changes only concern the eligibility and participation of individual veterans in this program.

The Administrator certifies that these final amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these final rules are therefore exempt from the initial and final regulatory analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Number is 64.116.

**List of Subjects in 38 CFR Part 21**

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

Approved: November 25, 1988.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is proposed to be amended as follows:

## PART 21—[AMENDED]

1. In § 21.35, paragraphs (f)(2), (h), (i)(1)(i), and the authority citation following paragraph (i) are revised to read as follows:

**§ 21.35 Definitions.**

* * * * *

(f) * * *

(2) A program of independent living services and assistance (see paragraph (d) of this section) for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible; or

(Authority: 38 U.S.C. 1501(6); Pub. L. 99–576)

* * * * *

(h) *Vocational goal.* (1) The term "vocational goal" means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests;

(2) The term "achievement of a vocational goal is reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances does not prevent the veteran from successfully pursuing a vocational rehabilitation program and becoming gainfully employed in an occupation consistent with the veteran's abilities, aptitudes, and interests;

(3) The term "achievement of a vocational goal is not currently reasonably feasible" means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances at the time of the determination:

(i) Prevent the veteran from successfully achieving a vocational goal at that time; or

(ii) Are expected to worsen within the period needed to achieve a vocational goal and which would, therefore, make achievement not reasonably feasible.

(Authority: 38 U.S.C. 1501(8), 1501(9)(A)(i), Pub. L. 99–576)

(i) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible, such services include:

* * * * *

(Authority: 38 U.S.C. 1501(9); Pub. L. 99–576)

2. In § 21.45 paragraph (a) and the authority citation for the section are revised to read as follows:

**§ 21.45 Extension beyond basic period of eligibility for a program of independent living services.**

* * * * *

(a) The veteran's medical condition (service and non-service-connected disabilities) is so severe that achievement of a vocational goal is not currently reasonably feasible, or

* * * * *

(Authority: 38 U.S.C. 1503(d); Pub. L. (99–576)

3. In § 21.50 paragraph (b)(5) and the authority citation which follows paragraph (b)(9) are revised to read as follows:

**§ 21.50 Initial evaluation.**

* * * * *

(b) * * *

(5) Determine as expeditiously as possible, without extended evaluation, whether achievement of a vocational goal is currently reasonably feasible.

* * * * *

(9) * * *

(Authority: 38 U.S.C. 220, 1506(d), 1516; Pub. L. 99–576)

* * * * *

4. In § 21.53 paragraphs (e) and (f) are revised to read as follows:

**§ 21.53 Reasonable feasibility of achieving a vocational goal.**

* * * * *

(e) *Criteria for reasonable feasibility not met.* (1) When the VA finds that the provisions of paragraph (d) of this section are not met, but the VA has not determined that achievement of a vocational goal is not currently reasonably feasible, the VA shall provide the rehabilitation services contained in § 21.35(i)(1)(i) of this Part as appropriate;

(2) A finding that achievement of a vocational goal is not currently reasonably feasible without providing the services contained in § 21.35(i)(1)(i) of this Part requires:

(i) Consultation with the Vocational Rehabilitation Panel; and

(ii) Compelling evidence which establishes that achievement of a vocational goal is not currently reasonably feasible beyond any reasonable doubt.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99–576)

(f) *Responsible staff.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division shall determine whether achievement of a vocational goal is:

(1) Reasonably feasible; or

(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services.

(Authority: 38 U.S.C. 1506(b), Pub. L. 99–576)

5. In § 21.57 paragraphs (a) and (c) are revised to read as follows:

**§ 21.57 Extended evaluation.**

(a) *Purpose.* The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.

(Authority: 38 U.S.C. 1506(c), Pub. L. 99–576)

* * * * *

(c) *Determination.* The determination of the current reasonable feasibility of a vocational goal will be made at the earliest time possible during an extended evaluation, but no later than the end of the period of evaluation or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor.

(1) When a vocational goal is currently reasonably feasible, an Individualized Written Rehabilitation Plan (IWRP) will be developed as indicated in § 21.84 of this Part.

(2) When a vocational goal is not currently reasonably feasible, information developed in the evaluation will be the basis for recommendations and referral to the Vocational Rehabilitation Panel. The panel will consider the case under provisions of § 21.62(b) of this Part.

(Authority: 38 U.S.C. 1506(d), Pub. L. 99–576)

6. In § 21.62 paragraph (b)(3) and the authority citation following it are revised to read as follows:

**§ 21.62 Duties of the Vocational Rehabilitation Panel.**

* * * * *

(b) * * *

(3) *Rehabilitation not currently reasonably feasible.* The panel will review each finding by VR&C staff that a rehabilitation program is not currently reasonably feasible, if the panel has not previously participated in consideration of the case. This includes:

(i) A finding that vocational rehabilitation is not currently reasonably feasible; or

(ii) A finding that a program of independent living services is not currently reasonably fεasible because:

(A) The veteran's level of independence cannot be measurably improved; or

(B) Such a program is medically contraindicated at this time.

(Authority: 38 U.S.C. 1506(a), Pub. L. 99-576)

* * * * *

7. In § 21.70 paragraph (b)(1)(i) and the authority citation at the end of paragraph (b) are revised to read as follows:

**§ 21.70 Vocational rehabilitation.**

* * * * *

(b) * * *

(1) * * *

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible such needed services include:

* * * * *

(Authority: 38 U.S.C. 1501(9); Pub. L. 99-576)

* * * * *

8. In § 21.74 paragraphs (a), (c)(2), (c)(3) and the authority citation at the end of paragraph (c) are revised to read as follows:

**§ 21.74 Extended evaluation.**

(a) *General.* An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is currently reasonably feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in § 21.57(b) of this part.

(Authority: 38 U.S.C. 1506(a); Pub. L. 99-576)

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is a reasonable certainty that the current feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain technical assistance from the Vocational Rehabilitation Panel in each veteran's case before granting an extension of a period of extended evaluation.

(3) An extension beyond a total period of 18 months for additional periods of up to 6 months each may only be approved by the counseling psychologist if there is a substantial certainty that a determination of current feasibility may be made within this extended period. The concurrence of the Director, Vocational Rehabilitation and Education Service is also required for this extension.

(Authority: 38 U.S.C. 1505(a), 1506(b); Pub. L. 99-576)

9. Section 21.86 is revised to read as follows:

**§ 21.86 Individualized extended evaluation plan.**

(a) *Purpose.* The purpose of an IEEP is to identify the services needed for the VA to determine the veteran's current ability to achieve a vocational goal when this cannot reasonably be determined during the initial evaluation.

(Authority: 38 U.S.C. 1507; Pub. L. 99-576)

(b) *Elements of the plan.* An IEEP shall include the same elements as an IWRP except that:

(1) The long range goal shall be to determine achievement of a vocational goal is currently reasonably feasible;

(2) The intermediate objectives relate to problems of questions which must be resolved for the VA to determine the current reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1507(a); Pub. L. 99-576)

10. In § 21.90 paragraph (a) is revised to read as follows:

**§ 21.90 Individualized independent living plan.**

(a) *Purpose.* The purpose of the IILP is to identify the steps through which a veteran, whose disabilities are so severe that a vocational goal is not currently reasonably feasible, can become more independent in daily living within the family and community.

(Authority: 38 U.S.C. 1509; Pub. L. 99-576)

* * * * *

11. In § 21.160 paragraphs (c)(2) and (c)(4) and the authority citation following paragraph (c) are revised to read as follows:

**§ 21.160 Independent living services.**

* * * * *

(c) * * *

(2) As part of an extended evaluation to determine the current reasonable feasibility of achieving a vocational goal;

* * * * *

(4) As a program of rehabilitation services for eligible veterans for whom achievement of a vocational goal is not currently reasonably feasible. This program of rehabilitation services may be furnished to help the veteran:

(i) Function more independently in the family and community without the assistance of others or a reduced level of the assistance of others;

(ii) Become reasonably feasible for a vocational rehabilitation program; or

(iii) Become reasonably feasible for extended evaluation.

(Authority: 38 U.S.C. 1504(a)(15); Pub. L. 99-576)

* * * * *

12. In § 21.162, paragraph (b)(1) is removed and paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) are redesignated paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) respectively; paragraph (a), the heading and introductory text of paragraph (b), paragraphs (b)(2), and paragraph (c) are revised to read as follows:

**§ 21.162 Participation in a program of independent living services.**

(a) *Approval of a program of independent living services.* A program of independent living services and assistance is approved when:

(1) The VA determines that achievement of a vocational goal is not currently reasonably feasible;

(2) The VA determines that the veteran's independence in daily living can be improved, and the gains made can reasonably be expected to continue following completion of the program;

(3) All steps required by §§ 21.90 and 21.92 of this Part for the development and preparation of an Individualized Independent Living Plan (IILP) have been completed; and

(4) The Vocational Rehabilitation and Counseling Officer concurs in the IILP.

(Authority: 38 U.S.C. 1509, 1520, Pub. L. 99-576)

(b) *Special considerations affecting the Director, Vocational Rehabilitation and Education Service.* The Director, Vocational Rehabilitation and Education Service, shall consider the following factors in administering the program of independent living services:

* * * * *

(2) To the maximum extent feasible, a substantial portion of veterans provided with programs of independent living services and assistance shall be receiving long-term care in VA medical centers and nursing homes:

* * * * *

(c) *Limitations.* (1) A program of independent living services and assistance may not be approved after September 30, 1989. Programs authorized prior to that date may be continued until completion or other termination;

(2) Any contract for services initiated before September 30, 1989, may be continued in effect for the purpose of providing necessary services and assistance;

(3) The limitations on provision of independent living services by for-profit agencies and facilities to veterans for whom such services constitute the

whole of a program are not applicable to veterans being provided independent living services as a part of a rehabilitation program during periods identified in § 21.160 (c)(1), (c)(2), and (c)(3) of this Part. For-profit agencies and facilities may be used to provide specific independent living services as a part of a rehabilitation program during the periods described above under the following conditions:

(i) Necessary services are not reasonably available through public or private nonprofit agencies; and

(ii) The facility meets the criteria contained in § 21.294(c) of this Part.

(Authority: 38 U.S.C. 1504(a)(15), Pub. L. 99-576)

13. In § 21.294 paragraph (b)(2) is revised and paragraph (b)(3) is added to read as follows:

**§ 21.294 Selecting the training or rehabilitation facility.**

* * * * *

(b) * * *

(2) The VA will only utilize public and nonprofit agencies to furnish independent living services, when such services constitute the whole of a rehabilitation program. These facilities must be:

(i) VA medical centers which provide independent living services;

(ii) Facilities which meet standards established by the State rehabilitation agency for rehabilitation facilities or for providers of independent living services; or

(iii) Facilities which are neither approved nor disapproved by the State rehabilitation agency, but are determined by the VA to be able to provide necessary services in an individual veteran's case.

(3) The VA may utilize for-profit facilities and agencies to provide specific independent living services as a part of a rehabilitation program under the conditions specified in § 21.162(c) of this part. These agencies and facilities must meet the standards established by local, state (including the State rehabilitation agency), and federal agencies which are applicable to for-profit facilities and agencies offering independent living services.

(Authority: 38 U.S.C. 1515, 1520(a), Pub. L. 99-576)

* * * * *

[FR Doc. 88-28930 Filed 12-16-88; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[FRL—3494-6]**

## Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Visibility Protection; Long-Term Strategy and Implementation Control Strategies

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice approves the general plan provisions and long-term strategy for visibility in a revision to the Louisiana State Implementation Plan (SIP). This action is a result of rulemaking on November 24, 1987 (52 FR 45132), in which EPA disapproved SIPs of States which failed to comply with the provisions of 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). Additional details are discussed in the proposed rulemaking on March 12, 1987 (52 FR 7802).

The Governor of Louisiana submitted a SIP Revision for Protection of Visibility on October 26, 1987. Supplemental information was submitted on June 16, 1988. Review of the SIP revision indicated that Louisiana has met the criteria of 40 CFR 51.302 and 51.306. Consequently, this notice also revokes the November 24, 1987, Federally promulgated plan for Louisiana.

**DATES:** This action will become effective on February 17, 1989, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Written comments on this action should be addressed to Tom Diggs, Chief (6T-AN), SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, 625 North 4th Street, Baton Rouge, Louisiana 70804.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Crocker, Air Programs Branch, SIP/NSR Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 655-7214 or (FTS) 255-7214. Reference Docket File Number LA-87-2.

**SUPPLEMENTARY INFORMATION:**

### Background

*A. Regulatory Requirements and Litigation Challenges*

Section 169A of the Clean Air Act, 42 U.S.C. 7491, sets as a national goal "* * * the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Section 169A requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wildernesses, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400 through 81.437. Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* In broad outline, the visibility regulations require 36 States listed in § 51.300(b) to (1) coordinate SIP development with the appropriate Federal land managers (FLMs), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" identified by the end of 1985 by the FLMs as critical to the visitor's enjoyment of the Class I areas. The regulations required the States to submit to EPA their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the Court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under Section 110 of the Act to promulgate visibility SIPs.

*B. Settlement Agreement*

A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to promulgate Federal Implementation Plans (FIPs) for visibility in States where SIPs are deficient with respect to the 1980 visibility regulations. Specifically, the first part of the agreement required EPA to propose and promulgate FIPs which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States on October 23, 1984, at 49 FR 42670. Louisiana submitted its Part I Plan on October 4, 1985, and EPA approved it on June 10, 1986, at 51 FR 20967.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIPs to remedy any deficiencies on a specified schedule.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined the SIPs of 32 States were deficient with respect to the remaining visibility provisions.

A revised settlement agreement required EPA to propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and long-term strategies and allowed EPA to defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal land managers (FLMs) have certified to EPA. As currently revised, the agreement allows EPA until August 31, 1989, to propose remedies for existing impairment in certain of the affected areas. See 53 FR 35956 (September 15, 1988).

On March 12, 1987, at 52 FR 7802, EPA proposed to disapprove the SIPs of 32 States (including Louisiana) for failing to meet the general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306. There, EPA proposed that control strategies to remedy existing impairment were unnecessary in the SIPs for 28 States (including Louisiana) and deferred a decision on the necessity of best available retrofit technology (BART) in four States (Arizona, Maine, Minnesota, and Utah).

The States were given the opportunity to avoid Federal promulgation of the FIPs if they submitted revisions to EPA by August 31, 1987. Three States (Georgia, Florida, and Kentucky) met this deadline. Several States (including Louisiana) submitted draft or final SIPs after the August 31 date. The settlement agreement required EPA to promulgate FIPs for States which failed to meet the submittal deadline. Therefore, on November 24, 1987, at 52 FR 45132, EPA promulgated FIPs for 29 States (including Louisiana) to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306.

*C. Today's Action*

On October 26, 1987, the Governor of Louisiana submitted a Part II SIP Revision for Protection of Visibility to meet the visibility general plan requirements and long-term strategies. Supplemental clarifying information was submitted on June 16, 1988. The SIP revision is entitled "Louisiana State Implementation Plan Revision: Protection of Visibility: Proposed Part II Long Term Strategy, October 26, 1987." EPA has reviewed the State's submittal and developed an evaluation report.[1] The report concludes that the Louisiana SIP revision meets all of the requirements for a Part II Visibility Protection Plan as outlined in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. Today's action approves the Louisiana SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. Today's action also revokes the FIP promulgated for Louisiana on November 24, 1987, at 52 FR 45132.

Louisiana has only one mandatory Class I area which is the Breton National Wildlife Refuge. The refuge consists of a chain of small islands and surrounding water stretching from near the mouth of the Mississippi River to the Mississippi Coast near the City of Gulfport, Mississippi. No other Class I areas currently exist in the State. The SIP commits the State to visibility protection consistent with the Clean Air Act to be afforded within the refuge area boundary. The SIP is to be reviewed every three years and revised as necessary.

**Requirements**

*A. General Plan Requirements*

The visibility regulations provide general plan requirements for the visibility SIPs. Section 51.302 sets specific State (and EPA in lieu of States) and FLM coordination requirements which must occur when developing a SIP. The general plan requirements of § 51.302(c) require that the SIPs include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal;

2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources;

3. Provisions to protect integral vistas identified pursuant to § 51.304;

4. Provisions to address any existing impairment certified by the FLM; and

5. A long-term (10–15 years) strategy for making reasonable progress toward the national goal.

(See 52 FR 7803 and 52 FR 45133 for further discussion on the general plan requirements and the process for developing control strategies to remedy existing impairment.)

The regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources.

*B. Long-Term Strategy*

The regulations require that the long-term strategy be a 10 to 15-year plan for making reasonable progress toward the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLMs have declared at least 6 months before plan submission. A long-term strategy must be developed which covers each Class I area within the State and each Class I area in another State that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The long-term strategy and SIP must provide for the review of the impact of new sources (see § 51.307). The State must consider as a minimum the following six factors in the long-term strategy:

[1] Evaluation Report for the Louisiana Part II Visibility Protection Plan in Mandatory Class I Federal Areas, July 1988.

1. Emission reductions due to ongoing air pollution control programs;

2. Additional emission limitations and schedules for compliance;

3. Measures to mitigate the impacts of construction activities;

4. Source retirement and replacement schedules;

5. Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and

6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The State must commit to periodic review of the SIP on a schedule not less frequent than every 3 years. A periodic report must be developed in consultation with the FLMs and must contain the following:

1. Progress achieved in remedying existing impairment;

2. The ability of the long-term strategy to achieve reasonable progress toward the national goal;

3. Any change in visibility conditions since the last report or since plan approval;

4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;

5. The progress achieved in implementing BART and meeting other schedules laid out in the long-term strategy;

6. The impact of any exemption granted under § 51.303; and

7. The need for BART to remedy existing impairment in an integral vista declared since plan approval.

*C. Integral Vistas*

Where the FLM has adopted an integral vista under § 51.304, the regulations require the State to (1) analyze for BART any facility where impairment in an integral vista has been reasonably attributed to that facility, (2) consider any integral vistas established 12 months prior to SIP submittal in its long-term strategy, and (3) coordinate with the FLMs on any permit application under the Prevention of Significant Deterioration (PSD) program where the proposed facility or modification may affect visibility in an integral vista. The FLM identified only one integral vista, and that one is located in Maine (see 46 FR 22707). Therefore, EPA proposed to disapprove only the State of Maine's SIP for failing to provide for the protection of these vistas. Thus, the visibility protection plan requirements for integral vistas (§§ 51.302 through 51.307) are applicable only for Maine.

*D. Federal Remedy*

On November 24, 1987, at 52 FR 45132, EPA disapproved the SIPs of 29 States (including Louisiana) for failing to comply with the provisions in EPA's existing regulations for visibility protection in mandatory Class I Federal areas dealing with impairment which can be reasonably attributed to a source. EPA also incorporated Federal implementation plans into the SIPs of these States to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306. These actions were proposed on March 12, 1987, at 52 FR 7802 and are in accordance with the settlement agreement with the EDF.

**State Submittal**

*A. General Plan Requirements/FLM Coordination*

Under Section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within a Class I area. The FLM must maintain these areas consistent with congressional land use goals. The visibility regulations (40 CFR 51.302) allow the FLM the opportunity to identify visibility impairment and to recommend elements for inclusion in the long-term strategy.

The State of Louisiana has met the visibility general plan requirements of § 51.302. The State has accorded the FLM opportunities to participate and comment on its visibility SIP revision. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program.

The Louisiana Part II Visibility Protection Plan incorporated into the SIP revision the following: (1) A determination that there is no existing visibility impairment that is reasonably attributable to specific sources; (2) a discussion of the SIP elements and how each element of the plan relates to the national goal; and (3) a long-term (10–15 years) strategy. Since no existing reasonably attributable impairment has been identified, all elements of the plan are intended to prevent future impairment of visibility. If existing reasonably attributable impairment is later identified, the State will revise its plan to remedy the impairment. Currently, there are no integral vistas in Louisiana.

*B. Long-Term Strategy*

The Louisiana visibility long-term strategy section included the following: (1) coordination with the FLM; (2) consideration of the six required factors for a long-term strategy; (3) a provision for the review of the impact of new sources; and (4) provisions for periodic review (i.e., every 3 years) of the plan, which review must include consultation with the Federal land manager and a report to the public and to EPA on progress toward the national goal.

*C. EPA Evaluation Summary*

These provisions meet EPA criteria and EPA is approving this phase of the plan. EPA has reviewed the State's submittal and developed an evaluation report. The report shows that the Louisiana SIP revision meets all of the requirements for a Part II Visibility Protection Plan as specified in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy).

**Final Action**

By this notice, EPA is approving the Louisiana SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. (One should reference the March 12, 1987, notice for additional information.) The SIP commits to a 3 year periodic review and making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. This SIP revision remedies the deficiencies for all the remaining visibility requirements of Subpart P (i.e., §§ 51.302 and 51.306) as identified in the November 24, 1987 (52 FR 45132), Federally promulgated plan. Consequently, this notice also revokes that Federal promulgation for Louisiana.

EPA has reviewed these revisions to the Louisiana SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

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

Date: December 13, 1988.

**Lee M. Thomas,**

*Administrator.*

40 CFR Part 52, Subpart T, is amended as follows:

## PART 52—[AMENDED]

### Subpart T—Louisiana

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(47) to read as follows:

**§ 52.970 Identification of plan.**

* * * * *

(c) * * *

(47) Part II of the Visibility Protection Plan was submitted by the Governor on October 26, 1987.

(i) Incorporation by reference.

(A) Revision entitled, "Louisiana State Implementation Plan Revision: Protection of Visibility: Proposed Part II Long-Term Strategy, October 26, 1987". This submittal includes a visibility long-term strategy and general plan provisions as approved and adopted by the Secretary of the Louisiana Department of Environmental Quality on October 26, 1987.

(B) Letter dated October 26, 1987, from Secretary of Louisiana Department of Environmental Quality (LDEQ), to the Governor approving the SIP revision.

(ii) Additional material.

(A) Letter dated June 16, 1988, from Administrator, Air Quality Division, LDEQ, to Chief, SIP/New Source Section (6T-AN), EPA Region 6, committing to make its three-year periodic review report available to the public as well as to EPA.

**§ 52.989 [Removed]**

3. Section 52.989, Visibility protection, is removed.

[FR Doc. 88-29054 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

---

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 49 CFR Parts 385 and 386

[FHWA Docket No. MC-123]

RIN 2125-AB46

### Safety Fitness Procedures

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** Section 215 of the Motor Carrier Safety Act of 1984 directs the Secretary of Transportation, in cooperation with the Interstate Commerce Commission (ICC), to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers. The FHWA is reissuing the Safety Fitness Procedures Rule, Part 385. The FHWA is also making a minor amendment to Part 386 (§ 386.72) to clarify existing procedures in the context of this rule. The provisions of this part are applicable to motor carriers conducting operations in interstate or foreign commerce which are subject to the Federal Motor Carrier Safety Regulations. The purpose of this rule is to establish procedures to assign motor carriers safety ratings of "satisfactory," "conditional," or "unsatisfactory."

**EFFECTIVE DATE:** January 18, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald J. Davis, Office of Motor Carrier Safety Field Operations, (202) 366-2698, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2829) (the Act) was enacted on October 30, 1984. Section 215 of the Act provides that the Secretary of Transportation, in cooperation with the ICC, shall by rule, after notice and opportunity for comment, establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers. In response to this mandate, FHWA is adopting regulations applicable to motor carriers conducting operations in interstate or foreign commerce which are subject to the Federal Motor Carrier Safety Regulations.

On June 25, 1986, the FHWA issued a notice of proposed rulemaking (NPRM) (51 FR 23088, Docket No. MC-123; Notice No. 86-6) to request comments regarding the proposed changes. All comments to the docket were to be received on or before August 11, 1986. The comment period was extended to September 12, 1986, in response to a petition from the American Trucking Associations, Inc. (ATA).

### Summary of Notice of Proposed Rulemaking

The NPRM established proposed procedures for determining the safety rating of a motor carrier through an on-site visit at the motor carrier's principal place of business. The rating would be based on the findings of a safety compliance review with respect to the carrier's safety procedures and operating results. Consideration would also be given to the carrier's past compliance record including improvement or lack thereof over previous safety audits, its accident record, and violations of state-related statutes or regulations. Safety ratings are assigned on a case-by-case basis.

The NPRM proposed that all unrated motor carriers file a one-time questionnaire with the FHWA. Motor carriers would be classified according to principal cargo transported and assigned a priority basis for receiving the questionnaire. The information collected from the questionnaire would be used to update the motor carrier census and to assist in prioritizing carriers for personal contact by FHWA safety specialists. New entrants into the motor carrier industry would be required to file the questionnaire for the purpose of registering with the FHWA and supplying information for updating the motor carrier census and prioritizing carriers for on-site contacts.

Comments were requested regarding the use of a motor carrier's identification number, which is assigned to the carrier by FHWA when its identity is entered into the Computerized Management Information System.

The NPRM proposed that a motor carrier that has received an unsatisfactory safety rating could not operate until it has taken action to correct the deficiencies that resulted in such rating.

Further, the proposed rule stated that any motor carrier may petition the FHWA for a review of its safety rating.

Finally, the NPRM contained a penalty provision for failure to make timely filing of the questionnaire, for furnishing misleading information, or for making false statements upon the questionnaire.

Following a review and evaluation of the comments, several proposals in the NPRM were modified, or deleted and replaced.

**Final Rule Summary**

Section 215 of the Motor Carrier Safety Act of 1984 (the Act) directs the Secretary of Transportation, in cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional motor carrier operating authority.

The rule establishes a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings. These assigned ratings are either "satisfactory," "conditional," or "unsatisfactory." The rule establishes a "safety fitness standard" which the FHWA shall use as its satisfactory benchmark for assigning safety ratings. All previously assigned safety ratings will remain in effect unless changed in accordance with this rule.

In addition, the rule establishes the "safety rating" procedures. The safety ratings are used to assign motor carriers to three new national safety programs that have been developed by FHWA. These programs are the "Educational and Technical Assistance Program," "Selective Compliance and Enforcement Program," and "Commercial Accident Prevention and Evaluation Program." These programs were developed to: (1) Ensure that motor carriers are meeting the safety fitness standard; (2) provide an enforcement framework to systematically deal with problem carriers including "imminently hazardous" carrier operations that require immediate action by the motor carrier to eliminate serious hazards to the motoring public; (3) identify safety countermeasures relevant to specific causes of accidents; and finally, (4) measure the effectiveness of FHWA's activities and the safety regulations in reducing commerical motor vehicle accidents.

The rule requires all unrated motor carriers conducting operations in interstate or foreign commerce to file a one-time Motor Carrier Identification Report, Form MCS-150. A new motor carrier shall file a Form MCS-150 within 90 days after beginning operations. The purpose of this report is to identify previously unknown carriers, to update the motor carrier census, to require the carrier to certify that it is familiar with the Federal Motor Carrier Safety Regulations and, to assist FHWA in prioritizing motor carriers for safety review contacts.

Finally, the rule provides for safety ratings being made available to the public upon request; to the ICC for consideration of operating authority applications and self insurance; to the Department of Defense in the selection of carriers to transport hazardous materials; to shippers for carrier selection purposes; and to insurance companies to assist in risk determinations.

The following paragraphs discuss:

1. Issues raised in the NPRM
2. FHWA policy considerations regarding new national programs, sanctions, and Safetynet
3. Section-by-section review of the final rule
4. Regulatory impact
5. Economic impact pursuant to the Regulatory Flexibility Act
6. List of subjects in 49 CFR Part 385.

*I. Issues Raised in NPRM*

A total of 31 responses were received regarding the NPRM published in the June 1986 **Federal Register**, the majority of which were from associations and councils collectively representing several thousand motor carriers of various types. Twenty-two of the respondents expressed support for the NPRM with various modifications from the proposed procedures. Three respondents were opposed to the concept of safety fitness determinations for motor carriers. The remainder of the respondents did not indicate a preference. Discussions follow with respect to the primary issues.

A. Questionnaire

The NPRM proposed that all unrated motor carriers be required to file a questionnaire which would furnish certain historical data on the carrier's operations for the past 3 calendar years. This historical data would include the average number of drivers used, the average number of power units used having a gross vehicle weight rating in excess of 10,000 pounds, the total annual commercial motor vehicle miles, the number of reportable accidents, the number of incidents involving hazardous materials releases required to be reported to the Department of Transportation (DOT). Also included on the questionnaire would be the number of state and local driver traffic violations, the number of times drivers or vehicles were placed out-of-service by Federal, state, or local officials, and pertinent financial responsibility information.

The majority of the comments supported the use of a questionnaire for the collection of historical data on a motor carrier's operation. They believed that most motor carriers could provide the information requested in the questionnaire with accuracy and without excessive burden since this information is already retained for a variety of industry reasons or is required by regulations issued by other governmental agencies.

Several opponents questioned the credibility of self-reported accident and violation data. Some comments pointed out that even if amnesty were granted for failure to report accidents to the FHWA, the same motivation for failing to report the information initially would still exist. It was argued by some that many motor carriers do not retain certain information requested in the proposed questionnaire and it would be burdensome to summarize the data that is available to respond to the questionnaire.

Specific comments of the Petroleum Marketers Association of America, representing 11,000 members, expressed concern that providing "operational data" for 3 preceding years would be an especially burdensome task and would require considerable preparation time.

Finally, the Private Carrier Conference, Inc., stated that the proposed questionnaire will be burdensome to private motor carriers in that those carriers will have to essentially reconstruct their past 3 years of trucking operations. It was noted that, in the past, private motor carriers have not been required to maintain records necessary to answer some of the questions. For instance, unlike for-hire motor carriers, private motor carriers need not report cargo classifications to the Interstate Commerce Commission or to state agencies.

In summary, while there is general support for obtaining historical motor carrier data, comments regarding the contents and use of the questionnaire have caused the FHWA to reevaluate the merits of the use and contents of the questionnaire.

Therefore, FHWA has eliminated a number of data items and reduced the number of years for which data must be reported from three years to one year. The FHWA believes that the streamlined data set will provide safety information important for the FHWA and for motor carriers. The new form, known as the Motor Carrier Identification Report, Form MCS–150, requires minimum data that will (1) identify previously unknown motor carriers operating in interstate or foreign commerce, (2) update the motor carrier census, (3) require the motor carrier to certify that it is familiar with the Federal Motor Carrier Safety Regulations, and (4) assist the FHWA in prioritizing motor carriers for safety reviews. The Form MCS–150 will replace Form MCS–137, Description of Motor Carrier Operations.

The Motor Carrier Identification Report consists of three parts: (1) Part A: *Filing Entity*—name of motor carrier and trade name, if any; principal office address; telephone number; and ICC MC number, if any; (2) Part B: *Operating Information*—cargo check list; transportation of hazardous materials inquiry; average number of power vehicles and drivers used for the past 12 months; and total vehicle miles traveled; and (3) Part C: *Certification Statement*. By signing and dating the document, the representative of the filing entity certifies that the information given is true and correct, and that he/she is familiar with the Federal Motor Carrier Safety Regulations.

The Motor Carrier Identification Report will be designated Form MCS–150, and will be available from all regional and division motor carrier safety offices nationwide and from the Office of Motor Carrier Information Management and Analysis, Washington, D.C. New motor carriers are required to file the Motor Carrier Identification Report within 90 days after beginning operations. All unrated motor carriers currently conducting operations in interstate or foreign commerce are required to file a one-time Motor Carrier Identification Report within 90 days after the effective date of this rule. This provision does not apply to a motor carrier that has received a safety rating from the FHWA, since similar information on rated carriers is already a matter of record in the FHWA Management Information System. Completed forms are to be filed with the Federal Highway Administration, Office of Motor Carriers, Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590. A motor carrier needs to file the Motor Carrier Identification Report only once.

B. Due Process Provision

Another issue raised by some commenters, was that they believed the NPRM did not provide adequate due process safeguards for a motor carrier assigned an unsatisfactory safety rating, because the NPRM automatically prohibited the carrier from operating in interstate or foreign commerce until it has taken, and certified to the FHWA that it has taken remedial action. Thirteen respondents, including the larger motor carrier associations and councils, were adamant in their recommendations that an appropriate due process procedure be written into the final rule. The proposed provision that a motor carrier receiving an unsatisfactory safety rating is automatically prohibited from further operations was deleted from the final rule. Any order issued by the FHWA for a motor carrier to cease all or part of its operations will be processed under the provisions of 49 CFR Part 386, Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, and other applicable regulations.

C. Cease Operations and Certifications

Another issue of major concern generated by the NPRM was whether the FHWA had exceeded its statutory authority by including in the "unsatisfactory" safety rating a provision that a motor carrier must cease operations in interstate or foreign commerce until it has certified that corrective action has been taken. Some respondents contended that this proposal improperly exceeds the power granted to the Secretary by Congress at 49 U.S.C. 521(b)(5)(A). This section gives the Secretary authority to order an employer to cease all or part of its operations for violations that pose an imminent hazard.

The FHWA agrees that all or part of a motor carrier's operations may only be shutdown by the Secretary when such operation poses an imminent hazard. The automatic shutdown provision for an "unsatisfactory" safety rating, contained in the NPRM in § 385.3, is thus not included in the final rule.

A motor carrier receiving a "conditional" or "unsatisfactory" rating will be required to certify to the FHWA, within 30 days, that corrective action has been taken to meet the safety fitness standard. Failure to make the required certification, or filing a false certification, will subject a motor carrier to civil or criminal prosecution.

A motor carrier with an unsatisfactory safety rating is considered to have a high risk for accidents and the FHWA will make strong efforts to reduce that risk. The carrier is given a list of items requiring corrective action and is required to certify within 30 days that corrective actions have been taken. A motor carrier certification is a statement by the carrier stating whether all corrective actions identified by the FHWA have been taken. The carrier will be placed in the Selective Compliance and Enforcement Program, under which problem areas will be identified and discussed with carrier management, and suggestions made for procedures to help achieve compliance with applicable regulations. A carrier failing to complete corrective actions and to make the required certification will be subject to formal enforcement action resulting in monetary fine or other sanctions.

It is the FHWA intention that an unsatisfactory or conditional safety rating will be a temporary condition. A carrier will either take corrective actions or will be subject to increasingly severe enforcement actions and sanctions that can result in the carrier being required to cease all or part of its commercial motor carrier operations.

D. Reason for Adverse Rating and Corrective Action To Be Taken

Twelve respondents stated that a motor carrier receiving an adverse rating should be summarily advised of the reasons for such a rating. Several further advised that this information must be provided by the individual who assigns the safety rating.

A copy of the safety or compliance review, containing a summary of the deficiencies and violations discovered, is given to the motor carrier upon conclusion of the examination. The Final Rule provides that the motor carrier will later be advised by letter of its safety rating and of those areas of noncompliance that were considered in the assignment of the safety rating.

In response to consideration of the merits of this recommendation, the notice (letter) advising a motor carrier of its safety rating will set forth those parts of the Federal Motor Carrier Safety Regulations (FMCSR's) or Hazardous Materials Regulations (HMR) of which the carrier was found to be in violation. Corrective actions with respect to violations and deficiencies and continued compliance with applicable regulations are a prerequisite to obtaining a "satisfactory" safety rating.

E. Unique Identification Number

The NPRM mentioned the feasibility of the use of a unique identification number to identify a motor carrier, and the comments varied according to the respondent's type of motor carrier operation. The use of a unique identification number was addressed as part of a final rule issued on May 19, 1988 (53 FR 18042) to revise 49 CFR Part 390, Federal Motor Carrier Safety Regulations. Under this rule a motor carrier must mark its vehicles with the name or trade name of the motor carrier, its address (city and State), and the identification number issued by the FHWA preceded by the letters USDOT.

*II. Policy Considerations*

The mission of the FHWA Office of Motor Carriers is to reduce commercial vehicle accidents and the related societal costs. The FHWA has established an enhanced framework within which it may carry out this mission. The safety rating procedure and its relationship with new national motor carrier safety programs is an integral part of the motor carrier safety effort.

It shall be the policy of the FHWA to monitor and inspect periodically new and "satisfactory" rated motor carriers operating in interstate and foreign commerce to ensure that motor carriers are meeting the safety fitness standard, minimize the inherent risks in the transportation of passengers and property by heavy commercial vehicles; and reduce highway accidents resulting in fatalities, injuries, and property damage.

Further, motor carriers that do not meet the safety fitness standards shall be placed in remedial programs designed to identify safety problems and assist motor carriers in meeting the safety fitness standard. When the compliance by a motor carrier rated less than satisfactory fails to improve, the FHWA will take appropriate action to eliminate the safety hazard including, but not limited to, initiating civil and criminal enforcement actions with progressively higher monetary fines, where appropriate.

The ATA succinctly commented that the "rating program should be remedial first and punitive second." This statement generally reflects FHWA policy. This policy is addressed through a number of measures, activities, and sanctions included in the Educational and Technical Assistance (ETA), the Selective Compliance and Enforcement (SCE), and the Commercial Accident Prevention and Evaluation (CAPE) Programs.

A. National Motor Carrier Safety Program

The primary purpose of the National Motor Carrier Safety Program and the mission of the Office of Motor Carriers is to help reduce death, injury, and economic loss due to all types of commercial motor vehicle accidents. Therefore, the FHWA has, among other things, developed new programs to enhance its motor carrier safety efforts.

Specifically, three new national safety programs have been developed: (1) to ensure that motor carriers are meeting the safety fitness standard; (2) to provide an enforcement framework to systematically deal with problem carriers; and finally, (3) to measure and improve the effectiveness of FHWA's activities and the safety regulations in reducing commercial motor vehicle accidents. The new safety programs and the "safety rating" relationship are described in the following paragraphs.

(1) *Educational and Technical Assistance Program.* A primary tool of the Educational and Technical Assistance Program is an on-site assessment, called a safety review, to determine whether a motor carrier has adequate safety management controls in place to meet the safety fitness standard.

During the initial contact with a motor carrier at the carrier's principal place of business, a motor carrier safety specialist will determine whether the company is meeting the safety fitness standard. The safety specialist will identify safety problem areas and offer educational and technical assistance to the company for correcting the identified safety problems. The safety specialist may suggest methods and procedures for improving safety management controls and operations; offer recommendations to achieve compliance with applicable regulations; discuss positive accident prevention activities that have been effective for similar carrier operations; and, where appropriate, furnish an information packet to the carrier to enhance regulatory compliance and improve motor carrier safety.

A motor carrier assigned a "satisfactory" safety rating is entered into the Educational and Technical Assistance Program and continues to receive selected safety information from the Office of Motor Carriers. Additionally, carriers rated "satisfactory" will be monitored through a national motor carrier safety data system that compiles state enforcement data and will be contacted or visited periodically to ensure that these carriers are continuing to meet the safety fitness standard.

The technical and educational assistance provided by the FHWA to individual motor carriers, the continual monitoring of actual motor carrier safety records through Safetynet, and informational safety contacts (i.e., perodic news releases, technological transfer, informational updates, and newly identified safety countermeasures) should help improve the safety posture of the motor carrier industry.

(2) *Selective Compliance and Enforcement Program.* A carrier with inadequate safety management controls, that is in noncompliance with the safety regulations, and/or is experiencing a significant number of highway accidents is placed in the Selective Compliance and Enforcement Program.

Carriers placed in the Selective Compliance and Enforcement Program will be sorted by types of operations posing the greatest risks to highway safety and scheduled for contact accordingly. The contact will be through a compliance review, which consists of an on-site investigation of a motor carrier's operations. This investigation could cover factors such as drivers' hours of service, driver qualifications, commercial license requirements; vehicle inspection, maintenance and repair; financial responsibility; and accident and other business records to determine whether a motor carrier meets the safety fitness standard.

The findings of a compliance review may result in the following: (1) If the carrier's rating is upgraded to "satisfactory" and its preventable accident rate is at or below the average determined by valid statistical sampling methods, it is removed from the Selective Compliance and Enforcement Program and placed in the Educational and Technical Assistance Program for continued monitoring, (2) If the carrier's rating is upgraded to "satisfactory" but its preventable accident rate is high, it is placed in the Commercial Accident Prevention and Evaluation Program, (3) If the carrier continues to be "unsatisfactory," or is rated "conditional" following a compliance review, the carrier remains in the Selective Compliance and Enforcement Program until the motor carrier meets the safety fitness standard.

The motor carrier will be encouraged to contact the safety specialist to discuss any safety issues and problems that have prevented the motor carrier from meeting the safety fitness standard. These carriers are subject to another safety review after sufficient time has elapsed to allow the carriers to initiate safety countermeasures to meet the safety fitness standard. If the motor carrier is meeting the safety fitness standard, the follow-up compliance review may be used to upgrade a "conditional" safety fitness rating to "satisfactory."

Examples of Selective Compliance and Enforcement Program actions include, but are not limited to, the following:

• Initiating additional educational and technical assistance.

• Requiring the carrier to develop a safety plan and implement safety management controls to meet the safety fitness standard.

• Initiating combined Federal and state compliance and enforcement activities with state counterparts participating in the Federal Motor Carrier Safety Assistance Program (MCSAP).

• Intervening for safety reasons in ICC actions pertaining to operational authority.

• Disqualifying all or some of the drivers used by a motor carrier.

• Issuing a written order to cease certain operations.

• Initiating successive civil or criminal actions with increasingly higher fines for continued noncompliance.

(3) *Commercial Accident Prevention and Evaluation Program.* Carriers that meet the safety fitness standard, but still have too many preventable accidents, are put into the Commercial Accident Prevention and Evaluation Program.

The purpose of the Commercial Accident Prevention and Evaluation Program contact is to analyze preventable accident data specific to the individual carrier, identify safety problem areas, and initiate countermeasures to reduce the risks of preventable accidents.

To help in this activity, the FHWA Motor Carrier Safety Management Information System will provide preventable accident profiles for the individual company and aggregate national/regional/state accident information for analysis and comparisons. The FHWA motor carrier safety specialist will ask the carrier to verify and analyze the accident statistics from its own accident records and work with the motor carrier to develop and initiate specific countermeasures to reduce the risks of recurring accidents.

The Commercial Accident Prevention and Evaluation Program contacts are not structured, but are situational depending on the problem areas unique to the individual carriers. Successful countermeasures related to specific types of preventable accidents will be documented and passed on to other carriers and the industry through other Commercial Accident Prevention and Evaluation Program contacts and the Educational and Technical Assistance Program.

Finally, another mechanism for accident prevention is the special accident and hazardous materials incident investigations conducted by FHWA on a selected basis to identify "cause and effect" accident patterns.

B. Sanctions

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832, 49 U.S.C. app. 2501 et seq.) prescribes a wide range of penalties to which a motor carrier or employee may be subject. These include a provision that the Attorney General, upon request of the Department of Transportation, may bring an action in an appropriate United States District Court for equitable relief to redress violations of the safety regulations. The district court may grant such relief as is necessary or appropriate, including mandatory or prohibitive relief, interim equitable relief, and punitive damages.

The Motor Carrier Safety Act of 1984 provides authority to require safety records and provides sanctions for the willful failure to prepare, use, and retain such records that can be audited by state and Federal authorities. The Act also provides criminal and civil penalties for certain substantial vehicle and equipment violations where a carrier or driver is operating a vehicle knowing the defects existed, and therefore choosing to disregard public safety.

Further, there is a middle range of violations between those of recordkeeping noncompliance and willful negligence. Examples of these types of violations are those in which a carrier or driver simply fails to maintain equipment or disregards hours-of-service limitations because it is inconvenient or because it is profitable not to comply. These types of violations are not isolated human errors, but rather patterns of equipment violations or operating conduct that any responsible business entity could detect and correct if it wanted to meet its full safety responsibility to the public. The Act provides for sanctions for those "serious patterns of safety violations" that individually may not have a high probability of causing an immediate accident, but collectively could lead to accidents.

The Act provides for a civil penalty of up to $500 for a recordkeeping violation. Each day of a violation constitutes a separate offense. However, the total civil penalty assessed a violator for all recordkeeping offenses relating to a single violation cannot exceed $2,500. If a serious pattern of safety violations, other than recordkeeping violations, exists or has occurred, a civil penalty of up to $1,000 for each violation may be assessed, to a maximum of $10,000 for each such pattern of violations. If a substantial health or safety violation exists or has occurred which could reasonably lead to or has resulted in serious personal injury or death, a civil penalty of up to $10,000 may be assessed for each violation. No civil penalty, except recordkeeping penalties, may be assessed against an employee unless it is determined that the employee's action constituted gross negligence or reckless disregard for safety, in which case the civil penalty may not exceed a total of $1,000 for each violation. A conviction of driving a commercial motor vehicle while under the influence of drugs or intoxicating beverages is an example of the latter category.

Provision is also made for criminal penalties for employers and employees operating a commercial motor vehicle who knowingly and willfully violate the safety regulations. Penalties for an employer are a fine of up to $25,000 and/or imprisonment not to exceed one year. An employee is subject to a fine not to exceed $2,500 if while operating a commerical motor vehicle the employee's activities led or could have led to serious injury or death.

Finally, the purpose of these criminal and civil penalties is to induce further compliance and effect a positive change in motor carrier safety management behavior. In assessing civil penalties, or, when appropriate, in recommending criminal penalties, the Federal Highway Administration's Office of Motor Carriers intends to aggressively pursue these penalties to the fullest. At the same time, the office of Motor Carriers will take into account the nature, circumstances, extent, and gravity of the violations; also considered will be the degree of culpability, history of prior offenses, ability to pay, the effect on the ability of the violator to continue to do business, and such other matters as justice and public safety may require. The structured programs discussed in Section "A" will provide the FHWA with the means to make more effective use of authorized sanctions, and improve the rationale for resorting to this type of enforcement. However, sanctions will be applied when appropriate, even for carriers whose overall safety rating is or has been satisfactory.

Title 49 CFR 386.72(b), which was added on June 1, 1987 (52 FR 20587), implements the procedure as to motor carrier safety imminent hazards. This section gives the Associate Administrator for Motor Carriers, or his or her delegate, authority to order a vehicle or employee out of service or order an employer to cease all or part of the employer's commercial motor vehicle opeations. In this context, "imminent hazard" means any condition of the carrier's commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately. Section 386.72(b) is being amended to make it clear that immediate compliance is required.

FHWA's existing authority to place vehicles (§ 396.9) and drivers (§ 395.13) out-of-service on the highway remains unchanged.

C. Safetynet

In order to support the three programs previously described, the FHWA has established an information exchange system called Safetynet.

Safetynet is an automated system of microcomputers and programs that collects safety information from states participating in the Motor Carrier Safety Assistance Program (MCSAP). It will integrate the state vehicle inspection systems with the Federal databases which contain inspection, accident, and safety audit information. There will be a full interchange of data between the states and the Federal computer systems.

Safetynet will support the mission of the FHWA's Office of Motor Carriers by identifying problem carriers through uniform data collected on a nationwide basis by all participating states. The performance of problem carriers will be tracked and follow-up actions initiated.

When Safetynet is fully developed as a system, the motor carrier safety profile will contain information from the following sources:

• Roadside driver and vehicle inspections,
• Safety and compliance reviews,
• Vehicle accident information, and
• Enforcement information, sanctions, etc.

Safetynet will enhance decisionmaking and assist FHWA in tracking and monitoring carriers in the National Education and Technical Assistance, Commercial Accident Prevention and Evaluation, and Selective Compliance and Enforcement Programs. The information system will help target carriers for safety and compliance reviews, determine which carriers require further review, or indicate other appropriate action.

*III. Section-by-Section Discussion*

Section 385.1 Purpose and Scope

A purpose and scope section specifies that this rule establishes procedures to determine the safety fitness of and assign safety ratings to all motor carriers subject to the jurisdiction of the FHWA, including applicants to the ICC for motor carrier operating authority.

Section 385.3 Definitions

The definition section defines the meaning of three safety ratings: "Satisfactory," "conditional," and "unsatisfactory." Unrated is not considered a safety rating. Additional definitions define the two types of reviews conducted at a motor carrier's principal place of business which will result in the assignment of a safety rating or a change in a safety rating. The two types of examinations are "compliance" and "safety" reviews. Definitions have also been included for the terms "applicable safety regulations or requirements," "preventable accident," and "safety management controls."

Section 385.5 Safety Fintness Standard

The safety fitness standard was developed as a satisfactory benchmark against which a motor carrier may measure its safety posture. Also, FHWA in determining the safety fitness of a motor carrier, shall use the safety fitness standard for assigning safety ratings.

Section 385.7 Factors to be Considered

This section discusses the factors considered in determining the safety fitness of a motor carrier and assigning a safety rating. The factors considered indicate whether or not a motor carrier has adequate safety management controls in place to ensure compliance with applicable regulatory standards, and whether these controls are functioning effectively. The safety and compliance reviews are the primary tools for gathering information for the assessment of a carrier's safety fitness. The factors considered include the following:

• Adequacy of safety management controls.
• Frequency and severity of regulatory violations.
• Frequency and severity of driver/vehicle roadside inspection regulatory violations.
• Number of out-of-service driver/vehicle violations.
• Increase or decrease in identical regulatory violations discovered in safety and compliance reviews.
• Frequency of accidents, hazardous materials incidents, reportable accident rate per million miles, reportable preventable accident rate per million miles and whether these accident and incident indicators have improved or deteriorated over time.
• Violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety when compatible with Federal rules, regulations, standards, and orders.

The number of violations and vehicle accidents will be weighted to reflect the size of the carrier's operations before assigning a safety rating.

Section 385.9 Determination of a Safety Rating

The determination of safety fitness and the assignment of safety ratings will be made by FHWA following the assessment of the rating factors prescribed in § 385.7. The safety fitness determination involves comparing the current safety fitness posture to the safety fitness standard and assigning a safety rating which best describes the current safety fitness posture of the evaluated motor carrier.

Section 385.11 Notification of Safety Ratings

The section for notification of safety ratings stipulates that the FHWA shall notify a motor carrier in writing of the safety rating assigned.

Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken to improve the carrier's overall safety performance.

Section 385.13 Motor Carrier Certification

A motor carrier receiving a safety rating of less than satisfactory (adverse rating) will be advised of those specific items for which immediate corrective action must be taken.

A motor carrier receiving a rating of "conditional" or "unsatisfactory" shall certify to the FHWA, within 30 days after receipt of the safety rating, that corrective action has been taken on all items requiring corrective action.

While a motor carrier has 30 days to certify to FHWA that corrective action has been taken, the FHWA is *not* establishing for a motor carrier a 30 day grace period or 30 days of relief from full compliance with applicable Federal safety and hazardous materials regulations. Failure to certify or falsely certifying under this section, moreover, will subject a carrier to additional penalties under 49 U.S.C. 522(b).

A motor carrier receiving a conditional or unsatisfactory safety rating will be entered into the Selective Compliance and Enforcement Program, which is one of the national motor carrier safety programs designed to assist the carrier in meeting the safety fitness standard. These carriers will be scheduled for follow-up compliance reviews as appropriate to determine if the safety rating should be changed to satisfactory or if other educational, remedial or punitive measures are necessary.

Finally, a carrier may be required to furnish additional documentation to substantiate any certification, or a carrier may be visited for an on-site review to verify that corrective actions were taken and to determine if the carrier meets the safety fitness standard.

Section 385.15 Review of a Safety Rating

The opportunity to submit a formal petition for review of a safety rating is provided for nonroutine cases such as those where the carrier disputes the findings of an on-site safety or compliance review underlying the rating. The section pertaining to review of safety ratings establishes the procedure for filing a petition for such review and indicates the basis for consideration of a change in a safety rating.

Section 385.17 Request for a Change in a Safety Rating

This section establishes the procedure for a motor carrier to request a change in a safety rating where there are no disputes and the basis for the change of the rating is evidence that corrective action has been taken and that operations are currently being conducted pursuant to the safety fitness standard.

Section 385.19 Safety Fitness Information

The safety rating assigned to a motor carrier is considered to be a factor that affects highway safety and, therefore, will be made available to the public upon request.

The FHWA when considering requests for safety fitness information, will make available information regarding the specific rating classification of a motor carrier. These rating classifications are: "unsatisfactory," "conditional," and "satisfactory," and are defined in 49 CFR 385.3, Definitions. Further, when reporting on unrated carriers, FHWA will distinguish between those carriers which have or have not filed Form MCS-150.

The FHWA believes that making safety ratings public will have a positive economic impact on the industry and enhance highway safety. Given a choice, a shipper will prefer using a company that meets the safety fitness standard since the shipper's economic well-being depends upon moving the product safely and efficiently through the transportation system. Insurance companies may also evaluate this information and through setting premiums that consider this rating, provide an economic incentive to help maintain safety. Safety ratings will be made available to the Interstate Commerce Commission and the Department of Defense by remote computer terminals to further enhance motor carrier safety.

Written or oral requests for safety ratings must identify the motor carrier by name, principal office address, and, if known, the docket number assigned by the Interstate Commerce Commission.

Written requests must be addressed to the Office of Motor Carrier Information Management and Analysis, HIA-1, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

Oral requests will be given an oral response by telephone. The FHWA will make available, through the communications media, a telephone number for interested persons who wish to obtain the safety rating of a motor carrier.

Section 385.21 Motor Carrier Identification Report

This section requires all unrated motor carriers to file a one-time short Motor Carrier Identification Report designated Form MCS-150. The purpose of the report is to identify previously unknown motor carriers operating in interstate or foreign commerce, to update the motor carrier census, to require the carrier to certify that it is familiar with the Federal Motor Carrier Safety Regulations, and to assist FHWA in prioritizing motor carriers for safety review contacts. A motor carrier that has received written notification of a safety rating by FHWA is not required to file the Motor Carrier Identification Report.

The ICC Register is published each working day, Monday through Friday, except for legal holidays. It contains a daily summary of motor carrier applications, decisions, and notices issued by the ICC. A copy of the ICC Register is furnished to the FHWA. The FHWA monitors this Register and, when an unrated motor carrier makes application to the ICC for motor carrier operating authority, the FHWA will attempt to contact the applicant personally for the purpose of initiating a safety fitness review. However, it is the carrier's responsibility to obtain and file the Form MCS-150. FHWA will attempt to conduct an on-site review and assign the carrier a safety rating prior to the date the ICC issues a final decision on the motor carrier's application for permanent operating authority. Such a safety rating will be available to the ICC by remote computer terminals. The rated entity will be advised of its safety rating in writing.

Section 385.23 Failure to Report

All unrated motor carriers currently conducting operations in interstate or foreign commerce are required to file a one-time Motor Carrier Identification Report within 90 days after the effective date of this rule. A motor carrier beginning operations after the effective date of this rule is required to file the form within 90 days after beginning operations. Failing to report, making false statements, or furnishing misleading information shall subject the motor carrier to civil or criminal penalties.

*IV. Regulatory Impact*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, this rulemaking action has been placed on DOT's Regulatory Program for significant rulemaking. It is anticipated that the direct cost of this rulemaking to the individual applicant will be minimal since it imposes little regulatory obligation upon the motor carrier. The benefits provided by this rule would be a decrease in accidents and consequently a decrease in economic and societal costs. The economic and safety impacts of this rule are further discussed and analyzed in a Regulatory Evaluation and Regulatory Flexibility Analysis which has been prepared and is available for inspection in the public docket and may be obtained from the FHWA at the address provided under the heading "For Further Information Contact."

*V. Regulatory Flexibility Act/Paper Reduction*

With regard to the assessment of the impact this rule will have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96-354), the reasons for, objectives, and legal basis of this action have been previously explained in this notice. In consideration of the potential benefits, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

The collection of information requirements contained in this rule are being submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

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.

Federalism Assessment

This final regulation revises Part 385 of the FMCSRs and addresses the issue of safety fitness procedures as it pertains to motor carriers of property and passengers engaged in interstate or foreign commerce. Nothing in this document directly preempts any State law or regulation. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of Executive Order 12612 and it is determined that there is no federalism impact.

**List of Subjects**

*49 CFR Part 385*

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 386*

Administrative practice and procedure.

(Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety).

Issued on December 12, 1988.

Robert E. Farris,

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter IIII as follows:

1. Part 385 is revised to read as follows:

## PART 385—SAFETY FITNESS PROCEDURES

Sec.


**Authority:** 49 U.S.C. app. 2512; 49 U.S.C. 104, 504, 521(b)(5)(A), and 3102; 49 CFR 1.48.

### § 385.1 Purpose and scope.

(a) This part establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, and to take remedial action when required.

(b) The provisions of this part apply to all motor carriers subject to the jurisdiction of the FHWA.

### § 385.3 Definitions.

*Applicable safety regulations or requirements* means 49 CFR Subtitle B, Chapter III, Subchapter B—Federal Motor Carrier Safety Regulations; and 49 CFR Subtitle B, Chapter I, Subchapter C—Hazardous Materials Regulations.

*Preventable accident* on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

*Reviews.* For the purposes of this part:

(1) *Compliance review* means an on-site investigation of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, and other safety and business records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted to review a motor carrier's operation in response to a request to change a safety rating, to investigate a complaint, or to investigate the operations of an unsatisfactory or conditionally rated motor carrier identified by a safety review, or as part of a routine periodic inspection of a carrier that has been rated satisfactory. The compliance review may result in the initiation of an enforcement action.

(2) *Safety review* means an on-site assessment to determine if a motor carrier has adequate safety management controls in place and functioning to meet the safety fitness standard. The safety review includes a review of selected carrier records and operations. It is used to gather information for assigning ratings to unrated carriers and may also be used to change safety ratings. The safety review will not ordinarily result in the institution of an enforcement action, but may if circumstances warrant.

(3) *Safety management controls* means the systems, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations, to ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

*Safety ratings:* (1) *Satisfactory safety rating* means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in § 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in § 385.5(a) through (h).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5(a) through (h).

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FHWA.

### § 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Commercial driver's license standard violations (Part 383),

(b) Inadequate levels of financial responsibility (Part 387),

(c) The use of unqualified drivers (Part 391),

(d) Improper use and driving of motor vehicles (Part 392),

(e) Unsafe vehicles operating on the highways (Part 393),

(f) Nonreporting of accidents (Part 394),

(g) The use of fatigued drivers (Part 395),

(h) Inadequate inspection, repair, and maintenance of vehicles (Part 396),

(i) Transportation of hazardous materials, driving and parking rule violations (Part 397),

(j) Violation of hazardous materials regulations (Parts 170 through 177), and

(k) Motor vehicle accidents and hazardous materials incidents.

**§ 385.7 Factors to be considered in determining a safety rating.**

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections.

(d) Number and frequency of out-of-service driver/vehicle violations.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) Frequency of accidents; hazardous materials incidents; reportable accident rate per million miles; reportable preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

(g) The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards, and orders.

**§ 385.9 Determination of a safety rating.**

Following a safety or compliance review of a motor carrier operation, the FHWA, using the factors prescribed in § 385.7, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

**§ 385.11 Notification of a safety rating.**

(a) Following a safety or compliance review, the FHWA shall determine the safety fitness of a motor carrier and notify the motor carrier in writing of the assigned safety rating.

(b) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

**§ 385.13 Motor carrier certification.**

(a) Upon notification of a conditional or unsatisfactory safety rating, a motor carrier shall certify to the FHWA, within 30 days, whether all corrective actions identified by FHWA have been taken.

(b) Certification required by this section must be made to the Regional Director, Office of Motor Carrier Safety, as listed at 49 CFR 390.40, for the FHWA region in which the carrier maintains its principal place of business for safety.

(c) Failure to certify or falsely certifying under this section will be considered a reporting violation under 49 U.S.C. 522(b).

**§ 385.15 Review of a safety rating.**

(a) A petition for review of a safety rating, where there are factual disputes, must list all factual issues disputed and be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition for a change in its assigned safety rating.

(b) The petition must be submitted to the Director, Office of Motor Carrier Safety Field Operations, within 90 days of the date of notification of the assignment, or change, of a safety rating.

(c) Following the review of a petition, the Director, Office of Motor Carrier Safety Field Operations, may request the motor carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide information in response to any reasonable or lawful request, or failure to attend the conference may result in dismissal of the petition.

(d) The Director, Office of Motor Carrier Safety Field Operations, shall notify the motor carrier in writing of a decision on a petition for review of a safety rating.

**§ 385.17 Request for a change in a safety rating.**

(a) A request for a change in a safety rating, where there are no disputes, and when the basis for the change is evidence that corrective action has been taken and that operations are currently being conducted pursuant to the safety fitness standard specified in § 385.5, shall be directed in writing to the Regional Director of Motor Carrier Safety for the FHWA Region in which the motor carrier maintains its principal place of business. The Regional Office addresses are listed in 49 CFR 390.40.

(b) Appropriate Federal Highway Administration personnel will contact the motor carrier relative to scheduling a compliance review.

**§ 385.19 Safety fitness information.**

(a) Ratings will be made available to the Interstate Commerce Commission and the Department of Defense telephonically or by remote computer terminals.

(b) The safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FHWA with the motor carrier name, principal office address, and, if known, the ICC assigned docket number, if any.

(c) Requests shall be addressed to the Office of Motor Carrier Information Management and Analysis, HIA-1, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(d) Oral requests by telephone will be given an oral response.

**§ 385.21 Motor carrier identification report.**

(a) All motor carriers currently conducting operations in interstate or foreign commerce shall file a Motor Carrier Identification Report, Form MCS-150, within 90 days after the effective date of this rule. Exception: The provisions of this section do not apply to a motor carrier that has received written notification of a safety rating from the FHWA.

(b) All motor carriers beginning operation after the effective date of this rule shall file the Motor Carrier Identification Report, Form MCS-150, within 90 days after beginning operations.

(c) The Motor Carrier Identification Report, Form MCS-150, is available from all FHWA region and division motor carrier safety offices nationwide and from FHWA Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(d) The completed Motor Carrier Identification Report, Form MCS-150, shall be filed with the FHWA, Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

**§ 385.23 Failure to report.**

Failure by a motor carrier to file a

Motor Carrier Identification Report, Form MCS–150, pursuant to the provisions of § 385.23, or furnishing misleading information or making false statements upon the MCS–150 shall subject the offender to the penalties prescribed in Title 49, United States Code, 522(b).

## Appendix—Form MCS–150; Motor Carrier Identification Report

Federal Highway Administration, Office of Motor Carriers, Information Management and Analysis, HIA–10, 400 Seventh Street, SW., Washington, DC 20590

Motor Carrier Identification Report

Pursuant to 49 U.S.C. 504 (1982 & Supp. III 1985), and the regulations codified in 49 CFR Part 385, a motor carrier conducting operations in interstate or foreign commerce shall file a one-time Motor Carrier Identification Report, Form MCS–150, within 90 days after the effective date of this rule. A new motor carrier shall file a Form MCS–150 within 90 days after beginning operations. This provision does not apply to a motor carrier that has received written notification of a safety rating from the Federal Highway Administration. The completed MCS–150 shall be filed with the Federal Highway Administration, at the above address.

*A. Motor Carrier Identification*

Legal Motor Carrier Name ______
Trade Name (if any) ______
Headquarters Address ______
(Physical address, *not* mailing address)

______
(Number and Street/Route No.)

______
City State Zip Code
Headquarters Telephone Number (include area code) ______
Interstate Commerce Commission Docket Number (if any) MC– ______

*B. Operating Information*

1. Circle letter of alphabet preceding each type of cargo you transport.

A. General freight
B. Household goods
C. Metal: sheets, coils, rolls
D. Motor vehicles
E. Driveaway/towaway
F. Logs, poles, beams, lumber
G. Building materials
H. Mobile homes
I. Machinery, large objects
J. Fresh produce
K. Liquids or gases
L. Intermodal containers
M. Passengers
N. Oil-field equipment
O. Livestock
P. Grain, feed, hay
Q. Coal/coke
R. Meat
S. New furniture/fixtures
T. U.S. mail
U. Chemicals
V. Commodities in dry bulk
W. Refrigerated food
X. Beverages
Y. Paper products
Z. Other ______

2. Do you transport hazardous materials in quantities that require placarding? ______ (Yes) ______ (No)

3. Average number of power vehicles operated per month during past 12* months ______

4. Average number of drivers used per month during past 12* months ______

5. Number of vehicle miles traveled during past 12* months ______

* If the information above represents a period of less than 12 months, state the number of months ______

*C. Certification Statement*

(to be completed by authorized official)
I, ______
(please print name),
certify I am familiar with the Federal Motor Carrier Safety Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct and complete.
Signature ______
Title ______
Date ______

## PART 386—[AMENDED]

2. The authority citation for Part 386 continues to read as follows:

**Authority:** Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); Motor Carrier Safety Act of 1984, Pub. L. 98–554, 98 Stat. 2829 (49 U.S.C. 2501 *et seq.*); recodification of Title 49, United States Code, Transportation, Pub. L. 97–449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); Hazardous Materials Transportation Act, Pub. L. 93–633, 88 Stat. 2156 (49 U.S.C. 1801 *et seq.*); Bus Regulatory Reform Act of 1982, Pub. L. 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note); Motor Carrier Act of 1980, Pub. L. 96–296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

3. In § 386.72, paragraph (b)(2) is revised to read as follows:

### § 386.72 Imminent hazard.

* * * * *

(b) * * *

(2) Upon the issuance of an order under paragraph (b)(1) of this section, the motor carrier employer or driver employee shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554, except that such review shall occur not later than 10 days after issuance of such order, as provided by section 213(b) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 521(b)(5)).

[FR Doc. 88–29019; Filed 12–16–88; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 652

**[Docket No. 70617–7148]**

## Atlantic Surf Clam and Ocean Quahog Fisheries

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

**ACTION:** Notice of allowable surf clam fishing time.

**SUMMARY:** NOAA issues this notice to establish allowable fishing time at 36 hours for each quarter of 1989 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility and predictability to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

**EFFECTIVE DATE:** January 1 through December 30, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill, 508–281–3600 ext. 252.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Mid-Atlantic Fishery Management Council (Council), to exercise his authority under 50 CFR 652.22(a)(3) to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to his/her best advantage. That program was continued for the remainder of 1987 and into 1988 with some modifications required to facilitate enforcement.

For 1988, the Regional Director initially allocated 36 hours of fishing time for each quarter (52 FR 49019, December 29, 1987). Based upon the catch rates for the year, it was necessary to increase the number of trips from six to eight for the last quarter, giving a total number of 26 trips for the year (53 FR 36462, September 20, 1988). The Council at its November 1988 meeting requested public comment on the flexible scheduling of the past two years versus the fixed scheduling alternative enacted previously. Commenters present at the meeting stated that the flexible scheduling allowed greater flexibility and safety and they requested that no changes be made.

Based on an analysis of 1988 quarterly fishing effort, projected trends for the upcoming quarter and comments from industry, the Regional Director has decided to again allocate 36 hours of fishing time for each quarter of 1989. That time must be scheduled in the form of six fishing trips of six hours duration each. Adjustments to the number of trips to insure the attainment of the quarterly quota will be made to the quarter immediately following when more complete catch information is available.

The fishing trips must be scheduled with 10 days advance written notice to the Surf Clam Coordinator, NMFS, 2 State Fish Pier, Gloucester, Massachusetts 01930. If this publication appears too late to allow such notice for those wishing to schedule trips during the first week of the first quarter, trips for that week only can be scheduled by calling (508) 281-3600 ext. 252.

## Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

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

## List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 1988.

**Richard H. Schaefer,**

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

[FR Doc. 88-29120 Filed 12-16-88; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 243
Monday, December 19, 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

### Animal and Plant Health Inspection Service

### 7 CFR Ch. III

**[Docket No. 88-200]**

### Varroa Mite Negotiated Rulemaking Advisory Committee; Meeting

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The purpose of this notice is to announce a meeting of the Varroa Mite Negotiated Rulemaking Advisory Committee.

**DATES:** January 5 and 6, 1989, from 9 a.m. to 5 p.m. each day.

**ADDRESSES:** The meeting will be held at the Federal Mediation and Conciliation Service, Room 201, 2100 K Street, NW., Washington, DC 20427.

**FOR FURTHER INFORMATION CONTACT:** Helene Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8682.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to convene members of the Varroa Mite Negotiated Rulemaking Advisory Committee to reach consensus on terms of a proposed rule to prevent the interstate spread of the Varroa mite.

The meeting will be open to the public. Public participation will be limited to written statements. Anyone who wants to file a written statement with the Committee about meeting topics may do so either at the time of the meeting or before the meeting, by sending the statement to Helene Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 14th day of December, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88-29113 Filed 12-16-88; 8:45 am]

BILLING CODE 3410-34-M

### Farmers Home Administration

### 7 CFR Part 1951

### Loan and Grant Programs; Servicing and Collections

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to amend its Community Facilities loan and grant servicing regulations. This action is being taken to clarify the regulation. The intended effect is to provide more comprehensive and straightforward guidance to FmHA staff and recipients of assistance relating to the servicing of the affected loans.

**DATE:** Comments must be received on or before January 18, 1989.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from one-half to 1 hour per response, with an average of 52 minutes per response including 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 suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paparwork Reduction Project (OMB# 0575-0103), Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** T.W. Davis, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382-9586 or Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6314, Washington, DC 20250, telephone: (202) 382-1490.

**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 to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. It has been determined that this action will not have a significant economic inpact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal reporting requirements. Furthermore, there will be no 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 action is not expected to substantially affect budget outlay, to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

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.

*Background:* This action is primarily to change regulations concerning the servicing of unauthorized assistance in the form of interest subsidies for which a recipient is not eligible and to provide for recovery of the unauthorized assistance. The alternatives are to do nothing or to proceed with revision of the regulation. FmHA believes that rewriting the regulation while incorporating the changes will result in the most efficient conduct of internal Agency administrative activities and provision of service to the public.

The primary changes include the following:

1. When the recipient of a loan should have been charged a higher interest rate than that in the debt instrument which resulted in the receipt of unauthorized subsidy benefits, the interest rate will be adjusted to the appropriate rate in effect for which the recipient was eligible at the time of loan approval or closing whichever is lower.

2. A concerted effort will be made to collect any unauthorized subsidy benefits received by the recipient.

3. Corrective actions will be taken upon advice of the Regional Attorney of the Office of General Counsel.

### List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs-Housing and community development, Loan programs-Housing and community development, Reporting and recordkeeping requirements, Rural areas, Rent subsidies, Subsidies.

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

## PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

2. Section 1951.711 is amended by revising paragraph (b)(3) to read as follows:

**§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.**

* * * * *

(b) * * *

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph. The recipient will be given the option to submit a written request that the interest rate be adjusted to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing. (See Exhibit C of this subpart for interest rates (available in any FmHA office)). FmHA servicing officials will make a concerted effort to collect all unauthorized subsidy benefits from the recipient and will contact the Office of General Counsel in each case for advice in accomplishing corrective actions.

* * * * *

Dated: November 21, 1988.

**Vance L. Clark,** *Administrator, Farmers Home Administrator.*

[FR Doc. 88–29052 Filed 12–16–88; 8:45 am]

BILLING CODE 3410-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Ch. I

**[Summary Notice No. PR-88-15]**

### Petition for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

### Petitions for Rulemaking

*Docket No.:* 25505.

*Petitioner:* Flight Attendant Services, Inc.

*Regulations Affected:* 14 CFR Parts 121 and 135.

*Description of Petition:* The petition, if granted, would add new sections to the Federal Aviation Regulations to require Part 121 and 135 certificate holders to carry on each passenger-carrying aircraft, in easy readible view of each passenger, the "Passenger Awareness Check (PAC)" adhesively displayed in direct view of each passenger.

*Petitioner's Reason for the Rule:* The petitioner asserts that the purpose of this petition is to enable passengers to be consciously aware of the emergency procedures mentioned in the preflight demonstration and to be responsible for their own safety in the event an authorized crewmember is unavailable to assist them in the event of an emergency.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before February 17, 1989.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ________, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued is Washington, DC, on December 13, 1988.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

[FR Doc. 88-29072 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-ASO-23]

## Proposed Revision of Transition Area; Alabaster, AL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Alabaster, AL, transition area by adding an arrival area extension. The extension would provide airspace protection for aircraft executing a new Nondirectional Radio Beacon (NDB) Runway 33 Standard Instrument Approach Procedure (SIAP) being developed for the Shelby County Airport. Also, this action would correct the geographic position coordinates for the Bessemer Airport.

**DATE:** Comments must be received on or before January 29, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-23, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Alabaster, AL, transition area. An arrival area extension is required to provide airspace protection for aircraft executing a NDB RWY 33 SIAP being developed for the Shelby County Airport. Also, this action will correct the geographic position coordinates for the Bessemer Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

### The Proposed Amendment

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

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

**Alabaster, AL [Amended]**

By deleting the existing description and substituting the following: "That airspace extending upward from 700′ above the surface within a 7-mile radius of Shelby County Airport (Lat. 33°10′41″ N, Long. 86°47′01″ W.); within 3.5 miles each side of the 168° bearing of the Calera RBN (Lat. 33°07′06″ N., Long. 86°46′02″ W.), extending from the 7-mile radius area to a point 11 miles south of the RBN; within a 6.5-mile radius of Bessemer Airport (Lat. 33°18′46″ N., Long. 86°55′32″ W.); excluding that portion which coincides with the Birmingham, AL, transition area."

Issued in East Point, Georgia, on December 9, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 88-29069 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-ASO-21]

## Proposed Revision to Transition Area; Lake City, SC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Lake City, South Carolina transition area. The Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) originally proposed based on the 192° bearing from the Evans Radio Beacon (RBN) was never developed. A new NDB SIAP has been developed predicated on the 288° bearing of the Evans RBN. This amendment would delete the arrival area extension along the 192° bearing and add a new extension on either side of the 288° bearing of the Evans RBN. This action is necessary to afford airspace protection for aircraft executing the new SIAP.

**DATE:** Comments must be received on or before January 23, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-21, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** Melvin Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Lake City, South Carolina transition area by deleting an existing arrival area extension and adding a new extension to provide airspace protection for aircraft executing a new SIAP. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

### The Proposed Amendment

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

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Lake City, South Carolina [Amended]**

By removing the existing description and adding the following: "That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Lake City Municipal C J Evans Field Airport (lat. 33°51'14" N., long. 79°46'08" W.); within 3 miles each side of the 283° bearing from the Evans RBN (lat. 33°51'21" N., long. 79°45'58" W.), extending from the 6.5-mile radius area to 8.5 miles west of the RBN; excluding that portion which coincides with the Kingstree, S.C., Transition Area."

Issued in East Point, Georgia, on December 9, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 88-29068 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[Region II Docket No. 86; FRL-3493-8]**

## Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This notice announces that the Environmental Protection Agency is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone. This revision was prepared by the New York State Department of Environmental Conservation pursuant to a SIP commitment to implement appropriate actions in order to reduce statewide

ozone levels as required under section 110 and Part D of the Clean Air Act. Today's notice proposes to incorporate into the New York SIP a revised regulation, Part 230, "Gasoline Dispensing Sites and Transport Vehicles," which will reduce volatile organic compound emissions due to motor vehicular refueling at certain gasoline stations in the New York City metropolitan area.

**DATES:** Comments must be received by January 18, 1989.

**ADDRESSES:** All comments should be addressed to: William J. Muzynski, P.E., Acting Regional Administrator, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278. New York State Department of Environmental Conservation Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

**SUPPLEMENTARY INFORMATION:**

## Background

In its most recent comprehensive State Implementation Plan (SIP) revision for ozone, which was submitted to the Environmental Protection Agency (EPA) on February 2, 1984 and approved by EPA on June 17, 1985 (50 FR 25173), New York State committed to adopt regulations, where required, for source categories covered by EPA's Control Techniques Guidelines (CTGs) and to make various regulatory revisions to provide additional volatile organic compound (VOC) emission reductions. In April 1985, New York adopted revisions to the State regulations contained in its SIP. These revisions to Title 6 of the New York Code of Rules and Regulations (NYCRR) promulgated a new Part 230, entitled "Gasoline Dispensing Sites and Transport Vehicles." Part 230 required gasoline stations in the New York City metropolitan area (NYCMA, comprised of New York City and Nassau, Suffolk, Westchester and Rockland Counties) whose annual throughput exceeds 120,000 gallons to install Stage I vapor control systems to collect the fugitive gasoline vapors which are emitted when the station's gasoline storage tanks are refilled. EPA's proposed approval of this regulation appeared in the **Federal Register** on June 13, 1986 (51 FR 21577).

## The State Submittals

On July 9, 1987 and April 7, 1988, New York State submitted to EPA adopted revisions to Part 230, effective June 26, 1987 and March 3, 1988, respectively. These revisions, which are the subject of today's notice, add to Part 230 requirements for the control of gasoline vapors resulting from the refueling of vehicle fuel tanks at gasoline service stations. Because emissions due to the bulk loading and unloading of gasoline are controlled at every point during its shipment (i.e., from storage and loading facilities to the tank truck, and from the tank truck to the service station storage tank), the control of the emissions due to the refueling of vehicles at gasoline service stations is the next logical step.

When vehicle fuel tanks are refilled, the air inside the tank is displaced and forced out into the atmosphere. This air is heavily saturated with VOCs and, therefore, contributes to the ozone problem. The control systems required under Part 230, known as Stage II controls, are those certified by the New York State Department of Environmental Conservation (NYSDEC) as being able to capture at least 90 percent of this vapor laden air before it enters the atmosphere. Part 230 also initiates a certification program to collect data to be used in determining which facilities are subject to the requirements of Stage II and/or Stage I. Under this certification program, all existing service stations will be required to apply for and obtain a State Certificate to Operate. Similarly, all new or modified gasoline stations will be required to apply for and obtain a State Permit to Construct.

The additional adopted revisions to Part 230, which were submitted to EPA on April 7, 1988, expressly move the compliance dates of Part 230 forward by nine months from the dates contained in the July 9, 1987 submittal. These expedited compliance dates are required in order for the State to comply with the decision issued by the U.S. District Court, Southern District of New York, in the case of the *Natural Resources Defense Council et al. v. NYSDEC et al.* Therefore, existing service stations with an annual throughput of gasoline exceeding 500,000 gallons must install State II controls and be in compliance by July 1, 1988; stations with an annual throughput between 250,000 and 500,000 gallons would have until July 1, 1989 to comply. Stage II controls are not required for existing service stations with an annual throughput of gasoline less than 250,000 gallons, or at service stations in New York City with storage tanks installed before January 1, 1970 and which have a capacity of less than 2,000 gallons. However, all service stations constructed or "substantially modified" (as defined in the State's rule) and located in the NYCMA, regardless of their annual throughput of gasoline, which be subject to both Stage I and Stage II controls.

## Findings

EPA finds that the adoption of Stage II controls in Part 230 meets New York's SIP commitment. The design of the State II program submitted by the State is substantially equivalent to the program committed to in the SIP, both in nature and emission reductions. The VOC reductions associated with this regulation were necessary for the State to demonstrate attainment of the ozone standard. EPA notes, however, that there could be some confusion with respect to the availability of records showing the quantity of gasoline delivered to the site. Specifically, the State should clearly require that the records of all gasoline deliveries should be kept at the service station, so that they are readily available at the time of an inspection. In addition, wherever possible the State should use a uniform beginning date for the twelve-month period of recordkeeping when determining the applicability of Part 230 to service stations.

Part 230 contains a variance provision which permits the Commissioner of the NYSDEC to accept alternative controls when a facility is unable to comply because of economic or technical infeasibility. In this regard, it should be noted that EPA cannot recognize any variance or alternate requirement until it is submitted by the State for approval as a SIP revision.

EPA is soliciting public comments on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address noted at the beginning of today's notice.

## Conclusion

EPA is today proposing to find that the revisions to Part 230 of the NYCRR adequately fulfills the SIP commitment made by the State.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Ozone.

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

Dated May 19, 1988.

Christopher J. Daggett,

*Regional Administrator, Environmental Protection Agency, Region II.*

[FR Doc. 88-29056 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

---

**40 CFR Part 228**

**[FRL-3492-8]**

## Ocean Dumping; Proposed Site Designation; Gulf of Mexico; Pensacola, FL

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA today proposes to designate a new Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico offshore Pensacola, Florida, i.e., the Pensacola (offshore) ODMDS, as an EPA-approved ocean disposal site for the disposal of dredged material. This proposed action is necessary to provide an acceptable ODMDS option for anticipated future disposal of restricted suitable dredged material.

The Pensacola (offshore) ODMDS is located outside of Florida State waters and is restricted to disposal of predominantly fine-grained dredged material from the greater Pensacola, Florida, area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS located closer to shore. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size of >0.125 millimeters (mm) and a composition of <10% fines.

Review comments on the Final Environmental Impact Statement (FEIS) for this proposed action are not addressed in this Proposed Rule but will be addressed in the subsequent Final Rule. Comments on this Proposed Rule will also be addressed in the Final Rule.

**DATE:** Comments must be received on or before January 18, 1989.

**ADDRESSES:** Send comments to: Frank M. Redmond, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC 20460.

EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** Reginald G. Rogers, 404/347-2126.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed site is in Region IV and the designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) indicate that ocean disposal sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 [January 11, 1977]). Interested persons may participate in this Proposed Rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

### B. Environmental Impact Statement Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 [May 7, 1974]). EPA, in cooperation with the U.S. Army Corps of Engineers (COE) and the U.S. Navy, has prepared a Draft Environmental Impact Statement (DEIS) and FEIS entitled "Designation of a New Ocean Dredged Material Disposal Site, Pensacola, Florida." This Proposed Rule and the pending Final Rule are procedural follow-ups to the EIS. This Proposed Rule includes excerpts from the EIS. The EIS may be used as reference, especially for literature citations, which are not cited herein.

The proposed action discussed in the EIS is the designation of a new ODMDS offshore Pensacola, Florida. The purpose of this proposed action is to designate, on a permanent basis, a new environmentally-acceptable ODMDS as an ocean option for the disposal of restricted suitable dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The COE and EPA evaluate all dredged material disposal projects in accordance with the EPA criteria given in the Ocean Dumping Regulations (40 CFR Parts 220-229), the COE regulations (33 CFR 209.120 and 209.145), and any applicable State requirements governing consistency with the State's Coastal Zone Management Program (the Pensacola (offshore) ODMDS is located outside Florida State waters). The COE also issues permits to all applicants for transport of dredged material intended for disposal after compliance with the same regulations is determined. The COE also undergoes a public review process for its own disposal actions. EPA has the right to disapprove any ocean disposal project if it believes that all provisions of MPRSA and the associated implementing regulations have not been met. Although State permits may be required for dredging activities, they would not be needed at the Pensacola (offshore) ODMDS since the disposal site is located outside Florida State waters.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on January 29, 1988 (53 FR 2640 [January 29, 1988]).

On June 10, 1988, the Notice of Availability of the DEIS for public review and comment was published in the **Federal Register** (53 FR 21914 [June 10, 1988]). The public comment period on the DEIS closed July 25, 1988. Distribution of the DEIS resulted in some mailing returns; attempts were made to redistribute such returns.

The Notice of Availability of the FEIS for public review and comment was published in the **Federal Register** on September 23, 1988 (53 FR 37044 [September 23, 1988]). The public comment period was to close on October 24, 1988, but was extended by EPA to November 14, 1988 (see announcement in the **Federal Register** in 53 FR 44658 [November 4, 1988]). The FEIS addressed the comments received on the DEIS. Distribution of the FEIS also resulted in some mailing returns; attempts were again made to redistribute such returns. Also, replacement pages for Appendix B in the FEIS were distributed to the FEIS mailing list addressees at the end of the original FEIS review period (original review period was extended to allow some review time for Appendix B replacement pages). Review comments received by EPA on the FEIS by the close of the extended review period will be addressed in the Final Rule, which will be published subsequent to issuance of this Proposed Rule. Comments received by EPA include technical comments by Florida State University concerning the original Appendix B relative to currents off of Pensacola, Florida; by the Minerals Management Service of the Department of the Interior; by the Sports Fishing Institute; and by the State of Florida. Any review comments on this Proposed Rule will also be addressed in the pending Final Rule.

The EIS discusses the need for the designation of the Pensacola (offshore) ODMDS. EPA is proposing the designation of the new ODMDS off Pensacola, Florida, to accommodate the Navy's anticipated disposal needs for predominantly fine-grained dredged material that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS (that site is restricted to disposal of suitable sandy dredged material). The U.S. Navy has proposed to establish a new homeport at Pensacola for the aircraft carrier *USS Kitty Hawk* and one naval reserve patrol craft. The *USS Lexington*, currently based at Pensacola, will be moved to Corpus Christi, Texas as part of the overall Gulf Coast Strategic Homeport Project. The proposed project will require deepening of the existing channel to the Naval Air Station (NAS) at Pensacola. Approximately 4.1 million cubic yards (mcy) of new work dredged material from the turning basin and channel is initially proposed for disposal in the new ODMDS.

In the future, the ODMDS could also be used for disposal of maintenance material dredged from the Navy's channel, the Pensacola Harbor Ship Channel or private dredging projects, provided the material meets the criteria specified in MPRSA. Additional Section 103 permit review would be required prior to the use of the new ODMDS for any dredged material other than the initial 4.1 mcy proposed for disposal. Additional dredged material testing and NEPA documentation may also be required. Only material that meets the Ocean Dumping Criteria and is not suitable for beach nourishment would be placed in the site.

The EIS also examines ocean disposal site alternatives to the proposed action. Three alternative sites (Sites "A", "B" and "C") located in the mid-Continental Shelf area were initially selected for study. All three sites were located within an economically and operationally feasible radius (20 miles) from Pensacola Pass. The sites chosen for detailed investigation, Sites "B" and "C", covered approximately 19 square miles each. This area was considered large enough that an ODMDS could be located within the area.

Alternative Site "A" is located within Florida State waters, as defined by the State of Florida (10.36 statute miles). Alternative Site "A" is a four mile area located approximately 13 statute miles southwest of Pensacola Pass in depths of 60 to 70 feet. During the initial evaluations, this site was eliminated because it had no apparent environmental advantages, would be more expensive to use than either of the two other alternative sites because it was farther from Pensacola Pass, and was adjacent to Alabama State waters which would complicate the coordination process.

Alternative Site "B" is also located within Florida State waters, as defined by Florida. The northern side of the site is approximately seven statute miles southeast of Pensacola Pass. Depths in the area range from 60 to 87 feet and the bottom is generally classified as compacted sand. This site was not selected because one permitted and two existing artificial reefs were located within the site and one existing and one proposed reef were located east of the site (i.e., downstream of the predominant current direction).

Alternative Site "C", the preferred site, is located seaward of State waters, as defined by Florida, with the exception of a small portion of the northwest corner. The northern side of Site "C" is approximately 11 statute miles south of Pensacola Pass. Depths in the area range from 60 to 95 feet and the bottom is generally classified as compacted sand and shell hash.

The proposed action is the final designation of a new ODMDS for Pensacola located within the preferred alternative Site "C". This ODMDS is located entirely outside of State waters. A numerical dispersion model (Disposal From An Instantaneous Dump: DIFID model), available at the U.S. Army Engineer Waterways Experiment Station, was used to simulate the disposed material as it descends through the water column and spreads over the ocean bottom under varying hydrodynamic conditions. The results of all the model simulations indicated that 100% of the sand and silt/clay clumps fell to the bottom within less than 100 seconds of the beginning of the disposal operation. In addition, the simulations indicated that this material fell directly beneath the barge, regardless of the input data, describing the oceanographic conditions of the site. The actual deposits of each of these solids fractions were different in that the sand tended to cover a large area of bottom at a lesser thickness than did the silt-clay clumps. The non-cohesive silts and clays did not behave in a similar fashion with a large percentage of these particles remaining suspended in the water column after disposal. Depending upon the ambient conditions, these particles can be transported from the dump location as a turbidity plume. The area affected by the plume varies greatly, depending primarily upon the type of material disposed. The area with suspended solids concentrations of more than 10 parts per million (ppm) would cover approximately 300 acres, 90 minutes after discharge, under worst-case conditions, i.e., 95% silt-clay. Since approximately 93% of the 4.1 mcy to be disposed can be classified as sand or silt/clay clumps, a management plan was devised to utilize this material to form a submerged containment (a horseshoe-shaped berm) into which the non-cohesive material would then be disposed. The model results, the management plan, and the comments received on the DEIS were used to define the actual coordinates of the area to be designated as the ODMDS. For additional details on the model and the management plan, see Appendices H and I of the FEIS, respectively.

**C. Coastal Zone Management and Endangered Species Coordination**

EPA has concluded that the proposed designation of the Pensacola (offshore)

ODMDS is consistent with the Florida Coastal Zone Management Program to the maximium extent practicable as required by Section 307 of the Coastal Zone Management Act. EPA has included its coastal zone consistency determination as Appendix J in the FEIS. Review comments on EPA's consistency determination will be addressed in the Final Rule.

### D. Endangered Species Coordination

Pursuant to Section 7 of the Endangered Species Act, coordination with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) was conducted regarding this site designation relative to adverse effects to any endangered species under NMFS and FWS jurisdiction. By letter to the U.S. Navy dated February 18, 1987 (see FEIS, pg. 7–6), the FWS concurred in the Navy's determination that the Navy's Pensacola Homeport Project would have no adverse effect on Federally-listed threatened or endangered species under FWS jurisdiction in the Pensacola area. Additional concurrence from FWS specifically relating to the proposed designation of an ODMDS offshore Pensacola, Florida was requested by EPA in a letter dated September 13, 1988, and concurrence was received by letter dated October 4, 1988. Also, the NMFS reaffirmed concurrence in the COE's determination that this site designation would have no adverse effects on threatened or endangered species under their jurisdication by letter dated December 14, 1987 (see FEIS, pg. 7–5). Verification that this concurrence is relevant to the proposed designation and is still valid was obtained by EPA during a telephone conversation on September 1, 1988, with Dr. Terry Henwood, Fisheries Biologist, of the NMFS Southeast Regional Office in St. Petersburg, Florida.

### E. Proposed Site Designation

The proposed Pensacola (offshore) ODMDS is located approximately 11 statute miles south of Pensacola Pass and occupies an area of approximately six square statute miles. Water depths range from approximately 65 to 80 feet. The Pensacola (offshore) ODMDS proposed for final designation is located entirely outside of Florida State waters and is defined by the following coordinates:

| | |
|---|---|
| 30°08′50″ N., | 87°19′30″ W.; |
| 30°08′50″ N., | 87°16′30″ W.; |
| 30°07′05″ N., | 87°16′30″ W.; |
| 30°07′05″ N., | 87°19′30″ W. |

### F. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR Part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations by the disposal from causing significant impacts outside the disposal site, to permit effective monitoring to detect any perturbations from the disposal, and to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, EPA will take appropriate measures to mitigate the impact or terminate disposal at the site. The proposed site conforms to the five general criteria except for the preference for historically-used sites and sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting a site off the Continental Shelf instead of the site in this proposed action. Also, in this case, the site that has been historically used in the area had already been permanently designated by EPA as the Pensacola (nearshore) ODMDS and is restricted to disposal of suitable sandy dredged material as defined earlier. A new ODMDS at Pensacola was therefore selected. This new Pensacola (offshore) ODMDS, which is being proposed for permanent designation herein, will complement the existing Pensacola (nearshore) ODMDS since it may be used for disposal of suitable fine-grained dredged material as defined earlier.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. EPA established these 11 criteria to constitute an environmental assessment of the impact of the site for disposal. The characteristics of the proposed site are reviewed below in terms of these 11 criteria.

*1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast [40 CFR 228.6(a)(1)]*

The boundary coordinates of the site are given above. The Pensacola (offshore) site is approximately 11 statute miles form the nearest beach and encompasses an area of approximately six square statute miles. Water depths at the site range from approximately 65 to 80 feet. Bottom topography in the site is relatively flat and geneally slopes to the southeast. The sand sheet in the immediate vicinity thins to the east with limstone karst topography becoming more predominant in this area. This site has been located on sandy bottom to avoid corals and other invertebrates that occur on rocky outcroppings at depts of 80 feet and more.

*2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases [40 CFR 228.6(a)(2)]*

The site is located 11 statute miles from Pensacola Pass, an area which is valuable in the maintenance of both adult and juvenile living resources. A large number of species are estuarine dependent during spawning and nursery cycles. Barrier island passes and vegetated shallow estuaries, such as Pensacola Bay, are important in the life cycle of these estuarine-dependent species for spawning, feeding, and migration. Since the site as 11 statute miles from Pensacola Pass, migratory passage through the pass will not be affected. The distance from important nursery and feeding areas is even greater since these areas are located within the estuary. In addition, the site is not located near any known major breeding or spawning areas.

*3. Location in Relation to Beaches and Other Amenity Areas [40 CFR 228.6(a)(3)]*

Pensacola area amenities will not be affected, based on the location of these amenities in relation to the disposal site and the dominant current patterns. Beach and shore-related amenities of Santa Rosa Island, Perdido Key, Gulf Islands National Seashore, Fort Pickens, and the Fort Pickens Aquatic Preserve are located approximately eight to 11 statute miles north of the site and perpendicular to the direction of net current transport.

The disposal site is approximately two miles west of the nearest known artificial reef (Escambia County #7) and three miles west of a permitted reef site. Two sites being considered for proposal as artficial reef sites are located within the ODMDS and two sites are located east and southeast of the eastern boundary of the site. Since the predominant currents are towards the west, the use of the ODMDS would not impact the known or permitted reef sites or those proposed for establishment that are outside the ODMDS. The proposed reef locations within the site would be impacted by designation and use of the ODMDS. This impact is not considered significant since these are only two of over twenty proposed reef locations in the vicinity of the ODMDS.

In addition, there are other areas within this general region which would be suitable for establishment of artificial reefs. In addition, proposed site management and monitoring plans have been developed to control impacts outside the boundaries of the site. The proposed site management and monitoring plans are presented in Appendices G and I of the FEIS, respectively. Site management is also discussed in Section G of this Proposed Rule.

*4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any [40 CFR 228.6(a)(4)]*

The initial 4.1 mcy of material that is to be disposed at the ODMDS will be the result of construction of the U.S. Navy's Pensacola Homeport Project at Pensacola. This dredged material will be predominantly fine-grained sand, silt, and clay material that is not suitable for beach nourishment or disposal at the existing Pensacola (nearshore) ODMDS. This material will be transported to the site and discharged by hopper dredge, hopper barge, or dump scow. In the future, additional fine-grained material may also be disposed at the ODMDS, but this is not known at this time. Both Federal and non-Federal applicants may use the site if relevant regulations are satisfied.

Materials may not be approved for ocean disposal unless the criteria in the Ocean Dumping Regulations, 40 CFR Part 227, have been met. Bioassays of the material to be initially disposed indicate no significant adverse effects to marine organisms. although slight heavy metal enrichment of chromium, mercury, and zinc exists, the levels are not high enough to initiate the capping of the disposed dredged material with clean sand or to prevent the proposed designation of this ODMDS.

*5. Feasibility of Surveillance and Monitoring [40 CFR 228.6(a)(5)]*

The location and water depth of the ODMDS will not pose any special problems for surveillance or monitoring. Surveillance of the site could be conducted by either aircraft or surface vessels. Periodic environmental monitoring will commence upon site designation and will continue as long as the site remains active. General monitoring objectives for the site include bathymetric measurements to identify shoaling or mounding areas, sediment mapping to determine distribution of disposal material at the ODMDS, water quality sampling and analysis, and bottom sampling and analysis to identify sediment and invertebrate characteristics. EPA is authorized to make appropriate steps to mitigate the impact or terminate disposal at the site, should significant adverse environment impacts be found during monitoring periods.

Site monitoring and management plans for the Pensacola (offshore) ODMDS are proposed in Appendices G and I, respectively, of the FEIS and in the "Site Management" section (G) of this Proposed rule. Some modifications of these proposed plans are possible based on site use and greater understanding of the site. Substantive modifications would be coordinated with appropriate Federal and State aencies. In general, the existence, magnitude, and implementation of management and monitoring plans for this site are dependent upon funding, monitoring data results, and coordination between EPA, the U.S. Navy, the COE, and the State of Florida.

*6. Dispersal, Horizontal Transportation and Vertical Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any [40 CFR 228.6(a)(6)]*

Current within the disposal site are longshore and wind driven with speeds of 30 centimeters per second (cm/sec) or less, 70% of the time (measued maximum of 62 cm/sec). It is unlikely that the suspended sediments will be transported onshore from these currents since the site is 11 statute miles offshore in the Gulf and the dominant net transport is to the west, parallel to the coast. These currents are basically wind and storm driven.

The material to be disposed on site will primarily be fine-grained material that will be more easily eroded and transported than the existing ambient sediments. Current velocities of 20 cm/sec will erode clay-sized particles and are expected 65% of the time over the disposal site. It is also expected that over time the clays and fine-grained sediments will become scattered by these currents and that the site will be fortified by sand and shell. Over time, the site should become consolidated and more difficult to erode. However, as indicated earlier, dredged material disposed at the ODMDS will be somewhat contained due to the proposed construction of a horseshoe-shaped berm at the site (see Appendix I of FEIS).

The disposal site is located approximately 11 statute miles offshore and covers an area of about six square miles. It is expected that disposal operations at this site will have a negligible impact on the circulation and mixing of the Shelf waters due to the relatively small area of coverage when compared to the Continental Shelf near Pensacola.

*7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) [40 CFR 228.6(a)(7)]*

Since the Pensacola (offshore) ODMDS is a new (as opposed to an interim) site, there have been no known previous discharges of dredged material at this site. The EPA-designated Pensacola (nearshore) disposal site is the closest ODMDS in the area. Disposal at the nearshore site is limited to sandy material containing less than ten percent silt-clays. No long term or irreversible effects of disposal at this site have been reported.

Effects of disposal operations include temporarily increased turbidity, localized mounding, possible release of trace metals and/or chemicals, and the smothering of some benthic organisms. These impacts are not considered significant.

*8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean [40 CFR 228.6(a)(8)]*

Commercial shipping, commercial and recreational fishing, recreational activities, and some scientific investigations occur throughout the nearshore region. Hopper dredges, tugs and scows must operate in shipping lanes when dredging and traveling to and from the disposal site; however, intermittent use of a site should not impede commerical shipping traffic within the shipping channels. Hazards to navigation are lessened by use of the U.S. Coast Guard's Area Vessel Traffic System, extra caution and awareness by the captains of hopper dredges, and the Corps of Engineers Navigation Bulletins to mariners with dredging schedules.

A section of the ODMDS overlaps a portion of a shipping safety fairway. Actual disposal at the ODMDS within the fairway is projected. However, by letter to EPA dated September 6, 1988, the Commander of the New Orleans District Coast Guard has stated that "I find no reason to object to the establishment of "Site C" and encroaching on the fairway as long as a minimum navigable water depth of 65 feet is maintained." (The proposed ODMDS is located within Site "C", the alternative area studied.) The safety fairway is located in the deepest (eastern) portion of the ODMDS, which ranges to a maximum depth of approximately 80 feet. A minimum water depth of 65 feet will be maintained.

Commercial and recreational fishing occurs, but it is not geographically limited to the vicinity of the proposed site. However, the disposal site represents only a small portion of the total fishing area available. Offshore Pensacola, commercial and sportfishing operations for finfish center primarily around hard bottom, artificial reef, and wreck areas. The proposed Pensacola (offshore) ODMDS has a sandy bottom; therefore, disposal activities should not interfere with these finfish fishing activities in the area. However, the predominantly sandy bottom area associated with the ODMDS do support shrimp. Local commercial fishing for shrimp is mainly targeted toward pink and rock shrimp. Little or no recreational fishing for these species exists in the area.

Other recreational activities in the nearshore region include boating and scuba diving. With the possible exception of wrecks inshore, the areas near the site do not have unique features that would attract visitors. Intermittent use of the site for disposal operations should not interfere with occasional recreational use of the areas.

Mineral resources would not be significantly affected since there are no active or inactive oil or gas leases within six miles of the ODMDS. Most oil and gas leasing has occurred in the Destin Dome area to the east of the ODMDS. Designation and use of an ODMDS and mineral exploration are considered compatible uses; therefore, potential future use of the ODMDS for these activities should not be in conflict. Although the EIS indicated that mineral extraction is also considered a compatible use, on-site extraction would realistically be difficult. Potential extraction in adjacent areas or even potential on-site extraction of oil and gas from adjacent areas (directional drilling) would be possible, however.

No mineral extraction, desalination projects, or fish and shellfish culture occur in the vicinity of the proposed site. Intermittent use of the site should not interfere with scientific investigations which may be conducted in the area, nor should dredged material disposal substantively interfere with any other legitimate uses of the ocean.

*9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys [40 CFR 228.6(a)(9)]*

The baseline surveys that were conducted during 1986–87 show that the water quality and environmental characteristics of the disposal site are typical of the northern Gulf of Mexico. Circulation and mixing of the water column within the disposal site directly affect water quality (e.g., dissolved nutrients, trace metals, dissolved oxygen, pH, and suspended sediments). These currents are wind and storm driven and run parallel to the coast.

More than 900 species of diatoms and 400 species of dinoflagellates are found in the Gulf of Mexico. Diatoms are the major component of phytoplankton except during periods of red tide or in silica-depleted waters when dinoflagellates become more abundant. In nearshore waters, copepods dominate the zooplankton populations. Typically, plankton populations are most abundant during spring and summer.

Fish, shrimp, and squid dominate the nekton community and are typical of the species found in the Gulf of Mexico. Several of the species reported are both recreationally and commercially important, although the dominant fish at the site, cusk eels, are not. The fish that are both recreationally and commercially important consist primarily of snapper, grouper, and amberjacks. These fish are mainly found in areas of hard bottom or artificial reefs, neither of which exist at the disposal site. Pink and rock shrimp are the most dominant crustaceans with pink shrimp increasing in abundance during the fall.

The benthic community of the proposed site is dominated by polychaetes, comprising over 50% of the individuals collected, and a few mollusks and arthropods. The organisms present are typical of sand or sand/shell hash bottoms. The abundance, diversity, and distribution of benthic organisms is directly related to the sediment texture.

Sediments were analyzed for heavy metals, PCBs, pesticides and nutrients, and were found to be either below minimum detection levels or in very low concentrations.

*10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site [40 CFR 228.6(a)(1)]*

It is expected that some change in the benthic species composition will occur due to the disposal of finer-grained dredged material at the site.

No evidence exists to suggest that the species occurring from recolonization would be considered nuisance species. Fecal coliform bacteria may be entrained in the dredged material but establishment of bacterial colonies is not expected due to ambient salinities at the site.

*11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance [40 CFR 228.6(a)(11)]*

No historically important cultural or natural features exist within the vicinity of the site.

**G. Site Management**

Site management of the Pensacola (offshore) ODMDS is the responsibility of EPA and the COE. The COE issues permits to all applicants for ocean disposal and undergoes a public review process for its own disposal actions; however, EPA assumes overall responsibility for site management.

Currently a Memorandum of Understanding (MOU) between the COE/South Atlantic Division and EPA/Region IV is being developed and is to establish a monitoring framework for ODMDSs in the Region IV area, which is to lead toward site-specific monitoring plans for individual ODMDSs. In the case of the Pensacola (offshore) ODMDS, a proposed site-specific monitoring plan and a proposed site management plan are already developed and presented in Appendices G and I, respectively, of the FEIS. Since specifics of these proposed plans are not presented herein, the FEIS should be consulted for such specifics. Plan concepts presented in the FEIS include an electronic verification system or visual surveillance that will report actual disposal information, sediment mapping to determine distribution of disposal material at the ODMDS, construction of a horseshoe-shaped berm within the ODMDS to help contain disposal material, bathymetric measurements to assess mounding of disposal material, water quality sampling and analysis of various parameters, and benthic sampling and analysis of sediments and benthos.

Some modifications of the proposed plans presented in the FEIS are possible as greater understanding of the site develops. Substantive modifications would be coordinated with appropriate Federal and State agencies. For example, revisions may be required based on monitoring data results and comparison of those data to the DIFID dispersion model. Techniques may also vary or be upgraded. These plans are furthermore dependent on funding, which is via an annual budget and is therefore undermined for each following year. In general, the existence, magnitude, and implementation of the management and monitoring plans for this site are dependent upon funding, monitoring data results, and coordination between EPA, the U.S. Navy, the COE, and the State of Florida. Nevertheless, EPA believes that site plans are needed and that the plans in the FEIS are reasonable proposals for the Pensacola (offshore) ODMDS.

If evidence of significant adverse environmental effects outside the Pensacola (offshore) ODMDS boundaries is discovered, EPA will take appropriate measures to mitigate the impact or terminate disposal at the site. Conversely, if monitoring results exhibit no significant impact outside the ODMDS boundaries, monitoring may be discontinued or less frequent.

Related to site monitoring, EPA plans to test for tributyltin (TBT) in sediment samples from dredged material from Pensacola Harbor that would be projected for disposal at the ODMDS.

**H. Proposed Action**

The designation of the proposed Pensacola (offshore) ODMDS as an EPA-approved disposal site for suitable dredged material is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV. The EIS provides information indicating that the proposed ODMDS may appropriately be designated for use. Interested persons may participate in this Proposed Rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

It should be emphasized that if an ocean disposal site is designated by EPA, such a site designation does not constitute EPA's approval of dredging projects or actual disposal of dredged material at the site. Before ocean disposal of dredged material at the site may commence, EPA and the COE must also evaluate the proposed dumping in accordance with the criteria in section 227 of the Ocean Dumping Regulations. In any case, EPA has the right to disapprove the actual disposal, if it determines that environmental concerns under the Act have not been met.

The Pensacola (offshore) ODMDS is not restricted to disposal use by Federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to disposal of predominantly fine-grained dredged material from the greater Pensacola, Florida area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size of >0.125 mm and a composition of <10% fines.

**I. Regulatory Assessments**

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed action will not resut in an annual effect on the economy of $100 million or more, or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Proposed Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 228**

Water pollution control.

Dated: December 9, 1988.

**Lee A. DeHihns III,**

*Acting Regional Administrator.*

In consideration of the foregoing, Part 228 of Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

## PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Part 228 is proposed to be amended by adding to § 228.12 paragraph (b)(72) a Ocean Dredged Material Disposal Site for Region IV as follows:

**§ 228.12 Delegation of management authority for interim ocean dumping sites.**

* * * * *

(b) * * *

(72) Pensacola, Florida: Ocean Dredged Material Disposal Site—Region IV.

*Location:*

| | |
|---|---|
| 30°08'50" N., | 87°19'30" W.; |
| 30°08'50" N., | 87°16'30" W.; |
| 30°07'05" N., | 87°16'30" W.; |
| 30°07'05" N., | 87°19'30" W. |

*Size:* Approximately 6 square statute miles.

*Depth:* Ranges from approximately 65 to 80 feet.

*Primary Use:* Dredged Material.

*Period of Use:* Continuing Use.

*Restriction:* Disposal is restricted to predominantly fine-grained dredged material from the greater Pensacola, Florida area that meets the Ocean Dumping Criteria, but is not suitable for beach nourishment or disposal in the existing, EPA-designated Pensacola (nearshore) ODMDS. The Pensacola (nearshore) ODMDS is restricted to suitable dredged material with a median grain size >0.125 mm and a composition of <10% fines.

[FR Doc. 88-28956 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

## LEGAL SERVICES CORPORATION

## 45 CFR Part 1609

## Fee-Generating Cases

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed regulation would amend Part 1609 of the Legal Services Corporation's ("Corporation" or "LSC") regulations, 45 CFR Part 1609, governing fee-generating cases to require that the sum of all attorneys' fees received by a recipient be credited towards the recipient's LSC annual grant. Also, the requirements for a recipient to find that other adequate representation is not available in a fee-generating case would be amended to require use of local bar referral services whenever available.

Section 1007(b)(1) of the Legal Services Corporation Act of 1974, as amended, 42 U.S.C. 2996(f)(b)(1) provides that no funds made available by the Corporation may be used with respect to any fee-generating case except in accordance with guidelines promulgated by the Corporation. The provision contemplates that recipients would concentrate their resources on matters where representation of an eligible client is not otherwise available from the private bar. Contingent fee cases and cases in which a fee shifting provision is available are often attractice to private bar members. The proposed changes are intended to reinforce LSC's objective that such cases should be proffered to the private bar first.

Moreover, because any fees obtained constitute incidental benefits of the litigation, by definition, the proposed rule would treat such receipts as a windfall which would be credited towards the grant funds to be paid to the grantee during the following quarter.

**DATE:** Comments may be submitted on or before January 18, 1989.

**ADDRESS:** Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy B. Shea, General Counsel, Office of the General Counsel, (202) 863–1823.

**SUPPLEMENTARY INFORMATION:**

### Section 1609.1

Section 1609.1 is proposed to be amended in order to make clear that the restrictions apply to subrecipients as well as to recipients.

### Section 1609.2

Section 1609.2 is proposed to be amended to state specifically that actions brought under a contract or a statute providing for the shifting of fees are considered fee-generating cases. Referring such cases to the local referral service will give private attorneys the opportunity to undertake representation in the matters.

### Section 1609.3

Section 1609.3 is proposed to be amended by adding "or any non-public funds" to the existing provision that a recipient shall not use "funds received from the Corporation" for fee-generating cases. This revision would make clear that prohibitions of this regulation on the acceptance of fee-generating cases apply to private non-LSC funds as well as Corporation funds. Because representation in fee-generating cases is prohibited by both section 1007(b)(1) of the Act and 45 CFR Part 1610, the change would render LSC regulations consistent.

The section is also proposed to be amended to include a presumption that all attorneys' fees are for representation in cases undertaken using LSC funds or non-public funds, unless proven otherwise. This presumption is reasonable because the recipients are in a better position than the Corporation to establish and maintain the requisite recordkeeping, and also because the vast majority of recipients receive most of their funding from the Corporation and private sources. In addition, this presumption would relieve recipients of having to maintain documentation of cost allocation for each case and would also result in administrative convenience for recipients and the Corporation.

### Section 1609.4

Section 1609.4 is proposed to be amended in order to state that a recipient may not undertake representation in a fee-generating case unless other adequate representation is unavailable and the recipient's executive director, pursuant to policies adopted by the recipient's governing body, has approved the undertaking.

Currently, § 1609.4(a)(1) deems other adequate representation to be unavailable when a case has been rejected by the local lawyer referral service *or* by two private attorneys. This amendment would eliminate the either/or proposition by requiring that recipients first attempt to refer fee-generating cases to a local lawyer referral service. Only in the event that a local lawyer referral service does not exist in the recipient's service area should referral be made to at least two private attorneys who have experience relevant to the case. The Corporation believes that recipients should first use a lawyer referral service, if one exists, in order the reinforce impartiality in the referral of potential fee-generating cases to private attorneys. Referral services, which are operated by local bars in nearly every jurisdiction, normally keep up-to-date lists of attorneys and their specialties and are likely to be successful in matching eligible clients in fee-generating cases with attorneys willing to represent them. These changes would reinforce the policy that recipients devote their resources to matters in which representation is not available by the private bar.

Further, recipients would be required to maintain documentation of the attempted referrals in the case file. Maintaining documentation of attempted referrals is not expected to be a burden.

Section 1609.4(b) is proposed to be amended in order to delete the exemption from referral for cases in which recovery of damages may be ancillary and not the principal object of an action for equitable or other non-pecuniary relief. Because numerous statutes permit payment of attorney's fees for prevailing parties in suits for equitable or non-pecuniary relief, see, for example, 28 U.S.C. 2412 (Equal Access to Justice); 5 U.S.C. 552 (Freedom of Information Act); 42 U.S.C. 1988 (Civil Rights); 29 U.S.C. 216 (Fair Labor Standards Act); and 15 U.S.C. 2073 (Consumer Product Safety Act), private attorneys are often willing to represent clients in such matters with the expectation of being awarded fees after prevailing in the case. The change would merely require that such cases first be proffered to the private bar through a referral service. This change would not place any disproportionate burden on recipients, as referrals to a lawyer referral service or to two private attorneys are simply accomplished.

Section 1609.4 is also proposed for revision to require a recipient's director to give prior written approval pursuant to the policies adopted by the recipient's governing body before a fee-generating case could be undertaken even after the requisite rejection by the referral service or private attorneys.

Because recipients generally should not be representing clients in fee-generating cases, any exceptions to this rule should be undertaken only after review and specific approval by the director in accordance with policies adopted by the recipient's governing body. The proposed revision sets forth criteria a governing body should establish for deciding whether or not representation in a fee-generating case should be undertaken. As with any decision on case acceptance, a recipient must consider each case to determine if it falls within the recipient's priorities and allocation of resources.

### Section 1609.5

A new § 1609.5(c) is proposed in order to confirm the Corporation's position on the acceptance of attorney's fees in cases seeking retroactive benefits under Titles II and XVI of the Social Security Act. Although recipients may under section 1609.4 accept these cases without first attempting a referral to a private attorney, a recipient may not accept a fee for such representation when the fee is deducted from an award of subsistence benefits. This has been the Corporation's longstanding position, based on the 1977 amendments to the LSC Act, wherein representation in benefit cases by recipients without prior attempted referral was specifically approved. P.L. 95–222; 42 U.S.C. 2996f(b). However, Congress clearly intended that recipients not deduct attorneys' fees from the client's retroactive benefit award. S. Rep. 95–172, 95th Cong., 1st Sess., 15–16; *reprinted in* 123 CONG. REC. 33027 (daily ed. October 10, 1977) (Statement of Sen. Nelson).

### Section 1609.6

The proposed changes to § 1609.6 would require each recipient to file a quarterly report as to the amount of attorneys' fees received by the recipient. The recipient would also show on the report any attorneys' fees received by a subrecipient in cases funded by the recipient as well as fees for co-counseling. This amount would then be credited towards the recipient's LSC funding for the next quarter and would be deducted by the Corporation from the recipient's subsequent monthly funding checks. The Corporation has ample authority in making decisons concerning the funding of recipients to consider the availability of other resources. *See e.g., National Clearinghouse v. Legal Services Corp.*, 674 F. Supp. 37 (D.D.C. 1987), *aff'd* C.A. 88-7027 (D.C. Cir. filed Oct. 21, 1988) (*per curiam*).

The Corporation wishes to maintain its established policy of encouraging recipients to seek attorneys' fees in appropriate cases. The policy is based, in part, on congressional recognition that attorneys' fees awards further the purpose of encouraging private enforcement of important public policies by enabling injured parties to obtain counsel. Under the proposed change, programs arguably may have less incentive to pursue cases that may result in an attorneys' fees award; however, program priorities and case acceptance practices should be based foremost on individual client needs rather than on the potential benefit to the program in the form of attorneys' fees. Recipients should not use the likelihood or probability of a fee award as a consideration in their selection of cases.

The Corporation also believes that this change in policy would not discourage recipients from filing actions under statutes providing attorneys' fees to prevailing parties. Recipients, of course, would continue to receive support from the Corporation, regardless of any potential fee award under these statutes.

Sums credited to recipients would free up funds previously appropriated for basic field grants. Given a line item funding formula such as provided in section 605 of Public Law 100-459, 102 Stat. 2223, such sums would be allocated to field programs as supplemental grants for that year, granting the largest share of funds to programs with the lowest funding per person. Thus, this change would promote general equalization of funding. If recipients continue to receive attorneys' fees as they have in the past, the Corporation should be able to supplement the grants of the lower per capita funded programs by a total of approximately $6 million a year, which represents two percent of the total amount granted by the Corporation to basic field programs.

**List of Subjects in 45 CFR 1609**

Legal services.

For reasons set out above, 45 CFR 1609 is proposed to be amended as follows:

## PART 1609—FEE GENERATING CASES

1. The authority citration for Part 1609 continues to read as follows:

**Authority:** Sec. 1007(b)(1) Legal Services Act of 1974, as amended (42 U.S.C. 2996f(b)(1)).

2. Section 1609.1 is revised to read as follows:

### § 1609.1 Purpose.

This part is designed to insure that recipients and subrecipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

3. Section 1609.2 is revised to read as follows:

### § 1609.2 Definition.

"Fee-generating case" means any case or matter which, if undertaken on behalf of an eligibile client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party. Any action brought on behalf of a client under a contract or statute with a fee-shifting provision is considered a fee-generating case.

4. Section 1609.3 is revised to read as follows:

### § 1609.3 Prohibition.

No recipient shall use funds received from the Corporation or any non-public funds to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. It shall be presumed that all cases undertaken by a recipient are undertaken using LSC or non-public funds. A recipient may rebut this presumption with contemporaneous documentation showing that a case was otherwise funded. All recipients shall establish procedures for the referral of fee-generating cases.

5. Section 1609.4 is revised to read as follows:

### § 1609.4 Authorized representation in a fee-generating case.

(a) Recipients are authorized to provide representation in fee-generating cases if other adequate representation is determined to be unavailable and the executive director has approved the undertaking of the case in writing pursuant to written policies adopted by the recipient's governing body.

(b) Other adequate representation is deemed to be unavailable when:

(1) The recipient has determined that free referral is not possible because:

(i) The case has been rejected by the local lawyer referral service or, if there is no lawyer referral service operating in the recipient's service area, by two attorneys in private practice who have experience in the subject matter of the case. The recipient shall maintain contemporaneous documentation of the requisite rejections in the case file;

(ii) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee. The recipient shall maintain contemporaneous documentation of such refusal in the case file; or

(iii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(2) Inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(3) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(4) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401, et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381, et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled.

(c) The governing body of a recipient shall adopt written policies to guide the director of the recipient in determining whether to approve action in such cases which will require the director to:

(1) Verify that other adequate representation is unavailable as required by § 1609.4;

(2) Determine how the case conforms with the recipient's priorities in resource allocation; and

(3) Document the executive director's consideration of the above listed factors and maintain such documentation and written approval in the case file.

6. Section 1609.5 is amended by adding paragraph (c) and the introductory text is republished to read as follows:

**§ 1609.5 Acceptance of fees.**

A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if:

* * * * *

(c) The fee is not deducted from the award to the client in connection with any claim for statutory benefits permitted by Section 1007(b)(1) of the Act and § 1609.4(d) of these regulations.

7. Section 1609.6 is revised to read as follows:

**§ 1609.6 Accounting for attorneys' fees.**

Any recipient who has been awarded fees shall submit a quarterly report due April 15, July 15, October 15, and January 31 of each year on a form approved by the Corporation, which shall state all attorneys' fees received by the recipient during the previous quarter. The quarterly report shall also include all attorneys' fees received by a subrecipient in all cases funded by the recipient. All such sums received by a recipient after the effective date of this rule shall be credited towards the recipient's LSC grant for the succeeding quarter and the sums shall be deducted from the recipient's monthly funding checks.

8. Section 1609.8 paragraph (c) is revised and the intodoctory text is republished to read as follows:

**§ 1609.8 Applicability.**

Nothing in this part shall prevent a recipient from:

* * * * *

(c) Acting as co-counsel with a private attorney when the case meets standards set forth in § 1609.4, and accepting part of any fees that may result from a shared case when the requirements of §§ 1609.5 and 1609.6 are met.

**Timothy B. Shea,**

*General Counsel.*

[FR Doc. 88-29142 Filed 12-16-88; 8:45 am]

BILLING CODE 7050-01-M

# Notices

Federal Register
Vol. 53, No. 243
Monday, December 19, 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 COMMERCE

### Foreign-Trade Zones Board

**[Order No. 400]**

### Resolution and Order Approving the Application of the Puget Sound Foreign-Trade Zone Association for a Special-Purpose Subzone for Tacoma Boatbuilding Co. in Tacoma, WA

Proceedings of the Foreign-Trade Zones Board, Washington, DC

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Puget Sound Foreign-Trade Zone Association, grantee of Foreign-Trade Zone 86, filed with the Foreign-Trade Zones Board (the Board) on January 27, 1988, requesting special-purpose subzone status for the shipyard of Tacoma Boatbuilding Company in Tacoma, Washington, within the Tacoma Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) any steel mill products including steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated under merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Tacoma Boatbuilding Company shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

*Grant of Authority to Establish a Foreign-Trade Subzone for the Tacoma Boatbuilding Company Shipyard in Tacoma, Washington*

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Puget Sound Foreign-Trade Zone Association, grantee of Foreign-Trade Zone No. 86, has made application (filed January 27, 1988, FTZ Docket 7–88, 53 FR 3907) in due and proper form to the Board for authority to establish a special-purpose subzone at the shipyard of Tacoma Boatbuilding Company in Tacoma, Washington;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is subject to the conditions stated in the resolution accompanying this action;

Now, Therefore, in accordance with application filed January 27, 1988, the Board hereby authorizes the establishment of a subzone at the shipyard of Tacoma Boatbuilding Company, designated on the records of the Board as Foreign-Trade Subzone No. 86A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, including the requirement that foreign basic steel mill products shall be subject to Customs duties prior to admission into the subzone if the same item is then being produced by a domestic mill, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zone Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 6th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Jan W. Mares,**

*Assistant Secretary of Commerce For Import Administration, Chairman, Committee of Alternates.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 88–29114 Filed 12–16–88; 8:45 am]

**BILLING CODE 3510-DS-M**

## International Trade Administration

### NASA et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 88-200. *Applicant:* NASA, Lyndon B. Johnson Space Center, Houston, TX 77058. *Instrument:* Electron Microscope, Model JEM-2000 EX/DP/DP. *Manufacturer:* JEOL Ltd., Japan *Intended use:* See notice at 53 FR 22684, June 17, 1988. *Instrument ordered:* September 16, 1987.

*Docket Number:* 88-202. *Applicant:* University of Kentucky, Lexington, KY 40506-0091. *Instrument:* Electron Microscope, Model H-600-3. *Manufacturer:* Hitachi Scientific, Japan. *Intended use:* See notice at 53 FR 22684, June 17, 1988. *Instrument ordered:* December 23, 1987.

*Docket Number:* 88-204. *Applicant:* University of Kentucky, Lexington, KY 40506-0099. *Instrument:* Electron Microscope, Model H-7000-2T. *Manufacturer:* Hitachi Scientific, Japan. *Intended use:* See notice at 53 FR 22684, June 17, 1988. *Instrument ordered:* December 23, 1987.

*Docket Number:* 88-210. *Applicant:* McCrone Research Institute, Chicago, IL 60616. *Instrument:* Electron Microscope, Model JEM-1200 EX/SEG/DP/DP. *Manufacturer:* JOEL, Ltd., Japan. *Intended use:* See notice at 53 FR 22685, June 17, 1988. *Instrument ordered:* March 31, 1988.

*Docket Number:* 88-214. *Applicant:* University of Virginia, Charlottesville, VA 22901. *Instrument:* Electron Microscope, Model JEM-4000EX/THGZ with accessories. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* See notice at 53 FR 22685, June 17, 1988. *Instrument ordered:* March 1, 1988.

*Docket Number:* 88-219. *Applicant:* Children's Hospital of Los Angeles, Los Angeles, CA 90027. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended use:* See notice at 53 FR 23780, June 24, 1988. *Instrument ordered:* April 7, 1988.

*Docket Number:* 88-221. *Applicant:* St. Christopher's Hospital for Children, Philadelphia, PA 19133. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* See notice at 53 FR 23781, June 24, 1988. *Application received by Commissioner of Customs:* May 24, 1988.

*Docket Number:* 88-223. *Applicant:* University of Delaware, Newark, DE 19716. *Instrument:* Electron Microscope, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* See notice at 53 FR 30083, August 10, 1988. *Instrument ordered:* April 5, 1988.

*Docket Number:* 88-224. *Applicant:* Beth Israel Hospital, Boston, MA 02215. *Instrument:* Electron Microscope. Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended use:* See notice at 53 FR 30084, August 10, 1988. *Instrument ordered:* March 16, 1988.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-29115 Filed 12-16-88; 8:45 am]

BILLING CODE 3510-DS-M

## National Institute of Standards and Technology

### Workshop on Implementation of Markings for Toy, Look-Alike and Imitation Firearms; Public Meeting

**AGENY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announced a workshop to discuss implementation issues related to a new law concerning the marking of toy, look-alike, and imitation firearms. The new law, section 4 of the Federal Energy Management Improvement Act, (Pub. L. 100-615), provides that "it shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce".

**DATE AND TIME:** The workshop will be held on February 9, 1989, starting at 10:00 a.m.

**ADDRESS:** The workshop will be held in the Green Auditorium, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Stanley Warshaw, Associate Director, Industry and Standards, Room A600, Administration Building, Gaithersburg, Maryland 20899, telephone number (301) 975-4000.

**SUPPLEMENTARY INFORMATION:** Section 4 of the Federal Energy Management Improvement Act, (Pub. L. 100-615), provides that "it shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it", a "blaze orange plug inserted in the barrel" or such other marking as may be approved by the Secretary of Commerce. Section 4 also permits the Secretary of Commerce to waive this requirement for any imitation firearm that will be used only in the theatrical, movie or television industry.

The workshop will be utilized to develop the specifics of the marking and the exceptions or alternative requirements, if any, that might need to be prescribed for such toy, look-alike, or firearms as water pistols, air soft guns firing nonmetallic projectiles, and so on. The use of existing voluntary standards such as ANSI Z53.1, entitled *Safety Color Code for Marking Physical Hazards*, will also be considered.

Date: December 13, 1988.

**Raymond G. Kammer,**

*Acting Director.*

[FR Doc. 88-29089 Filed 12-16-88; 8:45 am]

BILLING CODE 3510-13-M

### National Conference on Weights and Measures; Meeting

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that the Interim Meetings of the National Conference on Weights and Measures will be held January 9 through January 13, 1989, at the National Institute of Standards and Technology, Gaithersburg, Maryland. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meetings of the conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subject that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

**DATE:** The meeting will be held January 9–13, 1989.

*Location of Meeting:* The National Institute of Standards and Technology, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Albert D. Tholen, Executive Secretary, National Conference on Weights and Measures, P.O. Box 3137, Gaithersburg, Maryland 20878. Telephone: (301) 975–4009.

Date: December 14, 1988.

**Raymond G. Kammer,**

*Acting Director.*

[FR Doc. 88–29090 Filed 12–16–88; 8:45 am]

BILLING CODE 3510-13-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

December 13, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**FOR FURTHER INFORMATION CONTACT:** Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** A copy of the current bilateral textile agreement between the Governments of the United States and the Republic of Korea is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 13, 1988.

Commissioner of Customs,

*Department of the Treasury, Washington, D.C. 20229*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period which begins on January 1, 1989 and extends through December 31, 1989, in excess of the following restraint limits:

| | 12-mo restraint limit |
|---|---|
| Category Group I: | |
| 200, 201, 218–220, 222–229, 300–326, 360–363, 369–0,[1] 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669 and 670–0,[2] as a group. | 383,750,352 square meters equivalent. |
| Sublevels within Group I: | |
| 200 | 350,653 kilograms. |
| 201 | 1,364,071 kilograms. |
| 218 | 10,670,739 square meters. |
| 219 | 7,304,194 square meters. |
| 220 | 3,897,066 square meters. |
| 229–F [3] | 332,447 kilograms. |
| 300/301 | 2,513,347 kilograms. |
| 313 | 44,495,314 square meters. |
| 314 | 22,302,246 square meters. |
| 315 | 20,281,657 square meters. |
| 317/326 | 14,865,039 square meters. |
| 363 | 1,785,791 numbers. |
| 410 | 3,934,756 square meters. |
| 604 | 290,019 kilograms. |
| 611 | 2,084,302 square meters. |
| 613/614 | 6,605,678 square meters. |
| 617 | 4,883,835 square meters. |
| 619/620 | 85,414,409 square meters. |
| 624 | 8,094,904 square meters. |
| 625–629 | 10,879,016 square meters. |
| 669–C [4] | 1,023,053 kilograms. |
| 669–P [5] | 1,841,099 kilograms. |
| 669–T [6] | 3,633,552 kilograms. |
| Group II: | |
| 237, 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group. | 572,138,329 square meters equivalent. |
| Sublevels within Group II: | |
| 237 | 69,998 dozen. |
| 331 | 528,738 dozen pairs. |
| 333/334 | 100,000 dozen. |
| 335 | 105,000 dozen. |
| 336 | 46,389 dozen. |
| 338/339 | 803,661 dozen. |
| 340 | 450,000 dozen of which not more than 150,000 dozen shall be in Category 340–Y.[7] |
| 341 | 190,592 dozen. |
| 342 | 78,371 dozen. |
| 345 | 94,779 dozen. |
| 347/348 | 352,661 dozen. |
| 350 | 13,492 dozen. |
| 351 | 118,611 dozen. |
| 352 | 144,234 dozen. |
| 353/354/653/654. | 233,081 dozen. |
| 359–H [8] | 2,077,827 kilograms. |
| 433/434 | 17,370 dozen of which not more than 13,262 dozen shall be in Category 433 and not more than 6,802 dozen shall be in Category 434. |
| 435 | 31,917 dozen. |
| 436 | 13,511 dozen. |
| 438 | 64,071 dozen. |
| 440 | 214,447 dozen. |
| 442 | 45,660 dozen. |
| 443 | 322,056 numbers. |
| 444 | 49,753 numbers. |
| 445/446 | 52,465 dozen. |

| | 12-mo restraint limit |
|---|---|
| 447 | 84,880 dozen. |
| 448 | 32,122 dozen. |
| 459-W [9] | 86,892 kilograms. |
| 631 | 243,536 dozen pairs. |
| 632 | 1,848,887 dozen pairs. |
| 633/634/635 | 1,314,880 dozen of which not more than 150,000 dozen shall be in Category 633, not more than 803,000 dozen shall be in Category 634 and not more than 559,000 dozen shall be in Category 635. |
| 636 | 231,938 dozen. |
| 638/639 | 5,645,601 dozen. |
| 640-D [10] | 3,445,125 dozen of which not more than 1,313,033 dozen shall be in Category 640-DY.[11] |
| 640-O [12] | 2,524,524 dozen of which not more than 2,171,554 dozen shall be in Category 640-OY.[13] |
| 641 | 992,898 dozen of which not more than 37,730 dozen shall be in Category 641-Y.[14] |
| 642 | 84,342 dozen. |
| 643 | 741,486 numbers. |
| 644 | 1,113,298 numbers. |
| 645/646 | 3,419,369 dozen. |
| 647/648 | 1,203,135 dozen. |
| 649 | 539,254 dozen. |
| 650 | 19,742 dozen. |
| 659-C [15] | 213,947 kilograms. |
| 659-H [16] | 1,156,353 kilograms. |
| 659-S [17] | 145,197 kilograms. |
| Group III: | |
| 831-844 and 847-859, as a group. | 18,048,753 square meters equivalent. |
| Sublevels within Group III: | |
| 835 | 27,407 dozen. |
| 836 | 76,242 dozen. |
| 840 | 116,734 dozen. |
| Group IV: | |
| 845 | 2,315,056 dozen. |
| 846 | 810,701 dozen. |
| Group VI: | |
| 369-L [18] and 670-L/870, [19] as a group. | 57,943,626 square meters equivalent. |
| Sublevels within Group VI: | |
| 369-L | 244,235 kilograms. |
| 670-L/870 | 16,106,039 kilograms of which not more than 13,449,014 kilograms shall be in Category 670-L. |

[1] In Category 369-0, all tariff numbers except 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00.

[2] In Category 670-0, all tariff numbers except 4202.12.80.30, 4202.12.80.70, 4202.92.30.20, 4202.92.30.30 and 4202.92.90.20.

[3] In Category 229-F, only tariff numbers 5608.11.00.00, 5608.19.10.10 and 5608.19.10.20.

[4] In Category 669-C, only tariff numbers 5607.49.30.00 and 5607.50.40.00.

[5] In Category 669-P, only tariff numbers 6305.31.00.10, 6305.31.00.20 and 6305.39.00.00.

[6] In Category 669-T, only tariff numbers 6306.12.00.00, 6306.19.00.10 and 6306.22.90.00.

[7] In Category 340-Y, only tariff numbers 6205.20.20.15, 6205.20.20.20, 6205.20.20.46, 6205.20.20.50 and 6205.20.20.60.

[8] In Category 359-H, only tariff numbers 6505.90.15.30 and 6505.90.20.60.

[9] In Category 459-W, only tariff number 6505.90.40.60.

[10] In Category 640-D, only tariff numbers 6205.30.20.10, 6205.30.20.20, 6205.30.20.30, 6205.30 20.40, 6205.90.20.30 and 6205.90.40.30.

[11] In Category 640-DY, only tariff numbers 6205.30.20.10 and 6205.30.20.20.

[12] In Category 640-0, only tariff numbers 6203.23.00.80, 6203.29.20.50, 6205.30.10.00, 6205.30.20.50, 6205.30.20.60, 6205.30.20.70, 6205.30.20.80 and 6211.33.00.40.

[13] In Category 640-OY, only tariff numbers 6205.30.20.50 and 6205.30.20.60.

[14] In Category 641-Y, only tariff numbers 6204.23.00.50, 6204.29.20.30, 6206.40.30.10 and 6206.40.30.25.

[15] In Category 659-C, only tariff numbers 6103.23.00.55, 6103.43.20.20, 6103.49.20.00, 6103.49.30.38, 6104.63.10.20, 6104.69.10.00, 6104.69.30.14, 6114.30.30.40, 6114.30.30.50, 6203.43.20.10, 6203.49.10.10, 6204.63.15.10, 6204.69.10.10, 6211.33.00.10 and 6211.43.00.10.

[16] In Category 659-H, only tariff numbers 6502.00.90.30, 6504.00.90.15, 6504.00.90.60, 6505.90.50.60, 6505.90.60.60, 6505.90.70.60 and 6505.90.80.75.

[17] In Category 659-S, only tariff numbers 6112.31.00.10, 6112.31.00.20, 6112.41.00.10, 6112.41.00.20, 6112.41.00.30, 6112.41.00.40, 6211.11.10.10, 6211.11.10.20, 6211.12.10.10 and 6211.12.10.20.

[18] In Category 369-L, only tariff numbers 4202.12.40.00, 4202.12.80.20, 4202.12.80.60, 4202.92.15.00 and 4202.92.60.00.

[19] In Category 670-L, only tariff numbers 4202.12.80.30, 4202.12.80.70, 4202.92.30.20, 4202.92.30.30 and 4202.92.90.20.

Imports charged to these cateogory limits, except Categories 439 and 839, for the period January 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1988 levels are subject to adjustment according to the provisions of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

The conversion factors are listed below:

| Category | Conversion factor |
|---|---|
| 333/334 | 33.0 |
| 433/434 | 35.2 |
| 633/634/635 | 34.1 |
| 638/639 | 12.96 |

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88-29088 Filed 12-16-88; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.031A, CFDA No. 84.031G]**

## Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1989 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

*Purpose:* Institutions of higher education must meet specific statutory and regulatory requirements to be designated as eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

*Deadline for Transmittal of Applications:* January 27, 1989.

*Applications available:* December 27, 1988.

*Eligibility information:* Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent undergraduate student (FTE) in comparison with the average E&G expenditure per FTE student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Institutions Program regulations.

*Enrollment of Needy Students:* Under 34 CFR 607.3, an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; *or* (2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To quality under this criterion, an applicant's Pell grant percentage must be *more than* the threshold for its category provided on the table in this notice.

E&G Expenditures Per FTE Student: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for 1986-87 is *less than* the threshold for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expanded by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE for the 1986-87 base year.

| | Median Pell Grant percentage | 1986-87 average E&G per FTE student |
|---|---|---|
| 2-year public institutions | 20.38 | $4,443 |
| 2-year non-profit private institutions | 26.21 | 5,069 |
| 4-year public institutions | 21.04 | 8,376 |
| 4-year non-profit private institutions | 21.73 | 9,905 |

*Waiver Information:* Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waivers of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4(c) and (d) respectively.

For the purpose of § 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1986-87 were students from low-income families, "low-income" is defined as an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sized families.

For the purposes of this waiver provision, low-income families are identified according to the following:

| Size of family [1] | Gross annual family income must be less than [2] |
|---|---|
| 1 | $8,040 |
| 2 | 10,860 |
| 3 | 13,680 |
| 4 | 16,500 |
| 5 | 19,320 |
| 6 | 22,140 |
| 7 | 24,960 |
| 8 | 27,780 |

[1] For all families with more than 8 members, add $2,820 for each additional member.

[2] Add 15 percent for Hawaii and 25 percent for Alaska to the figures in Family Income Column.

Source: U.S. Department of Health and Human Services as published in the **Federal Register** of February 11, 1986, 51, No. 28, pages 5105-5106.

In reference to the waiver option specified in section 607.3 (b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by contacting: National Technical Information Services, Document Sales, 5505 Port Royal Road, Springfield, Virginia 22161, or call (703) 487-4650. Title: METROPOLITAN STATISTICAL AREAS, 1986 #PR86-199742.

*Applicable Regulations:* Regulations applicable to the eligibility process include: (a) the Strengthening Institutions Program, 34 CFR Part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR Part 628; and (c) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78.

*For Applications or Information Contact:* Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB#3, Washington, DC 20202-5335, Telephone: (202) 732-3314.

*Program Authority:* 20 U.S.C. 1057 and 1065a.

Dated: December 14, 1988.

**Kenneth D. Whitehead,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 88-29119 Filed 12-16-88; 8:45 am]

BILLING CODE 4000-01-M

---

## Meeting; National Assessment Governing Board

**AGENCY:** National Assessment Governing Board.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of a subgroup of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATE:** January 5, 1989.

**ADDRESS:** The Westin Hotel-O'Hare, 6100 River Road, Rosemont, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Eunice E. Henderson, Designated Federal Official, Office of the Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Room 602C, Washington, DC 20208, Telephone: (202) 357-6050.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); 20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting for each age and grade tested, and establishing standards and procedures for interstate and national comparison.

A subgroup of the National Assessment Governing Board will meet in Rosemont, Illinois on January 5, 1989 from 9 a.m. to 5 p.m. The proposed agenda includes the identification of National Assessment of Educational Progress (NAEP) policy issues that the full Board must consider and on which the Board's advice or decisions are needed in early 1989. The meeting of the subgroup will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-163; 5 U.S.C. Appendix 2). A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Until a permanent office site for the Board has been established, this summary is available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 55 New Jersey Avenue NW., Room 600, Washington, DC from 8:30 a.m. to 5 p.m.

Dated: December 14, 1988.

**Patricia Hines,**

*Acting Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 88-29066; Filed 12-16-88; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER88-578-000, et al.]

### Pacific Gas & Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Pacific Gas & Electric Company**

[Docket No. ER88-578-000]

December 9, 1988.

Take notice that on October 24, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing in this docket as a supplement to its earlier filing in this docket a Letter Agreement between PG&E and the City of Santa Clara clarifying the FERC filing rights and obligations of both parties.

*Comment date:* December 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

**2. South Carolina Electric & Gas Company**

[Docket No. ES89-10-000]

December 12, 1988.

Take notice that on December 2, 1988, South Carolina Electric and Gas Company filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $160,000,000 of short-term unsecured promissory notes in the form of bank loans and commercial paper, on or before December 31, 1990, with a final maturity date no later than December 31, 1991.

*Comment date:* December 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

**3. Central Power & Light Company et al.**

[Docket No. ER89-102-000]

December 12, 1988.

Take notice that on December 2, 1988, Central Power and Light Company and West Texas Utilities Company submitted for filing a revised ERCOT Interpool Transmission Service Tariff, and Public Service Company of Oklahoma and Southwestern Electric Power Company submitted for filing a revised SPP Interpool Transmission Service Tariff. The filing companies states that the purpose of the filing is to delete provisions from the currently effective Interpool Transmission Service Tariffs which require the reservation of 15% of the initial nominal capacity of the North Tie ("Reserve Capacity") and the solicitation from "Qualified Utilities" of reservations of the use of this North Tie Reserve Capacity. The filing companies request an effective date of January 31, 1989.

The filing companies state that copies of the filing have been served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and all parties to Docket No. EL79-8-002. Copies of the filing are also available for inspection in the general offices of each of the filing companies.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**4. Washington Water Power Company**

[Docket No. ER89-100-000]

December 12, 1988.

Take notice that on December 1, 1988, Washington Water Power Company tendered for filing a Transmission Wheeling Tariff, Schedule 62. The filing company states that the tariff is related to transmission wheeling service for borderline customer loads provided only to the Bonneville Power Administration under a currently existing General Transfer Agreement and that the tariff reflects changes in the company's cost to provide this service.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**5. Northern States Power Company**

[Docket No. ER88-75-002]

December 12, 1988.

Take notice that on December 1, 1988, Northern States Power Company submitted for filing its refund report in compliance with the Commission's order of November 4, 1988 in this docket.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**6. Central Vermont Public Service Corporation**

[Docket No. ER89-98-000]

December 12, 1988.

Take notice that on November 30, 1988, Central Vermont Public Service Corporation (Central Vermont) tendered for filing as an initial rate schedule a Purchase Agreement between the New England Power Company and Central Vermont for the sale of a portion of the Central Vermont entitlement in the capacity and net electrical output of the Vermont Yankee Nuclear Power to New England Power Company.

According to Central Vermont, copies of the filing were served upon the respective jurisdictional state regulatory agencies of the parties to the agreement. Central Vermont further states that the filing is in accordance with section 35 of the Commission's Regulations.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**7. Louisville Gas & Electric Company**

[Docket No. ER89-104-000]

December 12, 1988.

Take notice that on December 2, 1988, Louisville Gas & Electric Company ("Louisville") tendered for filing an amendment to the interconnection agreement between itself and Wabash Valley Power Association, Inc.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**8. Duke Power Company**

[Docket No. ER89-106-000]

December 12, 1988.

Take notice that on December 5, 1988, Duke Power Company ("Duke") tendered for filing with the Commission a new Service Schedule J-1987 to the Interchange Agreement between Duke and Carolina Power & Light Company ("CP&L") dated June 1, 1961, as amended ("Interchange Agreement"). Duke states that the Interchange Agreement is on file with the Commission and has been designated Duke Rate Schedule FERC No. 10.

Duke states further that under the terms of Service Schedule J, CP&L will buy 400 MW of capacity on a firm basis for the period from January 1, 1992 to December 31, 1997. The proposed agreement provides for a monthly capacity rate equal to $7.00 per kilowatt per month which will be escalated from 1986 to 1992 dollars prior to the commencement of service in 1992. CP&L has the right to purchase energy from 0 MWh to 400 MWh on any hour. The rate generally applicable to the supply of energy under Service Schedule J will equal Duke's out-of-pocket cost of supplying such energy. Duke further states that copies of the filing were mailed to CP&L, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**9. Mississippi Power Company**

[Docket No. ER89-101-000]

December 12, 1988.

Take notice that on December 2, 1988, Mississippi Power Company (MPC) tendered for filing what it describes as an initial Transmission Service Agreement executed between Alabama

Electric Cooperative (AEC) and MPC. The agreement provides for transmission service for the account of AEC for a period of three years commencing January 1, 1989.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**10. Commonwealth Electric Company**

[Docket No. ER89-107-000]

December 12, 1988.

Take notice that on December 2, 1988, Commonwealth Electric Company ("Commonwealth") tendered for filing a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that the change in rate has been computed according to the provisions of section 6(b) of its Rate Schedule FERC No. 6. Commonwealth states that the proposed change would supersede the 23 KV Wheeling Rate in effect during calendar 1987. Commonwealth states that it is requesting waiver of the Commission's notice requirements to allow the tendered rate change to become effective as of January 1, 1988 and that it has served copies of its filing upon Boston Edison Company and the Massachusetts Department of Public Utilities.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**11. Wisconsin Public Service Corporation**

[Docket No. ER89-103-000]

December 12, 1988.

Take notice that on December 2, 1988, Wisconsin Public Service Corporation (WPSC) tendered for filing a supplement to its Service Agreement No. 4 for "Partial Requirements Service" between the City of Marshfield, Wisconsin and Wisconsin Public Service Company. WPSC states that the supplement will revise the contract demand quantities in accordance with Exhibit 1 of the Service Agreement. WPSC states that copies of the filing were served upon the City of Marshfield, Wisconsin and the City of Manitowoc, Wisconsin.

*Comment date:* December 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29036 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3817-000, et al.]

## Sun Exploration and Production Co., et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

December 15, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 30, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| G-3817-000, D, 11-16-88 | Sun Exploration and Production Company, P.O. Box 2880 Dallas, TX 75221-2880. | Dorchester Gas Producing Company, Gyman-Hugoton Field, Texas County, Oklahoma. | (1) |
| G-3894-035, D, 11-17-88 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221. | El Paso Natural Gas Company, Payton Field, Ward County, Texas. | (2) |
| G-4307-002, D, 11-17-88 | Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252-2511. | Panhandle Eastern Pipe Line Company, Keyes Field, Cimarron County, Oklahoma. | (3) |
| G-4579-059, B, 11-14-88 | OXY USA Inc., P.O. Box 300, Tulsa, OK 74102 | Colorado Interstate Gas Company, Morton County, Kansas. | (4) |
| G-4579-060, D, 11-25-88 | OXY USA Inc | Northern Natural Gas Company, Morton County, Kansas. | (5) |
| G-5065-001, D, 11-16-88 | Tenneco Oil Company | Mobil Oil Corporation, Kansas-Hugoton Field, Grant and Haskell Counties, Kansas. | (6) |
| G-6178-000, D, 11-7-88 | Mobile Exploration and Producing North America Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046-0957. | Coloado Interstate Gas Company, Greenwood Field, Morton County, Kansas. | (7) |
| G-6296-001, D, 11-29-88 | Tenneco Oil Company | El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico. | (8) |
| G-13939-000, D, 11-22-88 | do | Colorado Interstate Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma. | (9) |

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| G-16030-000, D, 11-21-88 | Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725. | Panhandle Eastern Pipe Line Company, Forgan Field, Beaver County, Oklahoma. | (10) |
| G-17777-000, D, 11-7-88 | Mobil Oil Corporation | Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas. | (7) |
| G-18142-003, D, 11-15-88 | Sun Exploration and Production Company | Transwestern Pipeline Company, Various Fields, Texas and Beaver Counties, Oklahoma. | (12) |
| CI61-12-000, D, 11-18-88 | Chevron U.S.A. Inc | Panhandle Eastern Pipe Line Company, Forgan Field, Beaver County, Oklahoma. | (10) |
| CI61-1123-002, B, 11-14-88 | OXY USA Inc | Colorado Interstate Gas Company, Sec. 25-33S-42W, Morton County, Kansas. | (13) |
| CI63-1302-000, D, 11-18-88 | Tenneco Oil Company | Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma. | (14) |
| CI64-26-029, 11-25-88 | Chevron U.S.A. Inc | Texas Eastern Transmission Corporation, Locations in Monroe and Attala Counties, Mississippi, Nueces County, Texas, and Ouachita Parish, Louisiana. | (15) |
| CI67-270-002, D, 11-18-88 | do | ANR Pipeline Company, Laverne Field, Beaver County, Oklahoma. | (10) |
| CI69-756-001, D, 11-21-88 | do | Northwest Pipeline Corporation, Big Piney Area Field, Sublette County, Wyoming. | (16) |
| CI79-394-002, B, 11-17-88 | Tenneco Oil Company | Northern Natural Gas Company, Division of Enron Corp., Domby & Lorena Fields, Beaver County, Oklahoma. | (17) |
| CI79-436-001, D, 11-15-88 | do | Phillips 66 Natural Gas Company, Texas-Hugoton Field, Hansford County, TX. | (18) |
| CI88-191-001, E, 12-1-88 | Enron Oil & Gas Company, P.O. Box 1188, Houston, TX 77251. | Northern Natural Gas Company, Division of Enron Corp., Various onshore properties. | (19) |
| CI88-603-000 (CI75-319), D, 9-6-88. | Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052. | Texas Gas Transmission Corporation, Eugene Island Block 217 (OCS-G-0978), Offshore Louisiana. | (20) |
| CI88-604-000 (CI75-614), D, 9-6-88. | Texaco Inc., P.O. Box 52332, Houston, TX 77052 | CNG Transmission Corporation, Eugene Island Block 205, Field (OCS-G-0806), Offshore Louisiana. | (20) |
| CI89-65-000 (CI63-1183), D, 11-14-88. | Tenneco Oil Company | Arkla Energy Resources, a division of Arkla, Inc., O'Keene W. Field, Blaine County, Oklahoma. | (21) |
| CI89-71-000 (CI79-376), D, 11-15-88. | do | Northern Natural Gas Company, Clancy #1-15, Tyrone Field, Texas County, Oklahoma. | (22) |
| CI89-72-000 (CI79-375), D, 11-15-88. | do | Northern Natural Gas Company, Pedigo #1-16, Tyrone Field, Texas County, Oklahoma. | (22) |
| CI89-73-000 (CI65-140), D, 11-16-88. | Conoco, Inc., P.O. Box 2197, Houston, TX 77252 | Williston Basin Interstate Pipeline Company, Howard Ranch Unit, Fremont County, Wyoming. | (23) |
| CI89-74-000 (CI68-1201), B, 11-16-88. | Tenneco Oil Company | Arkansas Louisiana Gas Company, Ames SE Field, Major County, Oklahoma. | (24) |
| CI89-75-000 (CI78-1064), D, 11-16-88. | do | Arkla Energy Resources, a division of Arkla, Inc., Caspiana Field, Caddo & Bossier Parishes, Louisiana. | (25) |
| CI89-76-000 (CI64-1029), B, 11-16-88. | do | Arkla Energy Resources, a division of Arkla, Inc., Hanesville Field, Claiborne Parish, Louisiana. | (26) |
| CI89-77-000 (CI64-1029), D, 11-16-88. | do | Arkla Energy Resources, a division of Arkla, Inc., Simsboro Field, Lincoln Parish, Louisiana. | (27) |
| CI89-78-000 (CI61-1361), D, 11-17-88. | do | Panhandle Eastern Pipe Line Company, Carthage Field, Texas County, Oklahoma. | (28) |
| CI89-79-000 (G-5069-000), D, 11-17-88. | do | Northern Natural Gas Company, Division of Enron Corp., Kansas-Hugoton Field, Haskell County, Kansas. | (8) |
| CI89-80-000 (CI75-528), D, 11-17-88. | do | El Paso Natural Gas Company, Dublin Ellenburger Field, Lea County, New Mexico. | (30) |
| CI89-81-000 (CI69-1168), D, 11-17-88. | do | El Paso Natural Gas Company, Langlie Mattix Field, Lea County, New Mexico. | (30) |
| CI89-82-000 (CI78-1200), D, 11-17-88. | do | El Paso Natural Gas Company, Undesignated Strawn (Culebra Bluff S.) Field, Eddy County, New Mexico. | (31) |
| CI89-83-000 (CI69-1169), D, 11-17-88. | do | El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico. | (30) |
| CI89-84-000 (CI77-780), D, 11-18-88. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Williston Basin Interstate Pipeline Company, Pavillion Field, Freemont County, Wyoming. | (2) |
| CI89-85-000 (CI64-1481), D, 11-18-88. | do | Williams Natural Gas Company, Groendycke Field, Barber County, Kansas. | (2) |
| CI89-87-000 (CI64-1013), B, 11-18-88. | Tenneco Oil Company | Panhandle Eastern Pipe Line Company, Southeast Light Field, Beaver County, Oklahoma. | (32) |
| CI89-88-000 (CI79-386), B, 11-18-88. | do | Northern Natural Gas Company, Division of Enron Corp., Lovedale NW Field, Harper County, Oklahoma. | (33) |
| CI89-89-000 (CI79-436), D, 11-18-88. | do | Phillips 66 Natural Gas Company, Texas-Hugoton Field, Sherman County, Texas. | (34) |
| CI89-90-000 (CI)-381), D, 11-18-88. | do | Panhandle Eastern Pipe Line Company, Midway Field, Baca County, Colorado. | (35) |
| CI89-91-000 (G-6297—, D, 11-18-88. | do | El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico. | (36) |
| CI89-92-000 (CI67-1702), D, 11-18-88. | do | Transwestern Pipeline Company, Gatesby Field, Ellis County, Oklahoma. | (18) |
| CI89-93-000 (G-6669), D, 11-18-88. | do | El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico. | (37) |
| CI89-94-000 (CI75-291), B, 11-18-88. | do | Natural Gas Pipeline Company of America, Grayburg-Jackson Field, Eddy County, New Mexico. | (38) |

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| CI89-95-000 B, 11-17-88 | Samedan Oil Corporation, P.O. Box 909, Ardmore, Oklahoma 73402. | Transcontinental Gas Pipe Line Corporation, Dilworth Field, McMullen County, Texas. | ([39]) |
| CI89-96-000 (G-15238), D, 11-21-88. | Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046-0957. | United Gas Pipe Line Company, Blocker Unit No. 1, Harrison County, Texas. | ([40]) |
| CI89-97-000 (G-12001), D, 11-21-88. | Mobil Oil Exploration & Producing Southeast Inc. | Arkla Energy Resources, a division of Arkla, Inc., North Ruston Field, Lincoln Parish, Louisana. | ([41]) |
| CI89-98-000 (G-16147), D, 11-21-88. | Mobil Producing Texas & New Mexico Inc. | Trunkline Gas Company, Franks Field, Galveston County, Texas. | ([42]) |
| CI89-99-000 (G-9490), F, 11-21-88. | Texaco Producing Inc. | Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas. | ([43]) |
| CI89-100-000 (CI67-1631-000), D, 11-22-88. | Tenneco Oil Company | Natural Gas Pipeline Company of America, Erick Field, Beckham County, Oklahoma. | ([44]) |
| CI89-101-000 (CI61-810), B, 11-22-88. | ......do | Tennesee Gas Pipeline Company, Trull Field, Matagorda County, Texas. | ([45]) |
| CI89-105-000 (CI62-607), D, 11-23-88. | Chevron U.S.A. Inc. | Natural Gas Pipeline Company of America, Escobas Field, Zapata County, Texas. | ([46]) |
| CI89-106-000 (CI70-995), B, 11-25-88. | Mobil Oil Corporation Nine Greenway Plaza, Suite 2700, Houston, TX 77046. | Transwestern Pipeline Company, Guyman Field, Cimarron County, Oklahoma. | ([47]) |
| CI89-108-000 F, 11-25-88 | Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150. | CNG Transmission Corporation, Eugene Island Block 196, Field, Offshore Louisiana. | ([48]) |
| CI89-109-000 (CI68-621), B, 11-28-88. | Tenneco Oil Company | Tennessee Gas Pipeline Company, Deckers Prairie Field, Montgomery County, Texas. | ([49]) |
| CI89-111-000 (CI79-385), D, 11-29-88. | ......do | Panhandle Eastern Pipe Line Company, Reiss #1-A, Carthage Field, Texas County, Oklahoma. | ([18]) |
| CI89-113-000 (CI68-128), D, 11-29-88. | ......do | El Paso Natural Gas Company, Leonard Brothers, *et al.*, Jalmat Field, Lea County, New Mexico. | ([30]) |
| CI89-114-000 (CI64-987), D, 11-29-88. | ......do | Phillips 66 Natural Gas Company, W.T. Ford, Fuhrman-Mascho Field, Andrews County, Texas. | ([50]) |
| CI89-145-000 (G-6914), E, 12-1-88. | Columbia Natural Resources, Inc., P.O. Box 1273, Charleston, WV 25325. | Columbia Gas Transmission Corporation, Marsh Fork and Clear Fork Districts, Raleigh County, West Virginia. | ([51]) |

[1] Applicant assigned certain interests to Dorchester Hugoton, Ltd., effective August 1, 1988.
[2] Applicant assigned certain acreage to Hondo Oil and Gas Company, effective January 1, 1987.
[3] Applicant states that the Hanke Hanes # well was plugged and abandoned. Applicant assigned certain interests to Maple Properties Corporation, OXY USA, Inc., and Mesa Operating Limited Partnership, effective December 1, 1987. By assignment executed December 5, 1986, Applicant assigned certain interests to Crouch Petroleum Company, effective November 1, 1986.
[4] Applicant states that leases reverted to the U.S. Government, effective September 30, 1987, and May 11, 1987.
[5] Applicant states that certain leases have reverted.
[6] By assignment executed January 20, 1987, Applicant assigned its interest in certain acreage to Mobil Oil Corporation, effective November 1, 1986.
[7] By assignment dated November 9, 1987, Applicant assigned its interest in certain acreage to Morrison-Austin, effective November 1, 1987.
[8] By assignment executed September 28, 1970, Applicant assigned certain acreage to H. M. Bettis, W. T. Boyle, Norman D. Stovall, Jr., Spencer B. Street and Turnco, Inc., effective October 1, 1970. By assignment executed March 27, 1985, Applicant assigned certain acreage to Wood, McShane & Thams, effective December 1, 1984. By assignment executed January 29, 1988, Applicant assigned certain interests to Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1987.
[9] Applicant assigned its interests in certain acreage to Mesa Operating Limited Partnership, Phillips Petroleum Company, PNG Operating Company, and Foran Oil Company, effective December 1, 1986.
[10] By assignment dated September, 30, 1988, Applicant assigned its interests in certain acreage to Mesa Operating Limited Partnership, effective October 1, 1988.
[11] Not used.
[12] Applicant assigned certain interests to Kenneth W. Cory, effective October 1, 1988.
[13] Applicant states that the leases reverted to the U.S. Government, effective July 30, 1987.
[14] By respective assignments effective December 31, 1986, January 1, 1987, and March 1, 1988, Applicant assigned its interests in certain acreage to Prentice, Napier & Green Inc., Vanguard Oil & Gas Inc. and Red Eagle Exploration Company.
[15] Applicant is filing to add four new delivery points.
[16] By assignment dated September 23, 1988, Applicant assigned its interests in certain acreage to Lang & Holt Energy Company, effective October 1, 1988.
[17] Applicant states that the Foster # was plugged and abandoned on November 10, 1978. Applicant assigned its interests in certain acreage to Spess Oil Company, effective November 1, 1986.
[18] Applicant assigned certain acreage to Maple Properties Corporation by assignment, effective December 1, 1987.
[19] Effective December 31, 1987, Enron Producing Company was merged into Applicant.
[20] By assignment dated June 9, 1988, Applicant assigned its interests in certain acreage to Alliance Operating Corporation, effective May 1, 1988.
[21] By assignment executed March 30, 1987, Applicant assigned certain interests to Vanguard Oil & Gas, Inc., effective January 1, 1987. By assignments executed October 14, 1986, Applicant assigned certain interests to TE-RAY Energy, Inc., Security National Bank & Trust Company, Trustees of J.R. Perkins Trust "B", Elizabeth Perkins and F. L. Parham, effective September 1, 1986. By assignment executed November 6, 1986, Applicant assigned certain interests to TE-RAY Energy, Inc.
[22] By assignment executed July 11, 1986, Applicant assigned certain interests to Frank Collins, effective June 1, 1986.
[23] By assignment dated February 24, 1987, Applicant assigned its interests in certain acreage to Natural Gas Processing Co., effective December 29, 1986.
[24] Applicant states that the well was plugged and abandoned September 24, 1982.
[25] Applicant assigned certain acreage to Cohort Energy Company, effective April 1, 1988.
[26] Applicant states that the Crump Unit has been plugged. By assignment executed January 30, 1962, Applicant assigned its interests in certain interest in the Morgan Unit to W. T. McElwee.
[27] Applicant assigned certain acreage to Murphy Oil USA, Inc., effective November 1, 1986.
[28] Applicant assigned certain interests to Maple Properties Corporation and Anadarko Petroleum Corporation, effective December 1, 1987, and June 13, 1988, respectively.
[29] Not used.
[30] By assignment executed January 29, 1988, Applicant assigned certain interests to Prudential-bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1987.
[31] By assignment executed December 17, 1987, Applicant assigned its interests in certain acreage to Amoco Production Company, effective December 1, 1987.
[32] Applicant states that certain leases expired in November 1961 and the lease rights were surrendered to the landowner. By assignment executed February 22, 1960, Tennessee Gas Transmission Company assigned its interest in certain acreage to Petroleum, Inc., d/b/a/ Petroleum, Inc. of Kansas. By assignment executed June 1, 1962, Applicant assigned its interests in the remaining acreage to S. L. Reeves.
[33] Applicant states that the well was plugged and abandoned December 24, 1982.
[34] Applicant assigned certain interests to Mesa Operating Limited Partnership, effective June 1, 1986, and December 1, 1987. Applicant assigned certain interests to Maple Properties Corporation, effective December 1, 1987.
[35] By assignment executed January 28, 1986, certain acreage was assigned to Curtis Clark, d/b/a Clark Exploration Company effective February 1, 1986.
[36] By assignment executed September 28, 1970, Applicant assigned its interests in certain acreage to H. M. Bettis, W. T. Boyle, Norman D. Stovall, Jr., Spencer B. Street, and Turnco, Inc., effective October 1, 1970.
[37] Applicant assigned certain interests to DP Corporation and Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1985, and December 1, 1987, respectively.

[38] Applicant states that certain acreage is non-productive. Applicant assigned its interest in the remaining acreage to G & R Rich Properties, Inc., and Marbob Energy Corporation, effective October 1, 1984, and March 1, 1987, respectively.

[39] Applicant states that the reserves in the J. C. Dilworth Well No. 1 have been depleted and it was plugged and abandoned on June 16, 1988.

[40] Applicant assigned certain acreage to Faulconer Energy-Joint Venture 1988, effective August 1, 1988.

[41] Applicant assigned certain acreage to Trinity Operating Company, Inc., effective July 1, 1987.

[42] Applicant assigned certain acreage to Hef-Lin Energy Corporation, effective December 1, 1987.

[43] Effective December 1, 1987, Applicant acquired certain interests from Union Pacific Resources Company.

[44] By assignments executed March 26, 1984, Applicant assigned certain interests to Jack Speed. Applicant assigned certain interests to Natural Gas Pipeline Company of America, effective January 1, 1981.

[45] Applicant states that the acreage ceased to produce and that Applicant has sold the surface/subsurface equipment to Texas Independent Petroleum Inc., effective August 1, 1987.

[46] By assignment dated August 29, 1984, Applicant assigned its interests in certain acreage to Pennzoil Producing Company, effective July 31, 1984.

[47] Applicant states that the only well under this contract was plugged and abandoned on December 12, 1980.

[48] Effective June 1, 1988, Applicant acquired certain interests from Texaco Producing Inc. and Alliance Operating Corporation.

[49] Applicant states that the leases ceased to produce, the last well was plugged and abandoned on December 21, 1971, and the leases were subsequently surrendered to the original landowner.

[50] By assignment executed February 8, 1988, Applicant assigned certain interests to Maralo Inc., effective December 31, 1987. By assignment executed January 29, 1988, Applicant assigned certain interests to Prudential-Bache Energy Income Production Partnership IIIP-12, *et al.*, effective December 1, 1987.

[51] Effective September 26, 1988, Applicant acquired certain interests from Big Marsh Oil Company.

A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

---

**[Docket Nos. CP89-352-000, et al.]**

## United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

December 12, 1988.

Take notice that the following filings have been made with the Commission:

### 1. United Gas Pipe Line Company

[Docket No. CP89-352-000]

Take notice that on December 7, 1988, United Gas Pipe Line Company, (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-352-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Intercon Gas, Inc. (Intercon), a marketer, under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 4, 1988, under its Rate Schedule ITS, it proposes to transport up to 51,500 MMBtu per day equivalent of natural gas for Intercon. United states that it would receive the gas at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and that it would transport and redeliver the gas at an interconnection with Columbia Gulf Transmission Company near Barron, Rapides Parish, Louisiana.

United advises that service under § 284.223(a) commenced October 11, 1988, as reported in Docket No. ST89-773 (filed on November 17, 1988). United further advises that it would transport 51-500 MMBtu on an average day and 18,797,500 MMBtu annually.

*Comment date:* January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 2. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP89-342-000]

Take notice that on December 6, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-342-000, a prior notice request pursuant to §§ 157.205 and 284-223 of the Commission's Regulations for authorization to transport natural gas for PSI, Inc. (PSI), a marketer of natural gas, under the certificate issued in Docket No. CP86-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 150,000 MMBtu of natural gas per day, pursuant to an October 8, 1988, agreement between Northern and PSI. Northern would provide the service to PSI under the provisions of its Rate Schedule IT-1, it is indicated. Northern further states that the average and annual quantities would be 112,500 MMBtu and 54,750,000 MMBtu, respectively. Northern indicates that service commenced pursuant to § 284.223(a) of the Commission's Regulations as reported in Docket No. ST89-440.

*Comment date:* January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 3. United Gas Pipe Line Company

[Docket No. CP89-346-000]

Take notice that on December 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, filed in Docket No. CP89-346-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Texaco, Inc. (Texaco), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 51,500 MMBtu of natural gas per day for Texaco, a producer of natural gas, from various receipt points located in Texas to various delivery points also located in Texas. United anticipates transporting an annual volume of 18,797,500.

United states that the transportation of natural gas for Texaco commenced October 14, 1988, as reported in Docket No. ST89-828-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

*Comment date:* January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 4. Texas Gas Transmission Corporation

[Docket No. CP89-337-000]

Take notice that on December 5, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, 42301, filed in docket No. CP89-337-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Clinton Gas Marketing, Inc. (Clinton) under Texas Gas blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 90,000 MMBtu of natural gas equivalent on behalf of Clinton pursuant to a gas transportation agreement dated October 11, 1988, between Texas Gas and Clinton. Texas Gas would receive the gas at various existing points of receipt on its system in Texas and Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in Ohio.

Texas Gas further states that the estimated average daily and annual quantities would be 30,000 MMBtu and 32,850,000 MMBtu, respectively. Service under § 284.223(a) commenced on October 15, 1988, as reported in Docket No. ST89–687, it is stated.

*Comment date:* January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. United Gas Pipe Line Company**

[Docket No. CP89–347–000]

Take notice that on December 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–347–000 a request pursuant to §§ 157.205 and 283.228 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Seagull Marketing Services (Seagull), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas from numerous points of receipt located in Mississippi, Louisiana, Texas and Alabama to numerous points of delivery located in Louisiana, Texas, Mississippi, Alabama and Florida.

United further states that the maximum daily, average and annual quantities that it would transport for Seagull would be 515,000 MMBtu equivalent, 515,000 MMBtu equivalent and 187,975,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–829, filed with the Commission on November 21, 1988, it reported that transportation service for Seagull began on October 21, 1988, under the 120-day automatic authorization provisions of § 284.223(a).

*Comment date:* January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

**6. United Gas Pipe Line Company**

[Docket No. CP89–345–000]

Take notice that on December 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–345–000 a request pursuant to §§ 157.205 and 284–223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas from a point of receipt located in West Cameron Block 487, offshore Louisiana to a point of delivery located in West Cameron Block 505.

United further states that the maximum daily, aveage and annual quantities that it would transport for Texaco would be 10,300 MMBtu equivalent, 10,300 MMBtu equivalent and 3,759,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–775, filed with the Commission on November 17, 1988, it reported that transportation service for Texaco began on November 5, 1988, under the 120-day automatic authorization provisions of § 284.223(a).

*Comment date:* January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

**7. Northern Natural Gas Company, Division of Enron Corporation**

Docket No. CP89–344–000

Take notice that on December 6, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–344–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service on behalf of PSI, Inc., a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to an agreement dated October 1, 1988, under Rate Schedule IT–1 it proposes to transport up to 25,000 MMBtu per day of natural gas for PSI, Inc. from various receipt points to various delivery points. The receipt and delivery points are listed in Appendix A of the transportation agreement which provides for this service, and is on file with the Commission and open to public inspection. Northern proposes to transport 25,000 MMBtu on a peak day, 18,750 MMBtu on an average day and 9,125,000 MMBtu on an annual basis.

Northern indicates that the transportation of natural gas for PSI, Inc. commenced on October 1, 1988, as reported in Docket No. CP89–375–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission Regulations and the blanket certificate issued to Northern in Dockert No. CP86–435–000.

Northern further states that construction of facilities will not be required to provide the service proposed herein.

Northern also states that there is no agency relationship under which a local distribution company or affiliate of PSI, Inc. will receive natural gas on behalf of PSI, Inc.

*Comment date:* January 26, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88–29037 Filed 12–16–88; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP89-267-000]**

## Atlantic Richfield Co.; et al.; Application for a Presidential Permit for the Construction, Operation, Maintenance, and Connection at the United States/Canada International Boundary, of Facilities for Importation of Natural Gas

December 13, 1988.

Take notice that on November 22, 1988, Atlantic Richfield Company (ARCO), 1601 Bryn, Room 46–072, Dallas, Texas 75201 and Intalco Aluminum Corporation (Intalco), 400 South El Camino Real, San Matea, California 94402, (pursuant to section 3 of the Natural Gas Act (NGA), 15 U.S.C.

717(b); §§ 153.1 *et seq.* and 153.10 *et seq.* of the Commission's Regulations, 18 CFR 153.1 and 153.10; Executive Order No. 10485, as amended by Executive Order No. 12038; and Delegation Order No. 0204–112 of the Secretary of Energy. ARCO and Intalco as owners of all the undivided interests of the "Ferndale Pipeline System," jointly seek authorization from the FERC for a Presidential Permit for the point of entry for the importation of natural gas and the authority to construct, operate, maintain and connect a natural gas pipeline from manufacturing facilities operated by ARCO and Intalco near Ferndale, Washington to Canadian pipeline facilities at the Canadian border. Individually, each company has filed for authority from the Economic Regulatory Administration (ERA) to import natural gas from Canada to transport over the Ferndale Pipeline System, for their own use.

The Ferndale Pipeline System will consist of approximately 29 miles of 16 inch diameter pipe, extending from an interconnection with Westcoast Energy, Inc. (Westcoast) at the Canadian border near Sumas, Washington, to the ARCO refinery and the Intalco smelter near Ferndale, Washington. Westcoast will construct and operate tap, pipe and meter facilities in Canada. It is stated the design capacity of the pipeline will be approximately 105 MMcf/d with an estimated cost of 11 million dollars. The Ferndale Pipeline System will transport gas only to facilities owned or operated by ARCO or Intalco and there will be no offer made to provide any service to the public on the proposed system. Each company will be entitled to a specific percentage of daily pipeline capacity and capital costs will be apportioned on the basis of these percentages. Between themselves, however, applicants will own 100 percent of the pipeline system. The construction and operation of the proposed pipeline system will not be financed by third parties, but will be financed by international funds.

ARCO and Intalco both state that they are interested in expanding their usage of natural gas in the future and that the pipeline proposed, is structured to serve all their forcible natural gas needs.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10 and 157.102(b)(2)). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88–29038 Filed 12–6–88; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. RP88-184-006]

## El Paso Natural Gas Co.; Filing

Issued December 12, 1988.

Take notice that on December 2, 1988, El Paso Natural Gas Company (El Paso) filed First Revised Sheet No. 100–B to its FERC Gas Tariff, First Revised Volume No. 1 that reflect corrections to its First Revised Sheet N. 100–B filed December 1, 1988.

El Paso states that First Revised Sheet No. 100–B filed on December 1, 1988 reflected incorrect Order No. 500 surcharges and requests that the tariff sheet filed on December 2, 1988, be substituted for the sheets included in the December 1, 1988 filing.

El Paso requests an effective date of December 1,1988. El Paso states that copies of this filing have been served upon all parties receiving a copy of its December 1, 1988 filings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88–29039 Filed 12–16–88; 8:45 am]

BILLING CODE 6717-01-M

---

[Project No. 2608 Massachusetts]

## James River Corp.; Intent to File an Application for a New License

December 13, 1988.

Take notice that on August 15, 1988, James River Corporation, Premoid Division, the existing licensee for the West Springfield, MA Hydroelectric Project No. 2608, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808 as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2608 was issued effective May 1, 1965, and will expire December 31, 1993.

The project is located on the Westfield River in Hampden County, Massachusetts. The principal works of the West Springfield Project include an 18-foot-high, 450-foot-long timber crib dam; a reservoir of 20 acres at pool elevation 92.85 feet m.s.l.; a 2,500-foot-long power canal; a powerhouse with an installed capacity of 1,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Front Street, West Springfield, MA 01089, Attn: Mr. David J. Garwood, telephone (413) 736–4554.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88–29040 Filed 12–16–88; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. TC88-8-002]

## Kentucky West Virginia Gas Co.; Amended Curtailment Plan

December 12, 1988.

Take notice that on November 30, 1988, Kentucky West Virginia Gas Company (Kentucky West), P.O. Box 1388, Ashland, Kentucky 41105, filed in Docket No. TC88–8–002, the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 54K
Original Sheet No. 54L
Original Sheet No. 54M

Kentuckly West states that the tariff sheets filed herein contain its interim system-wide pro rata gas supply curtailment plan and are being filed in compliance with ordering Paragraph (D) of the Commission's Order issued October 31, 1988, in Docket Nos. TC88-8-000 and TC88-8-001.

Kentucky West has requested that the Commission authorize the tendered tariff sheet to become effective December 1, 1988. Kentucky West further requests waiver of the Commission's Regulations to permit the December 1, 1988 effective date.

Kentucky West states that copies of this filing have been served on all parties to this proceeding and on each of Kentucky West's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1988, to file with the Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29041 Filed 12-16-88; 8:45 am]

**BILLING CODE 6717-01-M**

---

**[Docket No. TQ89-1-40-000]**

## Raton Gas Transmission Co.; Filing

Issued December 12, 1988.

Take notice that on December 2, 1988, Raton Gas Transmission Company (Raton) filed Eleventh Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1.

Raton states that this filing is its first Quarterly PGA filing and reflects a Demand reduction by supplier of $0.01 per MCF and a Commodity increase of 4.98 cents per MCF to track supplier, Colorado Interstate Gas Company, current filing to be effective January 1, 1989.

Raton states that a copy of this filing has been mailed to its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29042 Filed 12-16-88; 8:45 am]

**BILLING CODE 6717-01-M**

---

**[Docket No. RP89-41-000]**

## Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

Issued December 12, 1988.

Take notice that on December 2, 1988, Southern Natural Gas Company ("Southern") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective January 1, 1989:

Second Revised Sheet No. 33
Third Revised Sheet No. 34
Third Revised Sheet No. 35
Third Revised Sheet No. 36
First Revised Sheet No. 36A

Southern states that the purpose of the filing is to revise those Sections to Southern's General Terms and Conditions to its gas sales tariff which set forth the procedures by which Southern measures gas for its customers. Southern states that it is currently in the process of installing electronic flow computers at various meter stations on its system to replace the existing chart measurement equipment. For this reason, Southern has revised sections 4 and 5 of the General Terms and Conditions to its Tariff to incorporate measurement by electronic flow computation.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29043 Filed 12-16-88; 8:45 am]

**BILLING CODE 6717-01-M**

---

**[Docket No. PR82-114-013]**

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Issued December 12, 1988.

Take notice that on December 5, 1988, Williams Natural Gas Company (WNG) tendered for filling revised tariff sheets to its FERC Gas Tariff.

WNG submits that the sheets are filed in compliance with the Commission's order of November 4, 1988 in this docket. WNG proposes that the tariff changes ordered by the Commission which are not related to thermal billing be made effective on January 1, 1989 and that the thermal billing changes be made effective on June 1, 1989.

WNG states that copies of the filing were mailed to all of WNG's jurisdictional customers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 of 385.214). All such motions or protest should be filed on or before December 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29044 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-589-007, RP86-104-009, RP87-30-016]

## Colorado Interstate Gas Co.; Compliance of Filing

December 13, 1988.

Take note that on November 16, 1988, Colorado Interstate Gas Company "(CIG") submitted for filing the following tariff sheets of its Second Revised Volume No. 1-A Transportation Tariff in compliance with the Commission's November 1, 1988 order in these dockets:

Substitute Original Sheet No. 26
Substitute Original Sheet No. 27

CIG states that these sheets comply with the requirement that CIG modify its "open access" tariff.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before December 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commision and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29101 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-1-000]

## Barbara T. Fasken, Individually and as Independent Executrix of the Estate of David Fasken, deceased; Petition for Adjustment

December 14, 1988.

On November 17, 1988, Barbara T. Fasken, (Petitioner) filed with the Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). The petition seeks to establish entitlement to NGPA section 108 stripper well prices collected for sales of gas from four wells operated by Petitioner located in the North Indian Basin Field, Eddy County, New Mexico, *i.e.,* the Indian Hills Unit Com. "A" No. 6 Well, the Skelly Federal Com. No. 1 Well, the Shell Federal Com. No. 1 Well, and the Ross Federal Com. No. 1 Well. The purchaser of the gas is Natural Gas Pipeline Company of America.

Petitioner states that the four wells have all been previously qualified as NGPA section 108 stripper wells. The request for relief relates to various periods from 1983 to 1988 during which their production exceeded the maximum quantities prescribed for stripper wells. Petitioner argues that it is entitled to stripper well prices collected during these periods [1] because the excess production was the result of recognized enhanced recovery techniques which qualified such production for stripper well prices under NGPA section 108(b)(1). Petitioner further asserts that the cost and revenue data submitted in support of the petition demonstrate that the denial of adjustment relief would result in out-of-pocket losses, inequity, and hardship.

On January 28, 1988, Petitioner filed with the Bureau of Land Management, Department of Interior (BLM), a petition for continuance of collection of the above stripper well prices for all the wells on the basis of use of enhanced recovery techniques, as provided for in § 271.805(e) of the Commission's regulations. BLM granted the petition, but effective only prospectively from its filing date. The determination is subject to Commission review.

Petitioner requests adjustment or waiver of the requirements of § 271.805(f) of the regulations which provide that a petition for enhanced recovery status must be filed within 150 days of the last day of the 90-day period of increased production in order for stripper well collections to continue without interruption, subject to refund. Petitioner states that the delay in filing the January 28, 1988 request was the result of management problems, compounded by the death of her husband, David Fasken in 1982. She states she was a newcomer to the oil and gas business with no direct control or real involvement in her husband's business at the time the enhanced recovery filings should have been made and that she made the filings within three weeks of learning of the error.

[1] Petitioner collected 108 prices during these periods, but has refunded to Natural, over protest, a sum of money which she states constitutes the disputed portion of such collections.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 30 days after publication of this notice in the **Federal Register.** The petition is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29102 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-165-001 and TQ88-2-4-001]

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 14, 1988.

Take notice that on December 7, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Second Substitute Eighth Substitute Twenty-First Revised Sheet No. 7 in its FERC Gas Traffic, First Revised Volume No. 1 containing changes in rates for its wholesale jurisdictional services for effectiveness on July 1, 1988.

According to Granite State, the proposed rates on Second Substitute Eighth Substitute Twenty-First Revised Sheet No. 7 would be effective for a 35 day rate period from July 1 through August 4, 1988 and would avoid back billing its customers, Bay State Gas Company (Bay State) and Northern Utilties Inc. (Northern Utilities) for substantial amounts. It is stated that Granite State earlier filed a purchased gas cost adjustment for effectiveness on July 1, 1988 and that, as a result of letter orders of the Director of Pipeline and Producer Regulation, the filing was revised in a compliance filing submitted July 27, 1988, which was accepted October 28, 1988. Granite State further states that the projected gas costs for the period beginning July 1 that were reflected in the rates in the revised tariff sheet in the compliance filing were higher than the gas costs embedded in the rates initially filed for effectiveness on that date. It is stated that the purpose of the instant filing is to reverse the effect of the Current Adjustment stated in the rates for July 1, 1988 effectiveness on the tariff sheet included in the compliance filing. According to Granite State this proposal will avoid the need for back billing Bay State $74,348.48 and Northern Utilities $27,410.06 for the 35 day rate period from July 1, 1988 through August 4, 1988. Granite State further states that acceptance of its proposal will have no effect on later filed purchased gas cost adjustments.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1988. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29103 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket Nos. TA89-1-4-002 and TM89-2-4-001]

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 14, 1988.

Take notice that on December 8, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Substitute Thirteenth Substitute Twenty-First Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for its jurisdictional wholesale services for effectiveness on January 1, 1989. In the same filing, Granite State tendered Substitue Sixteenth Revised Sheet No. 8 and Substitute Seventeenth Revised Sheet No. 8 containing changes in rates for a storage service under its Rate Schedule GSS in its FERC Gas Tariff for effectiveness on October 1, 1988 and January 1, 1989.

According To Granite State, on November 8, 1988, if filed its first annual purchased gas cost adjustment under the revised regulations prescribed in Order Nos. 483 and 483-A. Granite State further states that the instant filing corrects an error in the Rate Schedule CD-1 rates and revises the data pertinent to the assessment of past performance included in the prior filing. The result of the revised data concerning the assessment of past performance shows that actual purchase costs exceeded 103 percent of projected gas costs for sales to Bay State Gas Company for the month of June, 1988, according to Granite State.

Granite State further states that the revised tariff sheets applicable to its Rate Schedule GSS service are submitted to track correctly the relevant charges in CNG Transmission Corporation's Rate Schedule GSS charges, effective October 1, 1988 and January 1, 1989.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, Inc. and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 835 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1988. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29104 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. RP88-94-012]

## Natural Gas Pipeline Co. of America; Compliance Filing

December 14, 1988.

Take notice that on December 7, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute First Revised Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective December 1, 1988.

Natural states that the filing is made in compliance with the Commission's Order Accepting and Suspending Tariff Sheets Subject to Refund and Subject to Conditions and Establishing a Hearing issued on November 30, 1988 under Docket No. RP88-94-010 (Order). The Order required that Natural submit revised tariff sheets which separate the interest calculations for Natural's initial and subsequent filings to recover take-or-pay buyout and buydown and contract reformation costs (transition costs) under an Order No. 500 mechanism. By Order, Natural will not be permitted to recover interest on the transition costs related to the subsequent filing which were accrued prior to the effective date of the tariff sheets designed to recover those costs.

Natural states its compliance filing includes revised tariff sheets and workpapers which reflect removal of the interest on the transition costs included in the subsequent filing related to the period prior to December 1, 1988. Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective December 1, 1988.

A copy of the filing was mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP88-94-000.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before December 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29105 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. GP89-22-000]

## Natural Gas Pipeline Co. of America; Petition to Reopen and Vacate Final Well Determinations

December 14, 1988.

On November 28, 1988, Natural Gas Pipeline Company of America (Natural) filed a petition requesting the Commission to reopen and vacate determinations that three wells operated by Barbara Fasken or her predecessors in interest (Fasken) qualify as stripper wells under section 108 of the Natural Gas Policy Act of 1978. The determinations, obtained by David Fasken, deceased husband of Barbara Fasken, are on the following wells located in North Indian Basin Field, Eddy County, New Mexico:

| Well name | FERC control No. | Date of original well determination filing |
|---|---|---|
| Ross Federal Com. No. 1 Well. | JD84-28150 | 02/01/84 |
| Shell Federal Com. No. 1 Well. | JD82-56680 | 05/19/82 |
| Indian Hills Com. No. 6 Well. | JD84-23775 | 12/08/83 |

Natural is the purchaser of gas produced from these wells.

Natural alleges that in the applications for the section 108 determinations Fasken (1) understated average production per production day by counting as production days days when the wells were voluntarily shut-in by Fasken, (2) understated production of the wells for periods of around one year prior to filing the applications by omitting to report some volumes, and by allocating production for the Ross, Shell, or Indian Hills wells to other wells, and (3) represented that enhanced recovery techniques had not been previously used on the wells, when compressors had previously been used for that purpose.

Section 275.205(a) provides for reopening well determinations where in making such determination the Commission or the jurisdictional agency relied on any untrue statement of material fact or where a necessary statement of material fact was omitted. Natural states that the Ross, Shell, and Indian Hills wells would not have qualified as stripper wells but for the alleged misrepresentations and omissions in the applications. Natural asserts that as purchaser of the gas from these wells, it has been aggrieved and adversely affected by the determinations because Fasken was not entitled to receive the stripper well price for the gas from these wells.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of Natural's petition are on file with the Commission and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 88-29106 Filed 12-16-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3949-3]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OBM) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 382-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Air And Radiation**

*Title*: National Residential Radon Survey Pretest. (EPA ICR # 1396.) New collection.

*Abstract*: A survey of 60 residences is being conducted to pretest the questionnaire which will be used in the National Residential Radon Survey. Residents of private homes, as well as apartment dwellers, will be asked questions regarding building characteristics, occupancy patterns, and smoking habits. The response is voluntary and the results of the pretest will be used to evaluate potential problems with the questionnaire and the proper placement of radon measurement devices.

*Burden Statement*: The estimated public burden for this collection of information is 1 hour per response.

*Respondents*: Home owners and apartment dwellers.

*Estimated No. of Respondents*: 60.

*Estimated Total Burden on Respondents*: 60 hours.

*Frequency of Collections*: One time only.

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382-2740).

Public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, must be received by, or prior to, February 1, 1989. Send comments to:

Sandy Farmer, U.S Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460,

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

**OMB Responses To Agency PRA Clearance Requests**

EPA ICR # 1484; Gray Iron Foundry Waste Management Information; was approved 11/23/88; OMR # 2050-0091; expires 4/30/89.

EPA ICR # 1050; Standards of Performance For New Stationary Source—Storage Vessels For Petroleum Liquids; was approved 11/17/88; OMB # 2060-0121; expires 11/30/88.

EPA ICR # 1136; NSPS For Petroleum Refinery Wastewater Systems—Reporting and Recordkeeping; was approved 11/17/88; OMB # 2060-172; expires 11/30/91.

EPA ICR # 1189; Information Requirements For Facilities Petitioning For Hazardous Waste Delisting; was approved 11/23/88; OMB # 2050-0053; expires 10/31/91.

EPA ICR # 0827; Construction Grants Program Information; was approved 11/15/88; OBM # 2040-0027; expires 11/30/91.

EPA ICR # 1061; Standard Of Performance For The Phosphate Fertilizer Industry (NSPS Subparts T, U, V, W, X); was approved 11/17/88; OMB # 2060-0037; expires 11/30/91.

EPA ICR # 1446; Manifesting And Notification Of PCB Wastes; was disapproved 11/18/88.

Date: December 8, 1988.

**Paul Lapsley,**

*Director, Information and Regulatory Systems Division.*

[FR Doc. 88-29058 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3494-4]

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 382-2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Pesticides and Toxic Substances

*Title:* Notice of Supplemental Registration of a Distributor (EPA ICR # 0278); OMB # 2070-0044). This is a renewal of a previously approved collection.

*Abstract:* Any person who wishes to distribute a Federally registered pesticide product must notify EPA by submitting a "Notice of Supplemental Registration of a Distributor," as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This notice must be jointly prepared by the distributor and the registrant of the product.

*Burden Statement:* The average burden for each respondent who must submit a notification to EPA for supplemental registration of a pesticide product is estimated to be 15 minutes. This includes time for reviewing the instructions, recording the required information on the EPA-designated reporting form, as well as maintaining proper records.

*Respondents:* Any person may participate in this program by submitting a completed "Notice of Supplemental Registration of a Distributor" (Form 8570-5) to the Agency. Respondents are expected to be persons and/or business facilities in Standard Industrial Classification (SIC) codes 286-287.

*Estimated No. of Respondents:* 13,000 annually.

*Estimated Total Annual Burden on Respondents:* 3,250 hours.

*Frequency of Collection:* Once per event.

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382-2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-233), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

### OMB Responses To Agency PRA Clearance Requests

EPA ICR # 1233; Asbestos School Hazard Abatement Act, Grant and Loan Program; was approved 11/14/88; OMB # 2070-0062; expires 11/30/91.

EPA ICR #1486; Intergrated Air Cancer Project Survey; was approved 11/10/88; OMB # 2080-0036; expires 8/30/89.

Dated: December 8, 1988.

**Paul Lapsley,**

*Director, Information and Regulatory Systems Division.*

[FR Doc. 88-29059 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3494-5; EPA Project Number SE 86-01-A]

## Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Mojave Cogeneration Co., L.P. (Formerly U.S. Borax & Chemical Corp.)

**AGENCY:** Environmental Protection Agency (EPA), Region 9.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on December 6, 1988, the Environmental Protection Agency approved an 18-month extension of a PSD permit issued on February 20, 1987 under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 45 MW (gross) gas turbine combined-cycle cogeneration facility to be located at the existing U.S. Borax Refinery in Boron, California. The permit is subject to certain conditions, including allowable emission rates as follows:

| Pollutant | Emission limit (lbs/hr, 3-hour average) | |
|---|---|---|
| | Gas-firing | Oil-firing |
| $NO_x$, the more stringent of. | 18 (or 10 ppm @ 15% $O_2$, dry). | 74 (or 40 ppm @ 15% $O_2$, dry). |
| $SO_2$ | 0 | 102 (or 24 ppm @ 15% $O_2$, dry). |
| CO | 23 | 30. |
| PM | 12 | 17.5. |
| HC | 1.5 | 3.0. |

**FOR FURTHER INFORMATION CONTACT:** Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8221, FTS 454-8221.

**SUPPLEMENTARY INFORMATION:** Best Available Control Technology (BACT) requirements include the use of steam or water injection and a Selective Catalytic Reduction (SCR) system on the gas turbine for the control of $NO_x$ emissions.

**DATE:** The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed on or before February 17, 1989.

Date: December 12, 1988.

**David P. Howekamp,**

*Director, Air Management Division, Region 9.*

[FR Doc. 88-29061 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

[FIFRA Docket Nos. 631, et al.; FRL-3494-2]

## Pesticides Products Containing Sodium Fluoroacetate (Compound 1080)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of objections and request for hearing.

Notice is hereby given, pursuant to § 164.8 of the Rules of Practice, 40 CFR 164.8 promulgated under the Federal Insecticides, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.*, that certain registrants have filed objections to and have requested a hearing on the Administrator's notice of intent to cancel the registrations for pesticides products containing sodium fluoroacetate published in the Federal Register on October 12, 1988, 53 FR 39792. These proceedings have been consolidated for hearing by order of the Chief Administrative Law Judge dated November 16, 1988.

For information concerning the issues involved and other details of these proceedings, interested persons are referred to the dockets of these proceedings on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A-110); Room 3708, Waterside Mall, 401 M Street, SW., Washington, DC 20460. (202-382-4865).

Dated: December 9, 1988.

**Thomas B. Yost,**

*Administrative Law Judge.*

[FR Doc. 88-29060 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

---

[FRL-3494-1]

## Candidates for Regulatory Negotiation

This notice announces that the Environmental Protection Agency is seeking additional regulatory negotiation candidates. Regulatory negotiation is a supplemental approach to developing proposed rules that brings affected parties, including the Agency, together to see if they can reach consensus on how to address the environmental issues. EPA is committed to using any consensus reached—if within its statutory authority—as the basis of its proposed rulemaking.

Readers are invited to suggest EPA regulations which are in the pre-proposal stage as candidates for regulatory negotiation. In preparing their suggestions, readers should refer to section A of this notice which describes how to select rules most likely to be amenable to negotiation. If possible, please include a reference to the relevant statute and, if the rule is listed in the October EPA Regulatory Agenda (53 FR 42492 October 24, 1988), please list the SAR number as reference. Please send suggestions within 30 days of the date of this notice to: Chris Kirtz, Regulatory Negotiation Project, U.S. Environmental Protection Agency, 401 M Street SW., PM-223, Washington, DC 20460, (202) 382-7565.

EPA will evaluate each suggestion carefully and will advise the nominator regarding our assessment of the item's suitability for negotiation or development via some other consensual processes.

### A. Criteria for Selecting a Rule for Negotiation

EPA is open to nomination of rules at the pre-proposal state of rulemaking involving any environmental statute administered by EPA. In evaluating possible rules to suggest to EPA, you may find it helpful to ask the following questions. If you can answer yes to these questions, then the rule may be appropriate for regulatory negotiation.

1. Can the interested parties resolve the issues without compromising fundamental questions of value or principle?

2. Are the parties and interest sectors affected by the rule easily identifiable, reasonably limited in number, and potentially interested in good faith negotiations to resolve differences?

3. Are the issues to be discussed reasonably limited in number, and is the data base sufficient to support informed discussion?

### B. Negotiated Rulemaking Proceedings

Regulatory negotiations bring together a balanced mix of parties and interests to negotiate a rule that is at the pre-proposal stage. The goal of each negotiation is to reach a consensus on which to base a Notice of Proposed Rulemaking (NPRM). Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

A senior official selected by the EPA office responsible for developing the rule acts as chief negotiator for EPA. Individuals representing definable interests in the regulated community, business and public interest sectors, state and local officials, and other affected stakeholders, negotiate on behalf of their constituencies. A neutral facilitator chairs the negotiations, keeps the process moving smoothly, and assists in resolving disputes.

### C. EPA's Regulatory Negotiation Project

EPA established the Regulatory Negotiation Project in 1983 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations which could be implemented in a less adversarial setting. Since that time, the Agency has conducted seven regulatory negotiations:

- Nonconformance Penalties under section 206(g) of the Clean Air Act, as amended. Final rule: August 30, 1985.
- Emergency Pesticide Exemptions under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Final rule: January 15, 1986.
- Farmworker Protection Standards for Agricultural Pesticides. Proposed rule: July 8, 1988.
- Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986 (AHERA). Final rule: October 30, 1987.
- New Source Performance Standards for Woodburning Stoves under section 111 of the Clean Air Act. Final rule: February 26, 1988.
- Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984. Final rule: July 26, 1988.
- RCRA Minor Permit Modifications under the Resource Conservation and Recovery Act. Final rule: September 28, 1988.

In December 1986, the Program Evaluation Division of EPA's Office of Policy Planning and Evaluation, completed an assessment of the seven regulatory negotiations. The study confirmed that negotiation is especially appropriate in situations which involve the resolution of a limited number of related issues, none of which involve fundamental questions of value or extremely controversial national policy. The study further concluded that:

- Negotiated rulemaking can produce rules that are more pragmatic, and may produce better environmental results while still meeting statutory requirements.

Negotiated rules are also more likely to be acceptable to both the affected industries, the public interest sector and state and local governments involved in developing them.

- Negotiation may also result in earlier implementation of a rule by reducing the time it takes to proceed from proposed to final rulemaking.

EPA believes that the benefits to all parties of regulatory negotiation are substantial and is committed to continued use of regulatory negotiation and other consensus-based processes for rulemaking when appropriate.

### D. Additional Information

Additional information on EPA's Regulatory Negotiation Project is available upon request: Regulatory Negotiation Project Descriptor, and Program Evaluation Division's Analysis of the Regulatory Negotiation Project. Copies may be obtained from: Chris Kirtz, Director, Regulatory Negotiation Project, U.S. Environmental Protection Agency, 401 M Street SW., PM-223, Washington, DC 20460 (202) 382-7565.

**Thomas E. Kelly,**

*Office of Standards and Regulations.*

[FR Doc. 88-29057 Filed 12-16-88; 8:45 am]

BILLING CODE 6560-50-M

---

## FARM CREDIT ADMINISTRATION

## Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Cancelling Charter of Mammoth Cave Production Credit Association

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice.

On November 28,1988, the Acting Chairman of the Farm Credit Administration Board executed a Final Order barring claims against the Farm Credit Bank of Louisville (FCB) as successor to the Federal Intermediate Credit Bank of Louisville (FICB), arising out of the liquidation of Mammoth Cave Production Credit Association; discharging the FCB; and cancelling the charter of the Mammoth Cave Production Credit Association. The text of the Final Order is set forth below:

**Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Cancelling Charter of Mammoth Cave Production Credit Association**

Whereas, on August 9, 1983, the Board of Directors of the Mammoth Cave Production Credit Association (MCPCA) adopted a resolution placing MCPCA in voluntary liquidation, and a Liquidation Plan (the Plan) outlining the manner in which the liquidation was to proceed, which was approved by the Farm Credit Administration on August 18, 1983;

Whereas, pursuant to the Plan, Jack M. Gay was appointed Liquidating Agent by the FICB on August 9, 1983, and on January 1, 1984, Jeff Ivey was appointed successor Liquidating Agent of MCPCA, serving in such capacity until his resignation on October 16, 1987, and on October 20, 1987, Pamela J. Fratini was appointed successor Liquidating Agent;

Whereas, all assets of MCPCA have been disposed of in accordance with the Plan;

Whereas, MCPCA has been audited and examined, and the accounts fo MCPCA for the period August 9, 1983, through the date of this Order have been approved;

Whereas, in accordance with the Plan, all claims filed by creditors and holders of equities, except the claims of MCPCA allocated surplus holders, have been paid or provided for, including, without limitation, certain administrative expenses which the Farm Credit Bank of Louisville (as successor to the Federal Intermediate Credit Bank of Louisville) has paid; and

Whereas, all claims filed by creditors and holders of equities, including, without limitation, the claims of MCPCA allocated surplus holders, shall forever be discharged;

Now, therefore, it is hereby ordered that:

1. All claims of creditors, stockholders, and holders of participation certificates and other equities, and of any other persons and/or entities, against Mammoth Cave Production Credit Association, or, to the extent arising out of the actions of the Federal Intermediate Credit Bank of Louisville or its successor, the Farm Credit Bank of Louisville, in carrying out the Liquidation Plan of Mammoth Cave Production Credit Association, as approved by the Farm Credit Administration on August 18, 1983, against the Federal Intermediate Credit Bank of Louisville, the Farm Credit Bank of Louisville and the Liquidating Agents, are hereby forever discharged, and the commencement of any action, the employment of any process, or any other act to collect, recover or offset any such claims are hereby forever barred.

2. The accounts of the Mammoth Cave Production Credit Association for the period August 9, 1983, through the date of this Order are hereby approved.

3. The Farm Credit Bank of Louisville is hereby finally discharged and released from all responsibility or liability to the Farm Credit Administration or any other person or entity arising out of, related to, or in any manner connected with the administration and liquidation of Mammoth Cave Production Credit Association during the period August 9, 1983 through the date of this Order. The discharge and release of the Liquidating Agents by the Farm Credit Bank of Louisville is hereby approved.

4. The charter of Mammoth Cave Production Credit Association is hereby cancelled.

Signed November 28, 1988.

Farm Credit Administration Board.

**Marvin Duncan,**

*Acting Chairman.*

Dated: December 13, 1988.

Farm Credit Administration.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-29020 Filed 12-16-88; 8:45 am]

BILLING CODE 6705-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* New Collection.

*Title:* Open Learning Fire Service Program (OLFSP) Course Evaluation.

*Abstract:* The Open Learning Fire Service Program (OLFSP) Course Evaluation form will be used in the National Fire Academy's independent study baccalaureate degree program. The form will be used to assess the effectiveness of the course materials, instructor interaction and program administration. The introduction/demographic information will be used in developing an overall needs assessment.

*Type of Respondents:* Individuals or households.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 660.

*Number of Respondents:* 2,000.

*Estimated Averge Burden Hours Per Response:* .33.

*Frequency of Response:* Quarterly; Semi-annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: December 12, 1988.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 88-29064 Filed 12-16-88; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

*Agreement No.:* 224–200197.

*Title*: Virginia International Terminals Terminal Agreement.

*Parties*: Virginia International Terminals (VIT) Atlantic Container Line (ACL).

*Synopsis*: The agreement provides for a terminal use agreement whereby ACL guarantees movement of 300,000 tons during each year of a 3 year period through VIT's Portsmouth Marine Terminal and VIT in turn grants to ACL wharfage and crane rental charges different from those contained in Terminal Operators Conference of Hampton Roads Terminal Tariff No. 2, as amended.

By Order of the Federal Maritime Commission.

Dated: December 14, 1988.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88–29050 Filed 12–16–88; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 88N–0425]

### Drug Export; Haemophilus B Conjugate Vaccine

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Connaught Laboratories, Inc., has filed an application requesting approval for the export of the biological product Haemophilus b Conjugate Vaccine to Iceland.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Connaught Laboratories, Inc., Route 611, P.O. Box 187, Swiftwater, PA 18370, has filed an application requesting approval for the export of the biological product Haemophilus b Conjugate Vaccine, to Iceland. The Haemophilus b Conjugate Vaccine will be administered to children attaining the ages of 3, 4, and 6 months as a prophylaxis against serious systemic bacterial diseases, such as bacterial meningitis, sepsis, and epiglottitis. The application was received and filed in the Center for Biologics Evaluation and Research on November 22, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 29, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: November 30, 1988.

**Thomas S. Bozzo,**

*Director, Office of Compliance, Center for Biologics Evaluation and Research.*

[FR Doc. 88–29028 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0368]

### Abbott Laboratories; Premarket Approval of Abbott ER–EIA Monoclonal

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Abbott Park, IL, for premarket approval under the Medical Device Amendments of 1976, of the Abbott ER–EIA Monoclonal. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 17, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by January 18, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

**SUPPLEMENTARY INFORMATION:** On March 23, 1987, Abbott Laboratories, Abbott Park, IL 60064, submitted to CDRH an application for premarket approval of the Abbott ER–EIA Monoclonal. The device is an estrogen receptor (ER) immunological test system as an aid in the management of breast cancer patients. It is an in vitro device for the quantitative measurement of estrogen receptor (ER) in tissue cytosol to be used as an aid in assessing the likelihood of response to hormonal therapy and in the management of breast cancer patients.

On August 15, 1988, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 17, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ–440), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of the review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time or before January 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 12, 1988.

**Walter E. Gundaker,**

*Director, Office of Compliance, Center for Devices and Radiological Health.*

[FR Doc. 88–29048 Filed 12–16–88; 8:45 am]

BILLING CODE 4160–01–M

---

[Docket No. 88M–0384]

## IOPTEX Research, Inc.; Premarket Approval of Model UV304–01 (ULTRA C–LOOP) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by IOPTEX Research, Inc., Azusa, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model UV304–01 (Ultra C-Loop) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 17, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by January 18, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8261.

**SUPPLEMENTARY INFORMATION:** On January 5, 1988, IOPTEX Research Inc., Azusa, CA 91702–1375, submitted to CDRH an application for premarket approval of the Model UV304–01 (Ultra C-Loop) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens. The device is intended to be used for primary implantation for the visual correction of aphakia in patients 60 years of age and older where a cataractous lens has been removed by extracapsular cataract extraction methods. It is intended for placement in either the ciliary sulcus or capsular bag. The device is available in a range of powers from 5 diopters (D) through 33 D in 0.5 D increments.

On June 20, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 17, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the hearing of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 12, 1988.

Walter E. Gundaker,

*Director, Office of Compliance, Center for Devices and Radiological Health.*

[FR Doc. 88-29047 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

---

[Docket No. 88M-0364]

## Howmedica, Inc.; Premarket Approval of P.C.A.™ Total Knee System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Howmedica, Inc., Rutherford, NJ, for premarket approval under the Medical Device Amendments of 1976, of the P.C.A.™ Total Knee System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by January 18, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review of the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

**SUPPLEMENTARY INFORMATION:** On August 13, 1985, Howmedica, Inc., Rutherford, NJ 07070, submitted to CDRH an application for premarket approval of the P.C.A.™ Total Knee System. The device is indicated for noncemented use in skeletally mature individuals undergoing primary surgery for rehabilitating knees damaged as a result of osteoarthritis and rheumatoid arthritis. Regulatory review of safety and effectiveness data for the cemented use of the P.C.A.™ Total Knee System is not required at this time, because use of the device with bone cement has been found to be substantially equivalent to a generic type of device marketed in interstate commerce prior to May 28, 1976 (see CFR 888.3560).

On January 22, 1988, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ-410), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 18, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 12, 1988.

Walter E. Gundaker,

*Director, Office of Compliance, Center for Devices and Radiological Health.*

FR Doc. 88-29046 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

---

[Docket No. 88N-0272]

## Criteria for Determining the Regulatory Status of Food and Food Ingredients Produced by New Technologies; Announcement of Closed Meetings; Announcement of Open Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the ad hoc Expert Panel on Criteria for determining the Regulatory Status of Foods and Food Ingredients Produced by New Technologies (the Expert Panel), which was formed by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB) under a contract with FDA, will hold several closed meetings and an open meeting. The purpose of the open meeting is to obtain scientific data and information for use in FASEB's study of which scientific concepts and considerations are most appropriately used to determine the regulatory status of foods and food ingredients produced by new technologies.

**DATES:** The Expert Panel will hold closed meetings on Monday, January 30 and Tuesday, January 31, 1989; an open meeting on Monday, March 6, 1989; and closed meetings on Tuesday, March 7, and Wednesday, March 8, 1989, and on Monday, April 17 and Tuesday, April 18, 1989. All meetings will begin at 9 a.m. Written requests should be received by January 17, 1989. Those persons who will be unable to attend the open meeting but who wish to make a written presentation to the Expert Panel should submit such written presentations to the Dockets Management Branch (address below) by March 6, 1989.

**ADDRESSES:** Written requests to make oral presentations at the open meeting should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. The open meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be held in the Federation Board Room, FASEB (same address).

**FOR FURTHER INFORMATION CONTACT:**

Kenneth D. Fisher,
Life Sciences Research Office,
Federation of American Societies for Experimental Biology,
9650 Rockville Pike,
Bethesda, MD 20814,
301–530–7030,
or
James H. Maryanski,
Center for Food Safety and Applied Nutrition (HFF–300),
Food and Drug Administration,
200 C St. SW.,
Washington, DC 20204,
202–426–8950.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 30, 1988 (53 FR 33182), FDA announced that FASEB, under its contract with FDA (223–88–2124), is conducting a study, by means of the Expert Panel, of which concepts and considerations are most appropriately used to determine the regulatory status of foods and food ingredients produced by new technologies. (For complete information about this study, see 53 FR 33182.) The notice advised that an open meeting of the Expert Panel would be announced in the **Federal Register.** The open meeting will be held on Monday, March 6, 1989, in the Chen Auditorium, Lee Bldg., FASEB (address above), to receive the public's views on the issues involved in this study. The Expert Panel will also meet at the same location in closed meetings on January 30 and 31, 1989; March 7 and 8, 1989; and April 17 and 18, 1989. A list of the members of the Expert Panel is available from the Dockets Management Branch and FASEB.

The Expert Panel meetings are being announced as required by 21 CFR 14.15(b)(1).

Dated: December 13, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88–29023 Filed 12–14–88; 1:57 pm]

**BILLING CODE 4160-01-M**

**[Docket No. 88N-0401]**

## Emerging Food Safety and Quality Issues for the Next Decade; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting; Announcement of Closed Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office, is undertaking a review and evaluation of topics and issues in food safety and food quality that FDA should consider as important scientific concerns emerging in the next decade. The study will result in a scientific report that addresses and documents the identified topics and issues. FASEB is inviting the submission of scientific data and information bearing on this topic. FASEB is also providing an opportunity for public comment at an open meeting.

**DATES:** The open meeting will be held on Thursday, January 12, 1989. Closed meetings will be held on Wednesday, January 11 and Friday, January 13, 1989, and Wednesday, Thursday, and Friday, March 29 through 31, 1989. All meetings will begin at 9 a.m. Written requests to make oral presentations at the open meeting must be received by December 27, 1988. Written comments, scientific data, and information may be submitted at any time, however they should be submitted as soon as possible.

**ADDRESSES:** Written requests to make oral presentations at the open meeting and scientific data and information should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data, information, or written views should be submitted to each office. The open meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be held in the Federal Board Room, FASEB (same address).

**FOR FURTHER INFORMATION CONTACT:**

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 96750 Rockville Pike, Bethesda, MD 20814, 301–530–7030,

or

C. William Cooper, Center for Food Safety and Applied Nutrition (HFF–3), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0265.

**SUPPLEMENTARY INFORMATION:** FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of food and cosmetics.

FDA is announcing that it has asked FASEB, as a task under this contract, to provide FDA's Center for Food Safety and Applied Nutrition (CFSAN) with a report that: (1) Describes, evaluates, and documents topics and issues in food safety and food quality of potential concern to FDA that are expected to emerge in the next decade; (2) considers public input; and (3) recommends priorities of the anticipated issues for FDA program planning for the next decade. In response, FASEB asked its Life Sciences Research Office to appoint an ad hoc expert panel (the Expert Panel) to study this matter. The Expert Panel will report its findings to FASEB through the Life Sciences Research Office. FASEB will then evaluate these findings and submit its own report to FDA.

CFSAN has a mandate to promote and to protect the public health and has responsibility to assure a safe and wholesome food supply. Under the Federal Food, Drug, and Cosmetic Act as amended, related statutes, and Federal regulations promulgated under these laws, the agency performs various functions to carry out its mandate, including establishing regulations, providing premarket approval of food additives, establishing and conducting inspections, and performing analyses of foods. In addition, CFSAN conducts research on aspects of food safety and food quality and maintains an active training and education program on issues dealing with food safety.

In addition, CFSAN must stay abreast of the many changes brought about by advances in food and food-related technology. These changes not only affect the manner in which FDA utilizes its regulatory authority but also raise important consumer questions involving product labeling and the provision of meaningful dietary and nutritional guidance. FDA obtains and utilizes counsel from a variety of sources to identify and categorize the important issues that will affect the agency's food safety responsibilities in the remaining years of this century.

The Expert Panel will be asked to identify and discuss the concerns and issues for the future that are raised by several topics, including: (1) Implementation of the *Surgeon General's Report on Nutrition and Health;* (2) microbial safety of foods; (3) monitoring the food supply; and (4) public education about food quality and safety. The Expert Panel will also be asked to consider the roles of FDA including its use of appropriate regulatory tools of other portions of the Executive Branch; of Congress; of the private sector; and of counsumers in meeting future challenges.

The Expert Panel of scientists and science administrators who have expertise in the fields of microbiology, nutrition, toxicology, food science, and risk assessment will be assembled by the Life Sciences Research Office. Insofar as possible, the Expert Panel will represent academia, industry, consumers, professional associations, and government. Discussions by the Expert Panel will provide the basis for a report that provides CFSAN with information on issues that the food science community considers to be of primary importance in the next 10 years. A list of members of the Expert Panel is available from the Dockets Management Branch or FASEB (addresses above).

In accordance with 21 CFR 14.15(b)(1), notice is given that the Expert Panel will hold an open meeting on January 12, 1989, during which an opportunity will be provided for the public to present oral views on important issues in food safety and quality that are likely to emerge in the next decade. The Expert Panel will meet in closed executive session on January 11 and 13, 1989, and on March 29 through 31, 1989. Pursuant to the provisions of its contract with FDA, FASEB will provide the agency with a report on the issues involving food safety and food quality that the scientific community believes will be of primary importance in upcoming years. The report of the study will provide a basis for decisions on the approaches that CFSAN will consider in addressing these issues. The report will help the agency in its efforts to assure the highest degree of safety and quality for the American food supply

Dated: December 13, 1988.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-29024 Filed 12-14-88; 1:57 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0402]

## Guidelines for Assessing and Managing Iron Deficiency and Anemia in Women of Childbearing Age; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting; Announcement of Closed Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office, is about to begin a study to develop guidelines for FDA. The agency intends to make these guidelines available to health care providers. The purpose of the guidelines is to: (1) Help in identifying impaired iron status and anemia in women, (2) help in determining the most appropriate methods of assessment, and (3) help in selecting approaches to management of anemia in these women. FASEB is inviting the submission of scientific data, information, and views bearing on this topic. FASEB will provide an opportunity for public oral presentations at an open meeting.

**DATES:** The Life Sciences Research Office's ad hoc expert panel (the Expert Panel) open meeting will be held on Wednesday, January 11, 1989. Requests to make oral presentations at the open meeting must be in writing and received by January 5, 1989. The Expert Panel will also meet in closed executive sessions on Tuesday, January 10, 1989, and on Monday, March 13 and Tuesday, March 14, 1989. All meetings will begin at 9 a.m. Written presentations of scientific data, information, and views may be submitted at any time but should be submitted as soon as possible.

**ADDRESSES:** Written requests to make oral presentations at the open meeting and scientific data, information, and views should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data, information, and views should be submitted to each office. The open meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be in the Federation Board Room, FASEB (same address).

**FOR FURTHER INFORMATION CONTACT:**

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030, or

Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0087.

**SUPPLEMENTARY INFORMATION:** FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of food and cosmetics.

FDA intends to provide guidelines to health care providers for use in identifying: (1) Women of childbearing ages with impaired iron status and anemia, (2) the most appropriate methods of assessment, and (3) approaches to management of anemia in these individuals. FDA is announcing that it has asked FASEB, as a task under the contract, to determine the scientific community's views on the matters involved in developing these guidelines. In response, FASEB asked its Life Sciences Research Office to appoint the Expert Panel to study this matter. The Expert Panel will report its findings to FASEB through the Life Sciences Research Office. FASEB will then evaluate these findings and submit its own report to FDA.

Anemia in women of childbearing age (defined as postpuberty to menopause; 14 to 44 years of age) may result from many causes including iron deficiency, and various chronic diseases. Definitive diagnosis of iron-deficiency anemia requires distinguishing among the various causes of anemia. Specifically, identification of inadequate iron nutriture as a cause of anemia requires the determination of the status of iron stores. Iron deficiency may result from inadequate intake or absorption of iron, high menstrual blood losses, the demands of pregnancy, and other factors leading to blood loss. It is important to establish the cause (or causes) of anemia to select appropriate therapy and to avoid unnecessary intervention and possible harmful effects of ingestion of large amounts of iron-rich foods or dietary supplements by women whose iron stores are adequate. For these reasons, FDA needs guidance on the state of scientific knowledge in regard to the diagnosis and therapeutic management of iron deficiency and anemia in women of childbearing ages.

FDA requires specific guidance in order to supply health care providers with current information on diagnosis and management of iron deficiency and other causes of anemia. Such guidance should include criteria useful in identifying individuals at risk, diagnostic techniques for assessing iron status, appropriate tests for distinguishing among major causes of anemia, and recommended strategies for management of various conditions associated with impaired iron status, including recommended frequency for monitoring during therapy, duration of therapy, and indications for discontinuing therapy.

In accordance with 21 CFR 14.15(b)(1), notice is given that the Expert Panel will hold an open meeting on Wednesday, January 11, 1989, to provide an opportunity for the public to present oral views on the issues discussed above. A list of members of the Expert Panel is available from the Dockets Management Branch and FASEB.

This notice invites submission of information on scientific concepts and considerations that can be used to devise criteria to determine the most appropriate recommendations for identification and intervention in iron deficiency and anemia in women of childbearing ages. Two copies of any scientific data, information, or written views should be submitted as soon as possible to both the Dockets Management Branch and the life Sciences Research Office (addresses above). Requests to make oral presentations at the open meeting should be in writing and submitted to the same addresses by January 5, 1989. Pursuant to its contract with FDA, FASEB will provide the agency with a scientific report on these issues concerning iron deficiency and anemia in women of childbearing ages.

Dated: December 13, 1988.

**John M. Taylor.**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-29025 Filed 12-14-88; 1:57 pm]

BILLING CODE 9160-01-M

---

**[Docket No. 88N-0406]**

## Outside Scientific Expertise in Nutrition Objectives for the year 2000; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting; Announcement of Closed Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

---

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office, is: (1) Undertaking a review and evaluation of a draft set of National Nutrition Objectives for the Year 2000, (2) inviting submission of scientific data and information bearing on this topic, (3) providing an opportunity for presentation of written and oral information and data at an open meeting of the ad hoc expert panel (the Expert Panel) on National Nutrition Objectives for the Year 2000, and (4) providing notice of closed meetings of the Expert Panel. FASEB is inviting submission of scientific data and information bearing on this topic.

**DATES:** The open meeting of the Expert Panel on National Nutrition Objectives for the Year 2000 will be on Thursday, January 5, 1989. The closed meetings will be held on Wednesday, January 4 and Friday, January 6, 1989. All meetings will begin at 9 a.m. For written comments, information, and data to be considered by the Expert Panel at the open meeting, they must be submitted by December 30, 1988. Written requests to make oral presentations at the open meeting must be received by December 30, 1988.

**ADDRESSES:** Written requests to make oral presentations at the open meeting and scientific data and information to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data and information should be submitted to each office. The open meeting will be in the Chen Auditorium, Lee Bldg., FASEB (address above). The closed meetings will be in the Federation Board Room, FASEB (same address).

**FOR FURTHER INFORMATION CONTACT:**

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030,

or

Marilyn G. Stephenson, Center for Food Safety and Applied Nutrition (HFF-208), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1561.

**SUPPLEMENTARY INFORMATION:** FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of food and cosmetics.

The U.S. Public Health Service (PHS) has established a process for the development of "National Health Objectives for the Year 2000." The PHS schedule calls for the preparation of draft reports, on or before February 1, 1989, on each of 21 priority areas that have been revised by outside expert panels and by the PHS Steering Committee for the Year 2000. Representatives of PHS, FDA, and the National Institutes of Health (NIH) will participate in the development of the National Health Objectives, including the Nutrition Objectives. FDA's Center for Food Safety and Applied Nutrition (CFSAN) and NIH cochair the "Interagency Work Group for the Year 2000: Nutrition Objectives" (the Work Group).

The Work Group was organized on August 26, 1988, with representatives from 10 agencies. The 10 agencies in the Work Group have drafted preliminary nutrition objectives, and several publications are available on the status of implementation and effectiveness of the 1990 Health Objectives. All of these documents are available from either of the contact persons above. FDA is announcing that it has asked FASEB, as a task under this contract, to provide jointly to FDA and NIH a report that: (1) Summarizes the review and evaluation of background materials, (2) considers public input; (3) evaluates a draft of the objectives prepared by the Work Group; and (4) makes recommendations for consideration in regard to nutrition objectives for the year 2000. In response, FASEB asked its Life Sciences Research Office to appoint the Expert Panel to study this matter. The Expert Panel will report its findings to FASEB through its Life Sciences Research Office. FASEB will then evaluate these findings and submit its own report to FDA and NIH.

FASEB will convene the Expert Panel to undertake review and evaluation of the draft objectives and other materials prepared by the Work Group. The Expert Panel will consist of nine eminent scientists selected for their expertise in nutrition, clinical nutrition, public health, pediatrics, and medicine. The viewpoints represented among the Expert Panel members will include not only those of the scientific disciplines listed but also those of academia, consumers, industry, and scientific organizations in the broadly defined field of nutrition. A list of members of the Expert Panel is available from the Dockets Management Branch and FASEB.

In accordance with 21 CFR 14.15(b)(1), notice is given that the Expert Panel will hold an open public meeting during which an opportunity will be provided for the public to present written and oral views, scientific data, and information on the draft National Nutrition Objectives for the Year 2000. The meeting will be held on January 5, 1989, in the Chen Auditorium, Lee Bldg., FASEB (address above).

This notice invites submission of information, data, and views on the draft National Nutrition Objectives for the Year 2000 that should be considered for inclusion in the PHS National Health Objectives for the Year 2000. Two copies of any scientific data or information should be submitted to both the Dockets Management Branch and the Life Sciences Research Office (addresses above). This information may be submitted at any time, but it must be received by December 30, 1988, if it is to be considered by the Expert Panel.

This notice also invites public participation at the open meeting. Written requests to make oral presentations should be sent to the addresses above and received by December 30, 1988.

The Expert Panel will meet in executive session on January 4, 1989, to review the submitted information and data in preparation for the open meeting. The Expert Panel will also meet in executive session on January 6, 1989, to consider all of the information received at the open meeting. Both meetings will be held in the Federation Board Room, FASEB (address above). These meetings are being announced as required by 21 CFR 14.15(b)(1).

Dated: December 13, 1988.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 88-29026 Filed 12-14-88; 1:57 pm]

**BILLING CODE 4160-01-M**

---

## Health Resources and Services Administration

## Pediatric Acquired Immune Deficiency Syndrome (AIDS) Health Care Demonstration Projects

**AGENCY:** Health Resources and Services Administration.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA) announces that Fiscal Year (FY) 1989 funds are now available for grants to fund projects demonstrating strategies and innovative models for intervention in pediatric AIDS and coordination of services for children, youth, and women of childbearing age with Human Immunodeficiency Virus (HIV) infestion, AIDS or other related conditions, or those at risk for developing infection and its consequences. Funds appropriated by Pub. L. 100-436 will be used for this purpose.

**DATE:** The deadline for receipt of applications is February 22, 1989. Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Branch at the address below on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Grant applications received after the deadline date will be returned.

**FOR FURTHER INFORMATION CONTACT:** Additional information relating to technical and program issues may be obtained from: John J. Hutchings, M.D., Division of Services for Children with Special Health Needs, BMCHRD, Parklawn Building, Room 6-05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2170.

Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from: Ms. Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 11A-18, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1440. The original and two (2) copies of the applications must be submitted to Ms. Wilcom.

**SUPPLEMENTARY INFORMATION:**

### Program Background and Objectives

Through November 8, 1988, 77,994 cases of AIDS have been reported to the Centers for Disease Control (CDC). Of these, 1,230 have been infants and children 0-12 years of age and 313 have been adolescents 13-19 years of age. Approximately one-half of the known cases in this pediatric population have died. The Public Health Service (PHS) predicts an increase in pediatric AIDS by 1991, to 3,000 cases.

The cost of providing a full range of services in the pediatric population with AIDS is high, largely reflecting hospital costs with the higher inpatient hospital rates for children and the long periods of hospitalization these children experience. Cost reduction can be made through the use of comprehensive ambulatory and community-based services, which these demonstration projects should provide.

The Pediatric AIDS projects are designed to further the coordination of services for children, youth, and women of childbearing age with HIV infection, AIDS or related conditions, or those at risk for developing infection and its consequences. This coordination is to be accomplished through enhancement of current pediatric AIDS activities developed by the Office of Maternal and Child Health, including those activities supported by Title V of the Social Security Act or through the existing Pediatric AIDS Health Care Demonstration Projects supported in FY 1988 under Public Law 100-202, and other departmental AIDS activities, particularly the HRSA Service Demonstration Grants.

### Purpose

It is generally recognized that there is a need for development of strategies and innovative models for managing pediatric patients with AIDS, which emphasize service delivery in outpatient and community settings and reduce the amount of time spent in hospital settings. Two categories of projects will be funded in FY 1989 which are intended to accomplish these purposes and also are expected to provide solutions to a broad range of critical problems arising from the AIDS crisis.

The first category, Pediatric Health Care Demonstration Projects, which were also funded in FY 1988 should: (1) Demonstrate effective ways to prevent infection, especially through the reduction of perinatal transmission; (2) develop community-based, family-centered, coordinated services for infected infants, children and youth; and (3) develop programs to reduce the spread of HIV infection to vulnerable populations of young people. The Pediatric Health Care Demonstration Projects should serve as models for other communities and should identify the range of resources needed to provide appropriate, humane, and effective care to pediatric AIDS patients. They are designed to build on existing resources or networks in impacted communities for reaching and providing health care and supportive services to women and children most at risk. These projects will focus on local capacity-building, making maximum use of all available public and private resources.

The second category of projects are intended to focus on National Issues of High Priority in Pediatric AIDS which are of critical importance to children with AIDS and their families, especially in the areas of prevention and early detection and service provision. Proposed issues include but are not limited to: developing community plans to respond to issues arising from HIV infection in adolescents and youths, including those living at home, those in institutions, and those who are homeless; the development of a curriculum for training volunteers who work with families where there are HIV infected children; the preservation of maternal and child rights of privacy, confidentiality, and informed consent; the recommendations from the Surgeon General's Workshop on Children With HIV Infection and Their Families that dealt with health information issues and the role of the media; and a survey of the services of Comprehensive Hemophilia Centers to HIV infected children who do not have hemophilia. The intent is to identify and to deal with issues which interfere with and prevent AIDS patients and their families from receiving the services they require.

**Availability of Funds**

Approximately $2.25 million is available for the following two categories of new projects in FY 1989:

(1) *Pediatric AIDS Health Care Demonstration Projects.* A total of $1.5 million is available to be expended by grantees during project periods lasting from 1 to 3 years. It is anticipated that three to five such new grants will be made, depending on demonstrated need.

(2) *National Issues of High Priority in Pediatric AIDS.* A total of $750,000 is available for small grants lasting from 1 to 2 years. It is anticipated that four to six such grants will be made.

**Collaboration/Coordination with Other AIDS Programs**

Pediatric AIDS grantees supported by HRSA will be expected to coordinate their projects with other Federal, State, and local programs concerned with AIDS including, but not limited to: (1) HRSA AIDS Service Demonstration Grants; (2) CDC AIDS activities; (3) Community Health Centers and Migrant Health Centers; (4) Medicaid; (5) Title V programs: Maternal and Child Health Services Block Grants, Maternal and Child Health Hemophilia Services Projects, and other relevant SPRANS grants under Title V; (6) the education and outreach programs of the National Institute on Drug Abuse, especially those concerned with IV drug users, their sexual partners, and prostitutes; (7) HRSA Education and Training Centers Grants; (8) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development; (9) the clinical drug trials or other relevant research conducted by other institutes of the National Institutes of Health; and, (10) discretionary grants by the Office of Human Development Services to demonstrate innovative approaches to providing child welfare services for infants with AIDS.

To the maximum extent possible, HRSA's Pediatric AIDS Health Care Demonstration Program grantees also will be expected to work closely with community-based AIDS service organizations, local AIDS service activities supported by the Robert Wood Johnson Foundation, the National Hemophilia Foundation, or other foundations and organizations with AIDS activities.

**Eligible Applicants**

Public and private entities, nonprofit and for-profit, are eligible to apply for these grant awards. Eligible entities include public or private hospitals, university medical centers, State or local health departments, or consortia of health care and community organizations.

**Review and Evaluation Criteria**

Grant applications will be reviewed and rated by an objective review committee. The first category, Pediatric AIDS Demonstration projects, will be judged according to demonstration of need for services and to the applicant's ability to demonstrate the most effective ways of organizing services and providing treatment and support to children and women of childbearing age with HIV infection, AIDS or AIDS-related conditions or those at risk for developing infection and its sequelae. Applicants will be expected to demonstrate how proposed programs will be integrated with other AIDS service programs and indicate how the proposed services will augment existing activities. The second category, National Issues of High Priority in Pediatric AIDS, will be reviewed to assess the importance of the issue selected, the applicant's understanding of the state of the knowledge about the issue, and the applicant's capacity to perform the activities proposed. More detailed information on the review and evaluation criteria may be found in the grant application kit.

**Allowable Costs**

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, subpart Q. The five separate sets of cost principals prescribed for grant recipients are: (1) 45 CFR Part 92 for State and local governments; (2) OMB Circular A-21 for institutions of higher education; (3) 45 CFR Part 74, Appendix E for hospitals; (4) OMB Circular A-122 for nonprofit organizations; and (5) 48 CFR Chapter 1, subpart 31.2 for for-profit (commercial) organizations.

**Reporting Requirements**

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J—Monitoring and Reporting of Program Performance.

**Executive Order 12372**

The Pediatric AIDS Health Care Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal program. The application packages to be made available under this notice (Form PHS 5161-1 with revised facesheet HHS Form 424 approved under OMB 0348-0006) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Each applicant should promptly contact his/her State's single point of contact (SPOC) and follow instructions prior to the submission of an application. The SPOC has 60 days after the application deadline to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration program is 13.153.

Date: November 14, 1988.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 88-29027 Filed 12-16-88; 8:45 am]

**BILLING CODE 4160-15-M**

---

## Privacy Act of 1974; New System of Records

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notification of a New System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–15–0056, "National Vaccine Injury Compensation Program, HHS/HRSA/BHPr." We are also proposing routine uses for this new system.

**DATES:** PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on December 8, 1988. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, PHS will publish a notice to that effect in the **Federal Register.** The routine uses will be effective 30 days after the date of publication unless PHS received comments which would result in a contrary determination.

**ADDRESS:** Please submit comments to: Privacy Act Officer, Health Resources and Services Administration, Room 14A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3780.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Director, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5794.

The numbers listed above are not toll free.

**SUPPLEMENTARY INFORMATION:** The Health Resources and Services Administration (HRSA) proposes to establish a new system of records: 09–15–0056, "National Vaccine Injury Compensation Program, HHS/HRSA/BHPr." This proposed system of records will consist of petitions served on the Secretary, HHS, regarding payment of compensation under the National Vaccine Injury Compensation Program, which include medical records and other related documentation. The Secretary has placed the responsibility for implementing this program in HRSA's Bureau of Health Professions (BHPr).

The purpose of these records is to: (1) Determine eligibility of petitioners to receive compensation under the National Vaccine Injury Compensation Program; (2) compensate successful petitioners in the amount determined by the court; and (3) evaluate vaccine safety.

BHPr/HRSA is establishing stringent safeguards consistent with the sensitivity of the records. These include: Maintaining a current list of authorized users; handcarrying files from office to office in sealed envelopes; transmitting records to consultants by registered mail; escorting visitors into areas where records are maintained; utilizing passwords and data set name controls for computer access; and securing areas where records are stored.

HRSA will permit disclosure of the records to third parties pursuant to a routine use as follows: The first routine use permits disclosure to a congressional office, to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. The second routine use allows disclosure to the Department of Justice or a court, in the event of litigation instigated by the record subject. The third routine use allows Public Health Service consultants to evaluate medical records submitted to the Department. The fourth routine use allows disclosure of records to the Special Master of the U.S. Claims Court for adjudication of the compensation claim. The fifth routine use allows for **Federal Register** publication of the notice of receipt of petitioner's claim, as required by the National Childhood Vaccine Injury Act.

Individuals will be required to supply Social Security numbers in order to receive compensation payments. However, HRSA will not use Social Security numbers in this system to make any determination concerning rights, benefits, or privileges of the individuals.

This system notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Date: December 9, 1988.

**Wilford J. Forbush,**

*Deputy Assistant Secretary for Health Operations and Director, Office of Management.*

**09-15-0056**

**SYSTEM NAME:**

National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Room 4–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons filing claims (petitioners) under the National Vaccine Injury Compensation Program (NVICP).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Petition for compensation, including petitioner's name and name of person vaccinated if different from petitioner, Social Security Number and all relevant medical records, (including autopsy reports, if any), appropriate assessments, evaluations, prognoses, and such other records and documents as are reasonably necessary for the determination of eligibility for and the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 USC 300aa–11 and Executive Order 9397 regarding the use of Social Security Number.

**PURPOSE(S):**

1. To determine eligibility of petitioners to receive compensation under the National Vaccine Injury Compensation Program.
2. To compensate successful petitioners in the amount determined by the court.
3. To evaluate vaccine safety through research programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure may be made to a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the written request of the individual.

2. In the event of litigation where the defendent is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose

such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA will contract with expert medical consultants for the purpose of obtaining advice on petitioner's eligibility for compensation. Relevant records may be disclosed to such consultants. The consultants shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA.

4. HRSA will release the petitioner's complete medical file and may release consultants' report to the Department of Justice and the Special Master of the U.S. Claims Court for adjudication of the compensation claim.

5. HRSA will disclose for publication in the **Federal Register** the petitioner's name, court docket number, petitioner's city and State, and name of person vaccinated, if not the petitioner, as required by the National Childhood Vaccine Injury Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and disks.

RETRIEVABILITY:

(1) Docket number assigned by the U.S. Claims Court, (2) petitioner and/or name of person vaccinated, and (3) Social Security Number.

SAFEGUARDS:

1. Authorized Users: Access is limited to the System Manager and authorized BHPr/HRSA personnel responsible for administering the program. BHPr/HRSA will maintain a current list of authorized users.

2. Physical Safeguards: All files are kept in standard locking file cabinets during non-work hours; and disk packs and computer equipment are kept in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24-hour basis in secured areas. Security guards perform random checks on the physical security of the record storage area.

3. Procedural Safeguards: BHPr/HRSA is establishing stringent safeguards in line with the sensitivity of the records. These include: Handcarrying files from office to office in sealed envelopes, transmitting records to consultants by registered mail; escorting visitors into areas where records are maintained; utilizing passwords for computer access; securing areas where records are stored. A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

RETENTION AND DISPOSAL:

The records shall be disposed of by shredding three years after the termination of all administrative and judicial proceedings, as determined by a final adjudication. Upon written notification to the Government, the petitioner shall have the right to reclaim the original medical records submitted to the Government, after the final adjudication.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Health Professions, HRSA, Room 4-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager at the above address.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as a driver's license, passport, voter registration card, or union card. Identification paper with current photograpsh are preferred but not required. Additional identifcation may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: To determine if a record exists about you, write to the System Manager. The request must contain the name and address of the individual, assigned court docket number (if known), and a written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual under false pretenses is a criminal offense subject to a $5,000 fine. Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Individual may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the appropriate offical at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Petitioner, petitioner's legal representative, health care consultants, and other interested persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-29109 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Privacy Act of 1974; Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise three notices describing systems of records maintained by the U.S. Geological Survey. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The three notices being revised, which are published in their entirety below, are:

1. Personal Property Accountability Records—Interior, USGS-7 (previously published on October 2, 1986; 51 FR 35299).

2. Security—Interior, USGS-11 (previously published on October 2, 1986; 51 FR 35299).

3. Personnel Investigations Records—Interior, USGS-23 (previously published on February 16, 1988; 53 FR 4468).

The notice describing personal property accountability records (USGS-7) is being amended to add compatible routine use disclosures to other Federal agencies and consumer reporting agencies to facilitate the collection of debts owed to the Federal government.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on proposed new routine uses. Therefore, written comments on the proposed routine uses can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before January 18, 1989, will be considered. The notices shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

**Oscar W. Mueller, Jr.,**

*Director, Office of Management Improvement.*

Date: December 9, 1988.

**INTERIOR/USGS-7**

**SYSTEM NAME:**

Personal Property Accountability Records—Interior, USGS-7.

**SYSTEM LOCATION:**

(1) Property Management Branch, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 210, Reston, VA 22092.

(2) Administrative offices in all or substantially all field locations. (For a listing of specific locations, contact the System Manager.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Geological Survey employees who are accountable for bureau-owned controlled property.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records of assignment of an internal identification number and acknowledgement of receipt by employees. Records of transfers to other accountable employees. Inventory records containing employee social security numbers and duty stations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

40 U.S.C. 483(b).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary uses of the records are to: (a) Maintain control over bureau-owned controlled property; (b) maintain up-to-date inventory of the property and to record accountability for the property. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (6) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset and to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12).* Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are both manual and computerized.

**RETRIEVABILITY:**

By employee social security number.

**SAFEGUARDS:**

Access by authorized employees only.

**RETENTION AND DISPOSAL:**

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 307-10.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Property Management Branch, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 210, Reston, VA 22092.

**NOTIFICATION PROCEDURE:**

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURES:**

Same as above. See 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Individual employees.

**INTERIOR/USGS-11**

**SYSTEM NAME:**

Security—Interior, USGS-11.

**SYSTEM LOCATION:**

Office of the Chief Geologist, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, VA 22092.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Geologic Division employees who have been granted security clearances.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Record of security clearance for Division personnel; contains name, title, organization, office location, social security number, place and date of birth, and type of security clearance of person being granted access.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 10501.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary use of the records is to keep current records on security clearances in the Geologic Division. Disclosure outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual systems maintained in locked files. Automated system maintained in dBase III file.

RETRIEVABILITY:

Indexed by individual name.

SAFEGUARDS:

Maintained with security meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau of Records Disposition Schedule, RCS/Item 306–16.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, VA 22092.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

## INTERIOR/USGS-23

SYSTEM NAME:

Personnel Investigations Records—Interior, USGS–23.

SYSTEM LOCATION:

Security Office, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 150, Reston, VA 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current Geological Survey employees who (a) are granted access to classified information; (b) are filling sensitive positions not requiring access to classified information; (c) are being considered either for access to classified information or for filling sensitive positions not requiring access to classified information; and (d) are found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

2. Former Geological Survey employees who (a) were granted access to classified information; (b) were filling sensitive positions not requiring access to classified information, and (c) were found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with or from law enforcement agencies, employers, and educational institutions attended; foreign affiliations which may affect his or her loyalty to the United States; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: (1) To designated officials, officers, and employees of the USGS, DOI, OPM, DOE, CIA, FBI, and all other agencies and departments of the Federal Government who in the performance of their duties have an interest in the individual for employment purposes, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States Government; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All investigative records are maintained in file folders stored in Class 5 security containers having manipulation resistant combination locks.

RETRIEVABILITY:

All records are indexed by surname in alphabetical order.

SAFEGUARDS:

The card index for this system of records is contained in a metal cabinet with a secure key locking device; the key is secured in a Class 5 security container. All containers and cabinets are further secured in a windowless room having one doorway which is secured by a key locking device. Both the key locking devices and combinations to the Class 5 security containers are under stringent security controls.

**RETENTION AND DISPOSAL:**

(a) OPM background investigative files supporting secret-sensitive decompartmented information and top secret-infrequent access to sensitive compartmented information are retained until the awarded security clearance or employment is terminated. All other OPM investigative files are routinely destroyed within 90 days after receipt or upon completion of the adjudication action, whichever occurs last. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306-15b.

(b) All information, supplementing the above OPM investigative files, originated by the Geological Survey, is retained for two years following termination of awarded security clearance or employment, whichever occurs first, and is then destroyed. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306-15a.

**SYSTEM MANAGER(S) AND ADDRESS:**

Security Officer/Alternate Security Officer, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 150, Reston, Virginia 22092.

**NOTIFICATION PROCEDURE:**

Written inquiries to the System Manager are required and must include the following information in order to positively identify the individual whose records are requested: (1) Full name, (2) date of birth, (3) place of birth, (4) any available information regarding the type of record requested. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURES:**

An individual can obtain information on the procedures for gaining access to and contesting the records from the above System Manager. See 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

Same as above. See 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Information contained in this system is obtained from the following categories of sources: (1) Applications and other personnel and security forms furnished by the individual, (2) Results of investigations and other material furnished by Federal agencies.

[FR Doc. 88-29096 Filed 12-16-88; 8:45 am]

BILLING CODE 4310-31-M

---

## Fish and Wildlife Service

### Availability of the Draft Environmental Assessment Proposed Bond Swamp National Wildlife Refuge, Bibb and Twiggs Counties, Georgia

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of the draft environmental assessment for the Proposed Bond Swamp National Wildlife Refuge.

**SUMMARY:** This Notice advised the public that the Draft Environmental Assessment for the Proposed Bond Swamp National Wildlife Refuge is available for public review, effective November 22, 1988. The U.S. Fish and Wildlife Service (Service) proposes to protect and enhance approximately 6500 acres of forested wetland habitat in Bibb and Twiggs Counties, Georgia. The environmental assessment evaluates the value and significance of resources on the area in regard to potential acquisition by the Service as an addition to the National Wildlife Refuge System and to analyze other alternative uses of the area.

**DATES:** The assessment is presently available to the public as of November 22, 1988. Written comments must be received no later than January 6, 1989, to be considered.

**ADDRESSES:** Requests for copies of the assessment and other questions should be addressed to: Mr. Ronnie Shell, Refuge Manager, Piedmont National Wildlife Refuge, U.S. Fish and Wildlife Service, Round Oak, Georgia 31038: telephone commercial (912) 984-5441.

Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1200, Atlanta, Georgia 30303.

**SUPPLEMENTARY INFORMATION:** The objectives for which the area would be managed are to preserve and protect a diverse, threatened wetland ecosystem and its associated values; to preserve, protect, reestablish, and manage for endangered and threatened wildlife species; to manage for migratory birds with emphasis on providing optimum habitat for wintering waterfowl and enhancing nesting and brood habitat for wood ducks; to manage for native wildlife species and their associated habitats; and to provide opportunities for comparable public educational, interpretational, and recreational, opportunities associated with wildlife and their habitats.

Five alternatives for protection of the area are discussed in the assessment, and include No Action; Acquisition by U.S. Fish and Wildlife Service (preferred alternative); Acquisition by Another Government Agency; Acquisition by Conservation Oriented Group or Individual; and Acquisition by Conservation Easement by the U.S. Fish and Wildlife Service.

**James W. Pulliam, Jr.,**

*Regional Director.*

November 21, 1988

[FR Doc. 88-29062 Filed 12-14-88; 1:25 pm]

BILLING CODE 4310-55-M

---

### Availability of the Draft Environmental Assessment for the Purchase of Lands for the Establishment of Lake Ophelia National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of the draft environmental assessment for the purchase of lands for the establishment of Lake Ophelia National Wildlife Refuge.

**SUMMARY:** This notice advises the public that the Draft Environmental Assessment for the Purchase of Lands for the Establishment of Lake Ophelia National Wildlife Refuge is available for public review, effective November 23, 1988. Lake Ophelia National Wildlife Refuge is being proposed to preserve 38,000 acres of wintering habitat for mallards, pintails and wood ducks, and production habitat for wood ducks to help meet the habitat goals presented in the North American Waterfowl Management Plan.

The environmental assessment evaluates the value and significance of resources on the area in regard to potential acquisition by the Service as an addition to the National Wildlife Refuge System and to analyze other alternative uses of the area.

**DATES:** The assessment is presently available to the public as of November 23, 1988. Written comments must be received no later than January 6, 1989, to be considered.

**ADDRESSES:** Requests for copies of the assessment and other questions should be addressed to: Charles R. Danner, Chief, Project Development Branch, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1240, Atlanta, Georgia 30303.

Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1200, Atlanta, Georgia 30303.

**SUPPLEMENTARY INFORMATION:** The Service proposes to provide protection and management for wintering waterfowl on approximately 30,000 acres of wetland and associated habitats in the vicinity of Lake Ophelia, Avoyelles Parish, Louisiana. The area would also provide habitat for resident furbearers, alligators, and other wildlife. Secondary compatible uses would possibly include public outdoor activities such as hunting, fishing, research, environmental education, and other wildlife-oriented recreation.

Three alternatives for protection and management of the area are discussed in the assessment, and include No Action; Service Acquisition (preferred alternative); and Acquisition and Management by Others.

Establishment of the refuge and proper management will provide excellent wintering waterfowl habitat and a needed waterfowl refuge in the Lower Mississippi River Valley.

James W. Pulliam, Jr.,

*Regional Director.*

November 23, 1988.

[FR Doc. 88-29063 Filed 12-14-88; 1:26 pm]

BILLING CODE 4310-55-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 279X)]

### CSX Transportation, Inc.; Abandonment Exemption for Railroad Lines in Florence and Lee Counties, SC

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line between milepost AK-304.38, at Timmonsville, Florence County, SC, and milepost AK-313.43, at Lynchburg, Lee County, SC, a distance of 9.05 miles.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user or rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate agency has been notified in writing at least 20 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 18, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2], and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 29, 1988.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.29 must be filed by January 9, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 24, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 13, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

FR Doc. 88-29170 Filed 12-16-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-55 (Sub-No. 275X)]

### CSX Transportation, Inc.; Abandonment Exemption for Railroad Lines in Orangeburg County, SC, et al.

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 37.19-mile line of railroad between milepost AK-380.27 at Orangeburg to milepost AK-396.36 at Denmark and milepost AK-397.9 at Denmark to milepost AK-419.0 at Donora, located in Orangeburg, Bamberg, and Barnwell Counties, SC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective January 18, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 29, 1988.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 9, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 24, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 13, 1988

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88-29169 Filed 12-16-88; 8:45 am]

**BILLING CODE 7035-01-M**

---

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental isues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

## DEPARTMENT OF JUSTICE

### Diamond Reo Truck, Inc.; Lodging of Stipulation and Agreement To Compromise and Settle Environmental Claims

In accordance with Departmental policy, notice is herby given that on December 12, 1988, a proposed Stipulation and Agreement to Compromise and Settle Environmental Claims in The Matter of: Diamond Reo Trucks, Inc., Civil Action No. 74-1778-B-5, was lodged with the United States Bankruptcy Court for the Western District of Michigan. The proposed Stipulation and Agreement to Compromise and Settle Environmental Claims concerns the resolution of environmental claims of the United States Environmental Protection Agency against the Debtor, Trustee, and Estate of Diamond Reo Trucks, Inc. ("Diamond Reo"), for response costs incurred and to be incurred by the United States at the Liquid Disposal, Inc. site, located in Shelby Township, Michigan. The proposed Stipulation and Agreement to Compromise and Settle Environmental Claims requires Diamond Reo to pay the United States $300,000 as a priority claim in its bankruptcy, in exchange for a covenant by the United States not to sue Diamond Reo for any civil claims for a release for any and all civil liability to the United States, other than any claim for natural resources damages, for response costs and injunctive relief pursuant to sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, regarding the Liquid Disposal, Inc. site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to In the Matter of: Diamond Reo Trucks, Inc. D.J. Ref. 90-11-3-404.

The proposed Stipulation and Agreement to Compromise and Settle Environmental Claims may be examined at the office of the United States Attorney for the Western District of Michigan, 399 Federal Building, Grand Rapids, Michigan 49503, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Ill. 60604. Copies of the Stipulation and Agreement to Compromise and Settle Environmental Claims may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Stipulation and Agreement to Compromise and Settle Environmental Claims may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land & Natural Resources Division.*

[FR Doc. 88-29097 Filed 12-16-88; 8:45 am]

**BILLING CODE 4410-01-M**

---

### Landfill, Inc.; Lodging a Complaint and Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 21, 1988 a proposed Complaint and partial Consent Decree in *United States* v. *Landfill, Inc.*, Civil Action No. 88-Z-1714, was lodged with the United States District Court for the District of Colorado.

The Complaint filed by the United States was brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to compel the cleanup of the Marshall/Boulder Landfill near Marshall, Colorado, and the reimbursement of the United States for its response costs associated with the site. The defendants include Landfill, Inc., The City of Boulder, Cowdrey Corporation, and several individuals who own portions of the site. These defendants are referred to herein as the "Settling Defendants." There are four additional defendants, three corporations which allegedly disposed of hazardous substances at the site, and an individual who was an officer, director, and shareholder of one of the corporations.

The Consent Decree, lodged with the Complaint, provides for the Settling Defendants to design and undertake remedial action chosen by the United States Environmental Protection Agency ("EPA"), and described in EPA's Record of Decision ("ROD") entered September 26, 1986. The remedy selected by EPA in its ROD consists of: Fencing, regrading, and revegetating the Site to restrict access and minimize infiltration;

collecting contaminated ground water by a series of drains partially surrounding the site to eliminate the off-site transport of contaminants via alluvial ground water; treating the ground water by air stripping with off-gas carbon adsorption to reduce concentrations of volatile organics in the ground water to the most conservative of the applicable or relevant and appropriate standards and criteria (and to prevent the escape of volatile organics into the atmosphere); and monitoring to assess the ground water and surface water to assess the effectiveness of the selected remedial alternative. In addition, the Decree provides that the defendants shall reimburse the United States $200,000. The United States has spent approximately $750,000 to date at the site.

The Consent Decree provides for stipulated penalties against the defendants if a schedule attached to the Scope of Work for the cleanup is not met. The Consent Decree also includes covenant-not-to-sue provisions and reservations of rights.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Landfill, Inc.*, DOJ Ref. No. 90-11-2-195. The proposed Complaint and Consent Decree may be examined at the office of the United States Attorney, District of Colorado, Suite 1200, Federal Building, 1961 Stout Street, Denver, Colorado, 80294. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. Copying costs are $.10 per page, and the Consent Decree is 48 pages long, so a request for a copy of the Consent Decree must be accompanied with a check or money order made out to the Treasurer of the United States for $4.80.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-29099 Filed 12-16-88; 8:45 am]

BILLING CODE 4410-01-M

## Virgin Islands Housing Authority; Lodging of Consent Decree

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Virgin Islands Housing Authority*, Civil Action No. 86-112, was lodged with the United States District Court for the District of the Virgin Islands on December 12, 1988. The proposed Consent Decree provides for the completion of cistern cleaning and repairs and other capital improvements to the Virgin Islands Housing Authority's public water systems, adherence to prescribed operation, maintenance, and water quality monitoring procedures, and the payment of a civil penalty for alleged past violations of the Safe Drinking Water Act, 42 U.S.C. 300f *et. seq.*, and the National Interim Primary Drinking Water regulations, 40 CFR Part 141.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Virgin Islands Housing Authority*, D.J. Ref. No. 90-5-1-1-2550.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of the Virgin Islands, St. Thomas, United States Virgin Islands 00801; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $3.00, payable to the Treasurer of the United States, to cover the costs of reproduction.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-29098 Filed 12-16-88; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL ECONOMIC COMMISSION

### Meeting

**AGENCY:** National Economic Commission.

**ACTION:** Notice of Commission meeting.

**SUMMARY:** The National Economic Commission ("the commission") will hold meetings on January 4, January 5, January 10 and January 11, 1989. The commission was established by Section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

*Date, Time and Place:* January 4, 1989, 11:00 a.m.-5:30 p.m., Room 562, Dirksen Senate Office Building, Washington, DC; January 5, 1989, 9:00 a.m.-5:30 p.m., Room 562, Dirksen Senate Office Building, Washington, D.C.; January 10, 1989, 10:00 a.m.-6:00 p.m., Room 562, Dirksen Senate Office Building, Washington, DC; January 11, 1989, 9:00 a.m.-4:30 p.m., Room 562, Dirksen Senate Office Building, Washington, D.C.

*Agenda:* January 4, 1989: Economic assumptions and review of budget options. January 5, 1989: Alternative baselines and treatment of social security. January 10, 1989: Fiscal policy and deficit targets. January 11, 1989: Components of deficit reduction package.

*Closed Meeting:* The January 4 meeting will be closed to the public. The January 5 meeting will be open to the public from 9:00 a.m. to 11:00 a.m., and closed to the public from 11:00 a.m.-5:30 p.m. The January 10 meeting will be open to the public from 10:00 a.m. to 12 noon, and closed from noon to 6:00 p.m. The January 11 meeting will be closed to the public. All closed meetings will be closed in order to avoid disclosure of information the premature disclosure of which would be likely to significantly frustrate the implementation of the Commission's mandate within section 552b(c)(9), United States Code.

**FOR ADDITIONAL INFORMATION CONTACT:** Jim Hildreth at 425-8986, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:** See Federal Register, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

**Drew Lewis,**

*Co-Chairman.*

**Robert S. Strauss,**

*Co-Chairman.*

[FR Doc. 88-29117 Filed 12-16-88; 8:45 am]

BILLING CODE 6820-45-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting; Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202/786-0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings 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 discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* January 9, 1989.
*Time:* 8:00 a.m. to 5:00 p.m.
*Room:* 415.
*Program:* This meeting will review applications submitted for Humanities Projects in Museums and Historical Organizations, submitted to the Office of General Programs, for projects beginning after July 1, 1989.

2. *Date:* January 12-13, 1989.
*Time:* 8:00 a.m. to 5:00 p.m.
*Room:* 415.
*Program:* This meeting will review applications submitted for Humanities Projects in Museums and Historical organizations, submitted to the Office of General Programs, for projects beginning after July 1, 1989.

3. *Date:* January 24-25, 1989.
*Time:* 8:00 a.m. to 5:00 p.m.
*Room:* 415.
*Program:* This meeting will review applications submitted for Humanities Projects in Museums and Historical organizations, submitted to the Office of General Programs, for projects beginning after July 1, 1989.

**Stephen J. McCleary,**
*Advisory Committee Management Officer.*

[FR Doc. 88-29065 Filed 12-16-88; 8:45 am]
BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-261]**

### Carolina Power & Light Co.; H.B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23, issued to Carolina Power & Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

#### Environmental Assessment

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to certain reactor parameters applicable to the reactor coolant loop resistance temperature detector (RTD) system and to support the elimination of the RTD bypass system.

The proposed action is in accordance with the licensee's application for amendment dated July 26, 1988, as supplemented by letters dated August 26 and November 1, 1988.

*The Need for the Proposed Action*

The proposed change to the TS is required to provide the licensee with the correct values of parameters applicable to the reactor coolant loop resistance temperature detector system. The proposed change would support the elimination of the RTD bypass system and reduce the occupational radiation exposure due to maintenance of the bypass system.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TS with regard to environmental impacts. The proposed revision to the TS involves correcting certain parameters as applicable to the RTD system, and the application of these corrected values would have no radiological environment impacts. These corrected values would also support the elimination of the RTD bypass system. The elimination of the bypass system would not result in any environmental impacts which exceed those evaluated in the Final Environmental Statement related to the operation of the facility and would result in savings in occupational radiation exposure associated with the maintenance of the bypass system (approximately 0.1 person-rem/year). Accordingly, the Commission concludes that this proposed action would not result in significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves the use of systems located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

*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 errors in instrument setpoints.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the H. B. Robinson Steam Electric Plant, Unit No. 2, dated April 1975.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

#### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed 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 26, 1988, as supplemented on August 26, and November 1, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 12th day of December 1988.

For the Nuclear Regulatory Commission.

**Ronnie H. Lo,**

*Acting Project Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-29087 Filed 12-16-88; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on January 11, 1989, Room P-114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

*Wednesday, January 11, 1989—8:30 a.m. until 12:45 p.m.*

The Subcommittee will discuss the design of air systems, problems experienced by utilities with these systems, Industry activities to improve the performance of such systems, and the proposed resolution of Generic Issue 43, "Air Systems Reliability."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492-9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: December 12, 1988.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 88-29083 Filed 12-16-88; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on January 11, 1989, Room P-114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

*Wednesday, January 11, 1989-1:30 p.m. until the conclusion of business*

The Subcommittee will discuss Air Operated Valve Testing and Operating Experience (including Solenoid Air Control Valves) and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpido Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: December 12, 1988.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 88-29084 Filed 12-16-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

**Extension**

Rule 12g3-2, SEC File No. 270-104
Rule 13e-1, SEC File No. 270-55

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted Rule 12g3-2 and Rule 13e-1 for approval of an extension of clearance.

Rule 12g3-2 is an exemption for certain foreign securities affecting 1800 filers at an estimated one burden hour per response.

Rule 13e-1 addresses issuer repurchases in a third party tender offer situation. Currently, there are 20 responses annually at an estimated 13 burden hours per response. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235–119 and 3235–0305), Room 3228, New Executive Office Building, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

December 9, 1988.

[FR Doc. 88–29078 Filed 12–16–88; 8:45 am]

BILLING CODE 8010–01–M

---

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 12, 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:

Sterling Chemicals, Inc.
 Common Stock, $.10 Par Value (File No. 7–4075)
Cypress Semiconductor Corporation
 Common Stock, $.01 Par Value (File No. 7–4076)
Bank of New York Co., Inc.
 Common Stock, $7.50 Par Value (File No. 7–4077)
Lands End, Inc.
 Common Stock, $.01 Par Value (File No. 7–4078)
Midway Airlines, Inc.
 Common Stock, $.01 Par Value (File No. 7–4079)
Hasbro, Inc.
 8% Convertible Preferred Stock (File No. 7–4080)
ICH Corporation
 $1.75 Convertible Exchange Preferred Stock (File No. 7–4081)
Arrow Electronics, Inc.
 Depository Convertible Exchange Preference Shares (File No. 7–4082)
Lomas & Nettleton Mortgage Investors
 Warrants expiring March 1, 1990 (File No. 7–4083)
Advanced Micro Devices, Inc.
 Depository Convertible Exchange Preference Shares (File No. 7–4084)
Arkla, Inc.
 $3.00 Convertible Exchange Preferred Stock, Series A (File No. 7–4085)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 3, 1989, 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. 88–29076 Filed 12–16–88; 8:45 am]

BILLING CODE 8010–01–M

---

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 12, 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:

British Steel Plc
 1st Interim American Depositary Receipts (File No. 7–4086)
Magma Copper Co.
 Class B Common Stock (File No. 7–4087)
Universal Foods Corporation
 Common Stock, $0.10 Par Value (File No. 7–4088)
Viacom Inc.
 $3.875 Exchangeable Preferred Stock (File No. 7–4089)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 3, 1989, 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. 88–29077 Filed 12–16–88; 8:45 am]

BILLING CODE 8010–01–M

---

[File No. 22–18972]

## Application and Opportunity for Hearing; Northwest Airlines, Inc.

December 12, 1988.

Notice is hereby given that Northwest Airlines, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under two indentures between the Company and the Bank, one of which is to be dated as of January 1, 1989 (the "January Indenture") and one of which is dated as of December 1, 1988 (the "December Indenture"), both of which have been submitted for qualification under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of such Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest, or resign. Subsection (1) of such section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the December Indenture, the Company will issue up to $100,000,000 aggregate principal amount of its Equipment Trust Certificates, (the "December Certificates"), Series A (the "December Series"). Pursuant to the January Indenture, the Company will

issue up to $100,000,000 aggregate principal amount of its Equipment Trust Certificates, (the "January Certificates"), Series B (the "January Series"). The December Series will be issued under the December Indenture between the Bank, The First National Bank of Boston, as owner trustee related to such Series and the Company, in the principal amount of up to $100,000,000. The January Series will be issued under the January Indenture between the Bank, The First National Bank of Boston, as owner trustee related to such Series and the Company, in the principal amount of up to $100,000,000. The December and January Certificates will be registered under the Securities Act of 1933 (the "1933 Act") and the Indentures will be qualified under the Act.

(2) There is no default under any of the Indentures.

(3) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property and neither Indenture will provide for cross-collateralization or cross-defaults.

(4) Such differences as exist among the Indentures referred to herein and the respective obligations or the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The Company waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-18972, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than January 6, 1988, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-29075 Filed 12-16-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-88-48]

### Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before January 8, 1989.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ________, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 13, 1988.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

#### Petitions for Exemption

*Docket No.:* 25036

*Petitioner:* Florida Express

*Regulations Affected:* 14 CFR 121.371(a) and 121.378

*Description of Relief Sought:* To extend Exemption No. 4750 that allows petitioner to use certain original equipment manufacturers to perform maintenance, preventive maintenance, and alteration outside the United States on its BAC 1-11 aircraft or on the engines and components for such aircraft. Exemption No. 4750 expired on October 31, 1988.

*Docket No.:* 25585

*Petitioner:* Gerald A. McGinnis

*Regulations Affected:* 14 CFR 91.42(a)(1)

*Description of Relief Sought/ Disposition:* To allow flight instruction for hire to take place using designated home-built amphibious seaplanes. Denial, December 6, 1988, Exemption No. 5000

*Docket No.:* 054CE

*Petitioner:* Air Tractor Incorporated

*Regulations Affected:* 14 CFR 23.49(b)(1)

*Description of Relief Sought/ Disposition:* To allow certification of the Air Tractor Model AT-503 and AT-802 airplane with stall speeds ($V_{so}$) greater than the 61 knots requirement. Grant, November 28, 1988, Exemption No. 4980.

[FR Doc. 88-29073 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

### Research and Special Programs Administration

### Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of

Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATE:** Comment period closes January 4, 1989.

*Address Comments To:* Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 4242-X | U.S. Department of Defense, Falls Church, VA. | 4242 |
| 5206-X | Amos L. Dolby Company, Corsica, PA. | 5206 |
| 5206-X | Austin Powder Company, Cleveland, OH. | 5206 |
| 5206-X | El Dorado Chemical Company, St. Louis, MO. | 5206 |
| 5600-X | Ozark-Mahoning Company, Tulsa, OK. | 5600 |
| 5600-X | Solkatronic Chemicals, Inc., Fairfield, NJ. | 5600 |
| 6443-X | Montana Sulphur & Chemical Company, Billings, MT. | 6443 |
| 6752-X | Pennwalt Corporation, King of Prussia, PA. | 6752 |
| 6773-X | E. I. du Pont de Nemours & Company, Inc., Wilmington, DE. | 6773 |
| 7052-X | Ocean Technology, Inc., Burbank, CA. | 7052 |
| 7060-X | Federal Express Corporation, Memphis, TN. | 7060 |
| 7076-X | LaMotte Chemical Products Company, Chestertown, MD (See Footnote 1). | 7076 |
| 7495-X | Ethyl Corporation, Baton Rouge, LA. | 7495 |
| 7834-X | U.S. Department of Defense, Falls Church, VA. | 7834 |
| 7835-X | Big Three Industries, Inc., Houston, TX. | 7835 |
| 8086-X | U.S. Department of Defense, Falls Church, VA. | 8086 |
| 8086-X | Boeing Aerospace Company, Seattle, WA. | 8086 |
| 8178-X | National Aeronautics and Space Administration, Washington, DC. | 8178 |
| 8450-X | LTV Missiles and Electronics Group, Dallas, TX (See Footnote 2). | 8450 |
| 8451-X | Martin Electronics, Inc., Perry, FL. | 8451 |
| 8451-X | Battelle Columbus Division, Columbus, OH. | 8451 |
| 8536-X | Pennwalt Corporation, Lucidol Division, Buffalo, NY. | 8536 |
| 8554-X | ECONEX Incorporated, Wheaton, IL. | 8554 |
| 8554-X | ECONEXPRESS Incorporated, Wheaton, IL. | 8554 |
| 8554-X | Amos L. Dolby Co., Corsica, PA. | 8554 |
| 8555-X | Morton Thiokol, Inc., Brigham City, UT. | 8555 |
| 8865-X | Carleton Technologies, Inc., East Aurora, NY (See Footnote 3). | 8865 |
| 8904-X | Keith Huber, Inc., Gulfport, MS. | 8904 |
| 8910-X | Canbar Inc., Waterloo, Ont., Canada. | 8910 |
| 8930-X | General Aviation, Inc., Greeneville, TN. | 8930 |
| 8938-X | Cryogenic Services, Inc., Canton, GA. | 8938 |
| 8955-X | Western Atlas International, Inc., Houston, TX. | 8955 |
| 8968-X | Degussa Corporation, Ridgefield Park, NJ. | 8968 |
| 9024-X | SLEMI, Paris, France | 9024 |
| 9024-X | Arbel-Fauvet-Rail, St Laurent Blangy, France. | 9024 |
| 9138-X | National Aeronautics and Space Administration, Washington, DC. | 9138 |
| 9265-X | Guinn Flying Service, Houston, TX. | 9265 |
| 9308-X | Pennwalt Corporation, Buffalo, NY. | 9308 |
| 9319-X | W. R. Grace & Company, Dearborn Division, Lake Zurich, IL. | 9319 |
| 9377-X | Atlas Power Company, Dallas, TX. | 9377 |
| 9381-X | Pasco Zinc Corporation, Torrance, CA. | 9381 |
| 9430-X | ENPAC Corporation, Jacksonville, FL. | 9340 |
| 9433-X | Aldrich Chemical Company, Inc., Milwaukee, WI. | 9433 |
| 9507-X | Air Products and Chemicals, Inc., Allentown, PA. | 9507 |
| 9577-X | Altus Corporation, San Jose, CA (See Footnote 4). | 9577 |
| 9580-X | McDonnell Douglas Corporation, St. Louis, MO. | 9580 |
| 9658-X | Fluoroware, Inc., Chaska, MN. | 9658 |
| 9685-X | Certified Tank Manufacturing, Inc., Compton, CA. | 9685 |
| 9686-X | Fluoroware, Inc., Chaska, MN. | 9686 |
| 9705-X | E. I. du Pont de Nemours & Company, Inc., Wilmington, DE. | 9705 |
| 9744-X | Akzo Chemicals, Inc., Chicago, IL (See Footnote 5). | 9744 |
| 9785-X | Polish Ocean Lines, 81-310 Gdynia, Poland. | 9785 |
| 9804-X | Rotational Molding Inc., Gardena, CA (See Footnote 6). | 9804 |
| 9828-X | Mobay Corporation, Kansas City, MO (See Footnote 7). | 9828 |

(*1*) Amend to allow shipment of oxidizers and the quantity per each vial or bottle to 250 ml or 250 grams.
(*2*) To authorize 2 inch diameter sight hold in side boards of container and use of steel strapping to hold lids in place.
(*3*) To authorize gas reservoirs to be refilled a maximum of 5 times and to authorize refilling of the packaging.
(*4*) To authorize shipment of a new battery set in a 30-gallon non-DOT spec. steel drum.
(*5*) To increase the net weight authorized per package from 31.5 pounds to 32 pounds.
(*6*) To allow use of average wall thickness and retesting at a maximum 5 psig.
(*7*) To authorize shipment of azinphos methyl mixtures, solid, classed as Poison B contained in DOT specification 12B fiberboard boxes without being contained in PVA packets

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 6250-P | McDonnell Douglas Corporation, St. Louis, MO. | 6250 |
| 6418-P | Trical, Inc., Hollister, CA | 6418 |
| 7052-P | TDW Pipeline Surveys, Tulsa, OK. | 7052 |
| 7052-P | R-Con International, Salt Lake City, UT (See Footnote 1). | 7052 |
| 7607-P | Department of Health Services, Sacramento, CA. | 7607 |
| 8009-P | Horizon Energy Resources, Inc., Orlando, FL. | 8009 |
| 8214-P | Toyota Motor Corporation, Torrance, CA. | 8214 |
| 8451-P | Olin Corporation, Winchester Division, East Alton, IL. | 8451 |

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 8526-P | Monkem Co., Inc., Joplin, MO. | 8526 |
| 8526-P | Fore Way Express, Inc., Wausau, WI. | 8526 |
| 8627-P | Champion Chemicals, Inc., Houston, TX. | 8627 |
| 8723-P | Explosives Experts, Inc., Sparks, MD. | 8723 |
| 9549-P | Shaped Charge Specialist, Inc., Mansfield, TX. | 9549 |
| 9617-P | Alamo Explosives Company, Inc., Houston, TX. | 9617 |
| 9694-P | C-I-L Inc., Forest Products Division, Montreal, Quebec, Canada. | 9694 |
| 9785-P | Lykes Bros. Steamship Co., Inc., New Orleans, LA. | 9785 |
| 9902-P | Purusar Corp., Sunnyvale, CA. | 9902 |
| 9916-P | Petrolite Corporation, St. Louis, MO. | 9916 |
| 9934-P | Advance Research Chemicals, Inc., Catoosa, OK. | 9934 |
| 9953-P | Monroe Trucking, Inc., West Monroe, LA. | 9953 |
| 9953-P | Fore Way Express, Inc., Wausau, WI. | 9953 |
| 9953-P | Monkem Company, Inc., Joplin, MO. | 9953 |

(*1*) Authorizes shipment of reserve-activated lithium/thionyl chloride IRSS battery modules packaged in DOT Specification 19A wooden boxes.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 12, 1988.

**J. Suxanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 88-29080 Filed 12-16-88; 8:45 am]

**BILLING CODE 4960-10-M**

## Application for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applicants for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

**DATES:** Comment period closes January 19, 1989.

*Address Comments To:* Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 10082-N | SternAir, Inc., Dallas, TX | 49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b) Part 107 Appendix B, Subpart B. | To authorize transport of certain class A, B and C explosives that are forbidden for carriage by air or are in quantities greater than authorized for transport by air. (Mode 4). |
| 10084-N | Composite Engineering Co., Corona, CA. | 49 CFR Part 173 Subparts D, F and H as applicable. | To authorize manufacture, marking and sale of non-DOT specification cargo tanks manufactured from fiberglass reinforced plastic similar to the DOT Specifications MC312 and 307 cargo tanks for transportation of those materials authorized for transport in DOT Spec MC312 and 307 cargo tanks. (Mode 1). |
| 10086-N | Breed Automotive Corp., Boonton Township, NJ. | 49 CFR 172.101, 173.88(g), 173.94(a) | To authorize shipment of an Airbag Module, Explosive Power Device, classed as a class B explosive as a flammable solid packaged in a DOT spec. 12B carton with styrofoam modules inserted to restrict movement with a gross weight not to exceed 35 pounds. (Modes 1, 2, 3, 4). |
| 10087-N | HLA Engineers, Inc., Dallas, TX | 49 CFR 173.124(a)(6) | To authorize shipment of Ethylene oxide classed as a flammable liquid in a 6076 gallon stainless steel DOT Spec 51 portable tank insulated by a 4" polyurethane foam and a 20 gauge stainless steel jacket. (Modes 1, 2, 3). |
| 10088-N | Hedwin Corp., Baltimore, MD | 49 CFR 178.211-2(b), Part 173 Subparts D and F. | To authorize manufacture, marking and sale of non-DOT fiberboard containers similar to DOT Spec 12P containers for packaging those corrosive liquids for which a DOT 12P/2U container is authorized and flammable liquids with a flash point above 20 degrees F. (Mode 1). |
| 10090-N | Clawson Tank Co., Clarkson, MI | 49 CFR Part 173 Subparts D and F | To authorize manufacturing marking, and sale of a rotationally molded, reusable polyethylene tank within a wire frame enclosure for transport of certain Flammable liquids, Corrosive materials and Oxidizers. (Modes 1, 2). |
| 10091-N | Allergan Optical, Irvine, CA | 49 CFR 173.1200(a)(8)(ii)(e) | To authorize shipment of a buffered, normal saline pressurized with nitrogen gas which is nontoxic, nonflammable and nonhydrocarbon as an aerosol Consummer Commodity, ORM-D, in plastic containers which have been waterbath tested at 100 degree F. (Modes 1, 2, 3, 4, 5). |
| 10092-N | Morton Thiokol, Inc., Brigham City, UT. | 49 CFR 173.91(a)(2) | To authorize shipment of an Illuminating projectile, Class B explosive with projectiles set in a pallet base with a support cover held in place by strapping. (Modes 1, 3). |
| 10093-N | Olin Chemicals, Stamford, CT | 49 CFR 173.182(b)(6)(ii) | To authorize shipment of Sodium nitrate in a polypropylene bag made of 9 denier polypropylene fibers spun continuously to form a sheet weighing at least 3.5 ounces per sq. yd with an inner liner of 4 mil thick polyethylene. (Modes 1, 2, 3). |

NEW EXEMPTIONS—Continued

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 10094–N | Columbia Nitrogen Corp., Augusta, GA. | 49 CFR 173.154(a)(17) | To authorize shipment of Ammonium Nitrate Solution (containing not less than 15% water) classed as an oxidizer in DOT Specification 111A100W1 tank cars equipped with insulation and interior tank lined with plasite 9570. (Mode 2). |
| 10095–N | Moli Energy Limited, Burnaby, B.C., Canada. | 49 CFR 173.206, 175.3, 175.85, Part 107 Appendix B. | To authorize shipment of certain Lithium batteries and cells packed in strong inner fiberboard containers containing a maximum of 125 grams of lithium in one inner container with no cell containing more than 0.85 grams of lithium. (Mode 5). |
| 10096–N | Alby Klorat AB, S-774 00 Avesta, Sweden. | 49 CFR 173.163 | To authorize shipment of Potassium chlorate classed as an oxidizer packed in 4-ply paper bags with a plastic lining, 56 bags of 25 kg each, on a wooden pallet, shrink wrapped in plastic. (Modes 1, 2, 3). |
| 10097–N | Hercules Inc., Magna, UT | 49 CFR 173.88(e)(2)(ii), 173.92(a)(1), 173.92(b). | To authorize shipment of Rocket motors, Class B explosive in a propulsive state. (Mode 1). |

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 13, 1988.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 88-29081 Filed 12-16-88; 8:45 am]

BILLING CODE 4960-10-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 "Masterworks of Ming and Qing Painting from the Forbidden City" (see list [1]), imported from abroad for the temporary exhibition without profit withing the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii, beginning on or about January 7, 1989 to on or about February 12, 1989, the High Museum of Art, Atlanta, Georgia, beginning on or about February 28, 1989 to on or about April 2, 1989, the Cleveland Museum of Art, Cleveland, Ohio, beginning on or about April 15, 1989 to or on or about May 21, 1989, the Minneapolis Institute of Arts, Minneapolis, Minnesota, beginning on or about June 3, 1989 to on or about July 9, 1989, and the Metropolitan Museum of Art, New York, New York, beginning on or about September 16, 1989 to or about October 29, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Date: December 14, 1988.

**R. Wallace Stuart,**

*Acting General Counsel*

[FR Doc. 88-29122 Filed 12-16-88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street, SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register

Vol. 53, No. 243

Monday, December 19, 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**

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, December 13, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), the Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the application of Pioneer Financial, A Cooperative Bank, an operating non-FDIC-insured cooperative bank located at 46 Pleasant Street, Malden, Massachusetts, for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), and (c)(9)(B)).

Dated: December 14, 1988.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 88-29199 Filed 12-15-88; 4:47 pm]

BILLING CODE 6714-01-M

# Corrections

Federal Register
Vol. 53, No. 243
Monday, December 19, 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.

## DEPARTMENT OF AGRICULTURE

### Rural Electrification Administration

### 7 CFR Part 1785

### Cushion of Credit Account Computations and Procedures

*Correction*

In proposed rule document 88-27384 beginning on page 48651 in the issue of Friday, December 2, 1988, make the following correction:

**§ 1785.66 [Corrected]**

On page 48651, in the third column, in § 1785.66, remove the asterisks after the last line of text.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88G-0318]**

### Gattefosse, S.A.; Filing of Petition for Affirmation of Gras Status

*Correction*

In notice document 88-24289 appearing on page 41241 in the issue of Thursday, October 20, 1988, make the following corrections:

On page 41241, in the third column, under **SUPPLEMENTARY INFORMATION**, in the third and fourth lines, "21 ULS.C. 348(b)(5)" should read "21 U.S.C. 348(b)(5)", and in the sixth line "231 CFR 170.35" should read "21 CFR 170.35".

BILLING CODE 1505-01-D

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB-39 (Sub-No. 12)]**

### St. Louis Southwestern Railway Co.; Abandonment in Smith and Cherokee Counties, TX; Findings

*Correction*

In notice document 88-28468 appearing on page 49937 in the issue of Monday, December 12, 1988, make the following correction:

In the first column, in the document headings, the docket number should read as it appears above.

BILLING CODE 1505-01-D

federal register

Monday
December 19, 1988

# Part II

# International Development Cooperation Agency

## Agency for International Development

**22 CFR Part 210**

**Foreign Donations of Agricultural Commodities (416b Program); Proposed Rule**

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**

**Agency For International Development**

**22 CFR Part 210**

**[AID Regulation 10]**

## Foreign Donations of Agricultural Commodities [416(b) Program]

**AGENCY:** Agency for International Development (A.I.D.).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule indicates how the regulations at 22 CFR Part 210 would be revised to implement the amendments to section 416(b) of the Agricultural Act of 1949 contained in the Food Security Act of 1985, Pub. L. 99-198, in the Agricultural Aid and Trade Missions Act, Pub. L. 100-202, Dec. 22, 1987, and in other legislation, and to make other necessary changes.

**DATE:** Comments on these proposed rules must be received on or before February 17, 1989.

**ADDRESS:** Comments should be submitted to: Ms. Jessie C. Vogler, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (703) 875-4438.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Rosa, Actg. Chief, Project Coordination Division, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (703) 875-4706.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under A.I.D.'s required procedures. It has been determined that these program provisions will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since A.I.D. is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. It has been determined that the provisions of 5 U.S.C. 553 do not apply to this rule since the subject matter of the rule involves foreign affairs functions of the United States and a matter relating to grants.

Comments are requested within 60 days after publication and the proposed rule will be reviewed in order that a final document discussing comments received and any desirable amendments may be published in the **Federal Register.** The final document will be made effective upon publication in the **Federal Register.**

### Background

Section 416 of the Agricultural Act of 1959 (the "Act") was amended by the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253) to authorize the foreign donation of dairy products acquired by the Commodity Credit Corporation (hereinafter "CCC") through its price support program. In order to coordinate resources efficiently in carrying out the section 416 Foreign Donation Program, CCC and the Agency for International Development (hereinafter "A.I.D.") entered into a Memorandum of Understanding on August 9, 1983, which established A.I.D. as the agent for CCC in the operation of certain aspects of the section 416 program. Pursuant to this Memorandum of Understanding, A.I.D. promulgated the regulation set out at 22 CFR Part 210 governing the program. (49 FR 22024, May 24, 1984). The regulation provides that CCC and A.I.D. shall enter into agreements with Cooperating Sponsors (as defined in the regulation) for the donation of agricultural commodities. Such agreements shall include a description of the programs that the Cooperating Sponsor shall undertake with respect to the donated commodities (hereinafter "Plan of Operations").

The Agricultural Programs Adjustment Act of 1984 (Pub. L. 98-258) amended section 416 of the Act to expand the authority of CCC to donate agricultural commodities for assistance abroad. The amendments placed the authority for the foreign donation program in new subsection (b) of section 416, authorized the foreign donation of wheat acquired by CCC under its price support operations in addition to dairy products, authorized the donations for carrying out assistance under Title II of the Agricultural Trade Development and Assistance Act of 1954 ("Pub. L. 480"), and authorized sale or barter of donated commodities as approved by the Secretary of Agriculture.

Public Law 99-83 further added rice as an eligible commodity for foreign donation.

The Food Security Act of 1985 (Pub. L. 99-198) extensively revised section 416(b) of the Act by, among other things, expanding the categories of agricultural commodities which are eligible for donation and expanding the provisions regarding the sale or barter of commodities donated to cooperating sponsors.

In view of these amendments CCC and A.I.D. executed a revised Memorandum of Understanding on August 13, 1987 to reflect the new provisions of section 416(b) of the Act.

Further changes to section 416(b) were made pursuant to amendments to the Agricultural Aid and Trade Mission Act in 1988.

### Summary of New Provisions

This proposed rule incorporates the following major changes:

*(1) Eligible Commodities*

Section 416(b)(2) of the Act now states that the Secretary of Agriculture (hereinafter "Secretary") may provide dairy products, wheat, rice, feed grains and oilseeds acquired by CCC through its price support operations and such other edible agricultural commodities as are acquired by the Secretary or CCC in the normal course of operations.

This proposed rule amends the regulations to authorize the donation of the expanded categories of eligible commodities.

*(2) Bellmon Determination*

Section 416(b)(3)(B) of the Act provides that the requirements of section 401(b) of Pub. L. 480 shall apply with respect to commodities furnished under section 416(b). Section 401(b) of Pub. L. 480 (popularly known as "the Bellmon Determination"), provides that no agricultural commodity may be made available except upon a determination by the Secretary that (1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent spoilage or waste and (2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country.

A Bellmon Determination will be made prior to the signing of any section 416(b) Foreign Donation Program Agreement. This proposed rule provides that section 416(b) Foreign Donation Program Agreements are subject to suspension or termination where changed circumstances indicate that the original Bellmon Determination is no longer valid.

*(3) Usual Marketing Requirements*

Section 416(b)(3)(C) of the Act states that the Secretary shall take reasonable precautions to ensure (1) that commodities furnished will not displace or interfere with sales that might otherwise be made, and (2) that sales or barter of the donated commodities will not unduly disrupt world prices of agricultural commodities nor normal patterns of commercial trade with friendly countries.

This proposed rule amends the regulation to implement the section 416(b)(3)(C) requirements. Where the Cooperating Sponsor is a foreign government, the regulation continues the present provision that the U.S. Government may require the foreign government to assure the commercial purchases of a stated usual marketing requirement for the donated commodity. The amended regulation adds a prohibition against re-exporting the donated commodity, as well as other related commodities, as defined in the section 416(b) Foreign Donation Program Agreement. This export prohibition applies both to direct donation programs and to sales or barter of the donated commodities. Therefore, when a foreign government's Plan of Operation includes a program of monetization, that government will be required to take reasonable precautions to prevent the re-export of the donated commodities after sale.

It is not feasible to impose any export limitation provision in an agreement with a Cooperating Sponsor other than a foreign government. These trade considerations will be reviewed prior to signing an agreement with a foreign government, and an agreement will only be signed if it is determined that the furnishing of commodities will not be likely to have the adverse effects on world trade.

*(4) Sales and Barter*

Section 416(b)(7) authorizes the Secretary to approve the sale and barter of the donated commodities and products thereof in the following situations: (1) Sales or barter that are incidental to the donation of the commodities or products; (2) sales or barter to finance the distribution, handling and processing costs of the donated commodities or products in the importing country or in a country through which such commodities or products must be transshipped, or other activities in the importing country that are consistent with providing food assistance to needy people; (3) sales or barter to cover certain costs borne by CCC including, among others, packaging, enrichment, presevation and fortification in the United States; (4) when the Cooperating Sponsor is an intergovernmental organization, sales or barter of donated commodities consistent with the Cooperating Sponsor's normal programming procedures in the distribution of commodities; and (5) sales of commodities and products furnished to nonprofit and voluntary agencies, or cooperatives, as Cooperating Sponsor, to transport, store, distribute or otherwise enhance the effectiveness of the use of commodities and products donated, and to implement income generations for community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities.

Section 416(b)(7) further provides that no portion of the proceeds or services realized from sales or barter may be used to meet operating or overhead expenses, except as provided above in relation to intergovernmental organizations, and except for personnel and administrative costs incurred by local cooperatives.

This proposed rule modifies the regulation to explicitly authorize sales and barter under the above described circumstances.

The rule further provides that approval of sale or barter proposals will be made on a case-by-case basis. In reviewing the Cooperating Sponsor's Plan of Operations, special emphasis will be placed upon (i) the intended uses of local currency proceeds generated from the sale (or the goods and services received from barter), (ii) the ability of the Cooperating Sponsor to use effectively and to account for such proceeds, goods or services, and (iii) the risk of displacing commercial sales and imports, among other things.

The provisions of this proposed rule which relate to sales and barter are intended to balance the need to control against abuses, with the need to protect the Cooperating Sponsor from overly intensive procedural, reporting or recordkeeping requirements. Accordingly, this proposed rule provides certain minimal safeguards which apply to all section 416(b) Foreign Donation Program Agreements, but also provides sufficient discretion to require greater safeguards where past experience with the recipient country or the current conditions in the recipient country indicate the need.

*(5) Use of Foreign Currency Proceeds or Services*

Section 416(b)(8)(B) provides that the Secretary shall be responsible for regulations governing the use of foreign currency proceeds which will provide reasonable safeguards to prevent abuses in the conduct of sales and barter activities.

This proposed rule therefore amends the regulation to require that a Cooperating Sponsor must state in its Plan of Operations the anticipated sales price or value to be received in any sale or barter of the donated commodities, or, if the price or value of services cannot be estimated the rule requires the Cooperating Sponsor to provide sufficient procedural protections to assure that a fair price is obtained. The rule also requires the Cooperating Sponsor to create a special account for maintenance of the proceeds and that the Plan of Operations identify the uses of the proceeds.

If, pursuant to an approved Plan of Operations, the Cooperating Sponsor intends to sell or barter the donated commodities to any other public or private entity, the Cooperating Sponsor must enter into a written agreement governing the sale or barter of the donated commodities. Copies of the executed agreements shall be provided to the USAID or Diplomatic Post.

In light of the authority to allow sales and barters of commodities, the proposed rule amends the regulation governing voluntary contributions from recipients in order to clarify what would be permissible as a voluntary contribution as opposed to a sale, and what the obligations will be of Cooperating Sponsors who accept voluntary contributions in exchange for commodities.

*(6) Reporting and Record Keeping Requirements*

Section 416(b)(9)(A) of the Act requires Cooperating Sponsors which receive commodities and products approved for sale or barter to report to the Secretary with respect to several items. Items reported must include (1) the quantity of commodities furnished for sale or barter, (2) the amount of funds or the value of services generated in foreign currency and U.S. dollars, and (3) the uses of the proceeds or services; and (4) the amount of foreign currency proceeds used and the percentage of the quantity of all commodities and products donated and such use represented.

This proposed rule amends the regulation to incorporate these reporting requirements. The rule also amends the recordkeeping requirements in the regulation to expand their coverage to include all documents relating to the sale or barter of donated commodities, and to the programs financed with the foreign currency proceeds. These changes allow for monitoring the recipients' compliance with the section 416(b) Foreign Donation Program Agreement.

*(7) Preference For U.S. Flag Vessels*

Section 1142 of the Food Security Act of 1985 amended the cargo preference provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1101 *et seq.*), requiring an increase in the minimum percentage of section 416(b) cargo that must be shipped aboard U.S. flag vessels. This percentage is now 75%.

*(8) Appendix*

Appendix I provides a sample section 416(b) Foreign Donation Program Agreement.

*(9) Time of Payment of Ocean Transportation*

Problems have arisen over the deadline set out in the regulation for the reimbursement of ocean transportation costs. The regulation is amended to clarify that the date shall be 30 days from the date that the Director of Pub. L. 480 Operations Division, FAS/USDA, Washington, DC 20250, receives the proper documentation. Cooperating Sponsors, as defined in the regulation, are encouraged to contact the Chief, Project Coordination Division, Office of Food For Peace (FFP/PCD), Agency for International Development for information and assistance in preparing proposals and thereby expedite consideration of the proposals. Telephone: [703] 875–4706.

**List of Subjects in 22 CFR Part 210**

Agricultural commodities, Exports, Foreign aid, Foreign relations.

Accordingly, Part 210 of Title 22 of the Code of Federal Regulations is proposed to be revised to read as follows:

## PART 210—FOREIGN DONATION OF AGRICULTURAL COMMODITIES (SECTION 416(b) FOREIGN DONATION PROGRAM)

Sec.



**Authority:** Section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)).

### § 210.1 General purpose and scope.

(a) *Terms and conditions.* Pursuant to section 416(b) of the Agricultural Act of 1949, as amended [section 416(b)], this Part 210 contains the terms and conditions governing the donation of eligible agricultural commodities for carrying out programs of assistance in developing countries and friendly countries, under Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended [Pub. L. 480], through friendly foreign governments and private or public agencies, including cooperatives and intergovernmental organizations. However, these regulations do not apply to the World Food Program or the United Nations Relief and Work Agency except as may be specifically provided.

(b) *Legislation.* Section 416(b) generally provides that the Secretary of Agriculture may furnish, for carrying out certain programs of assistance in developing countries and friendly countries, eligible agricultural commodities acquired by the Secretary or the Commodity Credit Corporation [CCC]. CCC may pay the processing, packaging, transporting, handling and other charges, including certain costs of overseas delivery in connection with furnishing such commodities; and may pay processing and domestic handling costs in the form of eligible commodities.

(c) These regulations are promulgated by the Agency for International Development [A.I.D.] pursuant to a Memorandum of Understanding between A.I.D. and CCC establishing A.I.D. as agent for CCC in the operation of certain aspects of the section 416(b) Foreign Donation Program allocating responsibilities for administering the section 416(b) Foreign Donation Program.

### § 210.2 Definitions.

(a) "A.I.D." means the Agency for International Development including, when applicable, each USAID Mission overseas. "AID/W" means the office of A.I.D. located in Washington, DC.

(b) "Agricultural Commodities" or "Commodities" means agricultural commodities or products acquired by the Secretary of Agriculture or by the CCC and designated by the Secretary of Agriculture as available for disposition under the section 416(b) Foreign Donation Program.

(c) "Barter" means to exchange agricultural commodities for services or goods.

(d) "CCC" means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

(e) "Cooperating Sponsor" means a foreign government, a public or non-profit private humanitarian organization, an intergovernmental organization, a cooperative, the American Red Cross, or other agency which has been approved by A.I.D. for participation in a section 416(b) Foreign Donation Program.

(f) "Cooperative" means a non-profit organization, engaged in the production or marketing of agricultural commodities.

(g) "Diplomatic Post" means an office of the Department of State located in a foreign country, and may include an Embassy, Legation, or Consular office.

(h) "Duty Free" means exempt from all customs duties, tolls, taxes or governmental impositions levied on the act of importation.

(i) "Local Currency Proceeds" or "Proceeds" means the net local currency generated from the sale of donated agricultural commodities, after deducting appropriate costs the cooperating sponsor pays in getting the food ready for sale and getting it to where it can be sold, or, where appropriate, generated from the voluntary contribution of nominal monetary amount for donated agricultural commodities.

(j) "Humanitarian organization" means an organization that has the purpose of carrying out activities designed to provide assistance benefiting needy people.

(k) "Non-profit" means that the residue of income over operating expenses accruing in any activity, project, or program is used solely for the operation of such activity, project or program.

(l) "Ocean transportation" or "ocean freight" includes the transportation of commodities, and freight payments thereon, under an intermodal through bill of lading.

(m) "Private organization" means a non-governmental organization that receives private funding.

(n) "Recipients" means persons who are in need of food assistance because of their economic or nutritional condition or who are otherwise eligible to receive commodities for their own use in accordance with the terms and conditions of the Foreign Donation Program Agreement.

(o) "Sale" means the exchange of donated agricultural commodities for local currency.

(p) "USAID Mission" means an office of A.I.D. located in a foreign country, and includes a USAID Representative, USAID Affairs Officer or a Section of the Embassy handling A.I.D. matters in a foreign country.

(q) "USDA" means the U.S. Department of Agriculture.

**§ 210.3 Eligibility requirements for organizations to participate.**

(a) To be eligible to participate as a Cooperating Sponsor in the section 416(b) Foreign Donation Program, an entity must be within the definition of "Cooperating Sponsor" in § 210.2(e).

(b) All non-profit private humanitarian organizations that have received dairy products for foreign distribution from CCC under the authority of section 416 prior to the issuance of this regulation are eligible to continue to participate in the section 416(b) Foreign Donation Program.

(c) All organizations registered with A.I.D. under A.I.D. Regulation 3, 22 CFR Part 203 ("Registration of Agencies for Voluntary Foreign Aid") are eligible to participate in the section 416(b) Foreign Donation Program.

(d)(1) Organizations eligible to be registered under paragraph (c) of this section which are not so registered, and which are not eligible under paragraph (b) of this section, may apply for registration by contacting the Registration Officer, Office of Private and Voluntary Cooperation (FVA/PVC), Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523.

(2) In exceptional circumstances, one or more of the provisions in the Conditions of Registration contained in A.I.D. Regulation 3, 22 CFR Part 203 may be waived by the Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance [FVA], of A.I.D., on the recommendation of the Office of Food for Peace following the registration review by the Office of Private and Voluntary Cooperation (FVA/PVC).

(e)(1) Certain categories of organizations engaged exclusively in religious activities, and private foundations, which do not meet Condition No. 1 of A.I.D. Regulation 3, 22 CFR Part 203, will not be registered but may, in exceptional circumstances, apply to become Cooperating Sponsors in the section 416(b) Foreign Donation Program, following the review described in paragraph (e)(2) of this section.

(2) The Office of Food for Peace will conduct a review of applications described in paragraph (e)(1) of this section, and of applications put forward outside the context of registration, and forward recommendations to the Assistant Administrator, FVA Bureau, A.I.D., for a decision regarding participation.

(f) Cooperating Sponsors must submit to A.I.D. a program plan of operations for approval. For details see § 210.6(a) herein.

**§ 210.4 Section 416(b) Foreign Donation Program Agreement.**

(a) The Cooperating Sponsor will enter into a written agreement with A.I.D. and CCC by signing a section 416(b) Foreign Donation Program Agreement which will incorporate by reference the terms and conditions set forth in this part (A.I.D. Regulation 10) and the approved Program Plan of Operation.

(b) Appendix I of this Regulation is a Sample Format of the section 416(b) Foreign Donation Program Agreement. This format will be modified when deemed appropriate by the U.S. Government, as in the case of monetization or emergency programs.

**§ 210.5 Availability of commodities.**

(a) Commodities will be available for distribution and use in accordance with the provisions of the section 416(b) Foreign Donation Program Agreement. Unless provided otherwise in the section 416(b) Foreign Donation Program Agreement, the quality of agricultural commodities donated by CCC and the packaging of the agricultural commodities will be in accordance with agricultural commodity and packaging specifications determined by CCC and set forth in the section 416(b) Foreign Donation Program Agreement.

(b) Unless the section 416(b) Foreign Donation Program Agreement provides otherwise, title to all bulk commodities shall pass at the time and place of delivery free on board (FOB) vessel at U.S. port, and title to all other commodities shall pass at the time and place of delivery free along side (FAS) vessel at U.S. port, or in the case of intermodal shipments, at the intermodal delivery point.

(c)(1) The CCC will pay processing, packaging, transporting, handling, and other charges incurred in making commodities available to Cooperating Sponsors as agreed upon in the section 416(b) Foreign Donation Program Agreement.

(c)(2) All costs and expenses incurred subsequent to the transfer of title to Cooperating Sponsors shall be borne by them except that, when specifically provided in the section 416(b) Foreign Donation Program Agreement, or upon the determination by CCC that it is in the best interest of the program to do so, CCC may pay or make reimbursement for transportation from U.S. ports to designated ports or points of entry abroad, and in the case of urgent and extraordinary relief requirements, transportation costs from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs.

(d) Shipment of commodities and the payment of ocean freight shall be made in accordance with the following procedures:

(1) When the Cooperating Sponsor agrees to pay ocean transportation costs and to perform freight forwarding and booking functions:

(i) The Kansas City Commodity Office (KCCO) ASCS/USDA will furnish the Cooperating Sponsor with a Notice of Commodity Availability (form CCC-512) which will name the receiving country, commodity quantity, and date available at U.S. port. The Cooperating Sponsor will arrange ocean transportation and freight forwarding in accordance with the instructions of CCC regarding the quantity of commodities to be shipped on U.S. flag vessels. Non-Vessel Operating Common Carriers (NVOCC) may not be employed to carry U.S.-flag shipments. Approval of ocean transportation arrangements shall be obtained from KCCO/ASCS/USDA, P.O. Box 419205, Kansas City, MO 64141-0205. Telephone: (816) 926-6658.

(ii) The Cooperating Sponsor will complete form CCC-512 indicating the name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port, and will sign and return the completed form to KCCO/ASCS/USDA, P.O. Box 419205, Kansas City, MO 64141-0205, with a copy of Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, DC 20250. KCC/ASCS/USDA will then issue instructions to have the commodity shipped f.a.s. vessel, or f.o.b. vessel, U.S. port or intermodal delivery point for consignment to the Cooperating Sponsor as specified in the form CCC-512.

Unless provided otherwise in the section 416(b) Foreign Donation Program Agreement, U.S. ports will be selected on the basis of the lowest landed cost to CCC, except where mutually agreeable to both the Cooperating Sponsor and KCCO/ASCS/USDA.

(2) When CCC agrees to pay ocean transportation costs and the Cooperating Sponsor agrees to perform freight forwarding and booking functions:

(i) KCCO/ASCS/USDA will furnish the Cooperating Sponsor with a form CCC-512 which will name the receiving country, commodity, quantity and date available at U.S. port. The Cooperating Sponsor will then arrange ocean transportation and freight forwarding in accordance with the instructions of CCC regarding the quantity of commodities to be shipped on U.S.-flag vessels. Non-Vessel Operating Common Carriers (NVOCC) may not be employed to carry U.S.-flag shipments. Approval of ocean transportation arrangements shall be obtained from KCCO/ASCS/USDA, P.O. Box 419205, Kansas City, MO 64141-0205, Telephone (816) 926-6658.

(ii) The Cooperating Sponsor will complete the form CCC-512 indicating ocean freight rate as stated in the Federal Maritime Commission [FMC] tariff [with tariff identification], name of steamship company, name of vessel, flag of vessel, and estimated time of arrival at U.S. port, and will sign and return the completed form CCC-512 to KCCO/ASCS/USDA, with a copy to Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, DC 20250. KCCO/ASCS/USDA will then issue instructions to have the commodity shipped f.a.s. vessel or f.o.b. U.S. port, or intermodal delivery port for consignment to Cooperating Sponsor as specified in the CCC-512. Unless provided for otherwise in the section 416(b) Foreign Donation Program Agreement, U.S. ports will be selected on the basis of lowest landed cost to CCC, except where mutually agreeable to the Cooperating Sponsor and KCCO/ASCS/USDA.

(iii) CCC will pay the Cooperating Sponsor or the ocean carrier, as may be agreed upon, for ocean transportation costs within 30 days of receipt by the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, Washington, DC 20250, of the following documentation: (A) One copy of completed form CCC-512 [as indicated above]; (B) three copies of freighted onboard bill of lading signed by originating carrier or intermodal through bill of lading; (C) two copies of booking note or charter party covering ocean transportation of subject cargo; (D) request for payment, indicating amount due and certification that payment has been made to ocean carrier or request for direct payment to ocean carrier.

(3) When CCC issues instructions to Cooperating Sponsors regarding freight forwarding and booking ocean transportation, CCC will comply with the provisions of the Merchant Marine Act, 1936, as amended, regarding the minimum cargo to be shipped aboard U.S.-flag vessels, and will endeavor to meet tonnage requirements on an overall program basis for the 12-month compliance period.

**§ 210.6 Obligations of the Cooperating Sponsor.**

(a) Plan of Operations. Each Cooperating Sponsor shall submit to A.I.D. or the Diplomatic Post a description of the programs it is sponsoring or proposes to sponsor. This description will, when approved by A.I.D. and CCC, provide the basic information for preparation of the section 416(b) Foreign Donation Program Agreement and will be incorporated by reference into such an agreement. Within the overall objectives of the approved program, elements of the program may be changed by written agreement of authorized representatives of the Cooperating Sponsor, A.I.D., and CCC. In case of conflict between the Agreement and the approved Plan of Operations, the Agreement will prevail. The Plan of Operations should specify clearly how the proposed program is to be conducted. In addition to any other requirements of law or regulation, the Plan of Operations will include the following information:

(1) A description of program goals and criteria for measuring progress toward reaching the goals.

(2) A geographic, economic, medical or other appropriate description of the recipient target group that is sufficient to readily determine recipient eligibility to receive section 416(b) commodities and to assure that such commodities will not displace commercial sales in the recipient country.

(3) Statements as to what public recognition and container markings will be employed in the distribution of the commodities.

(4) A logistics plan that demonstrates the adequacy of port, transportation, and storage/warehousing facilities to handle the flow of commodities to recipients without undue risk of spoilage or waste.

(5) Sufficient information concerning the plan of distribution and the recipient target group so that a determination can be made as to whether the proposed food distribution would result in a substantial disincentive to domestic food production.

(6) Statements detailing the support of the government of the host country acquiring the commodity or any other support for the proposed program.

(7) Kind and quantity of agricultural commodities requested and delivery schedule.

(8) Describe any reprocessing or repackaging that will occur in the country, giving location and name of firm that will perform the reprocessing or packaging.

(9) Explain how costs of administration, storage, transportation, processing, repackaging, special labels, issuance of information materials, etc., will be financed.

(10) Describe other contributions such as financial, human resources, other food commodities, etc., including the source, estimate of the amount and role the contributions will play in the program.

(11) Explanation of the methods of educating recipients on the source of agricultural commodities, program requirements, and preparation and use of agricultural commodities, particularly steps to be taken to assure that there will be no harmful unintended effects from the distribution of the agricultural commodities. Therefore, examples of educational materials for the field or guidelines should be presented which include food handling precautions, such as refrigeration, to prevent contamination and spoilage of, for instance, cheese and butter products; immediate preparation of foods before eating; discarding of leftovers if no refrigeration is available; and information about proper use and preparation of non-fat dry milk [NFDM] in its dry and reconstituted form where NFDM is distributed. Specifically, in child feeding programs where NFDM is distributed in bulk directly to families, projects at a minimum should include education on (i) promotion of exclusive breast feeding for 4-6 months and continuation of breast feeding after solid foods are introduced, (ii) use of NFDM as a protein supplement, (iii) the importance of combining NFDM with energy rich foods, e.g. oil, fats, porridges, stews, etc., (iv) precautions to be taken to prevent contamination of foods prepared with NFDM, and (v) precautions to be taken when NFDM is reconstituted as a milk drink, when there is evidence that it may be used this way.

(12) Description of the method to be used to supervise, monitor and account for the distribution, sale or barter of the agricultural commodities to assure that they are distributed to the intended recipients or sold or bartered as

intended, and any proceeds used as intended.

(13) Information to show approval of host government to import the donated agricultural commodity duty free.

(14) A detailed description of any intended sales or barter by the Cooperating Sponsor of agricultural commodities requested under the section 416(b) Foreign Donation Program. Information to be supplied will include:

(i) Quantity and type of commodities to be sold or bartered and anticipated purchasers or barter parties.

(ii) The amount of local currencies anticipated to be generated from the sale, or the value of the goods or services anticipated to be generated from the barter, of the donated agricultural commodities; except that, where such an amount or value cannot be estimated, the Cooperating Sponsor will describe the method to be used to ensure that a fair return of cash, goods or services will be received for the commodities.

(iii) All generated local currencies should be deposited into an interest bearing account for control and monitoring. The accrued interest will be added to the principal and disbursed for approved projects or activities.

(iv) The specific uses of local currency proceeds and a timetable for their expenditure.

(v) The method of accounting for the receipt, deposit and disbursement of local currency proceeds, which must include a separate special account.

(vi) A description of the goods or services for which donated agricultural commodities are intended to be bartered; and a method for ensuring that such goods or services are received.

(vii) Information concerning the extent to which any sale or barter of the donated agricultural commodities would displace normal commercial imports or displace or interfere with local production, or any sales that might otherwise be made.

(b) *Other Requirements.* (1) The terms and conditions of the section 416(b) Foreign Donation Program Agreement and of this regulation, except as otherwise specifically provided, are deemed to be accepted by the Cooperating Sponsor in submitting the Plan of Operations.

(2) The Cooperating Sponsor agrees to use the agricultural commodities only in accordance with the section 416(b) Foreign Donation Program Agreement and this regulation.

(3) The donation of agricultural commodities by CCC and the payment by CCC of any costs specified in the section 416(b) Foreign Donation Program Agreement is made with the understanding that the Cooperating Sponsor will carry out its obligations as provided in the Agreement and this part. The Cooperating Sponsor shall be liable to CCC for any of the following actions: (i) failure to export the commodities from the U.S., (ii) re-entry of the commodities into the U.S., (iii) any use of the commodities, or of the local currency generated from their sale, or of services generated through their barter that is inconsistent with the section 416(b) Foreign Donation Program Agreement.

For any such failure, the Cooperating Sponsor shall reimburse CCC for all costs paid by CCC in making the agricultural commodities available to the Cooperating Sponsor, including the acquisition cost to CCC. However, the Cooperating Sponsor shall not be liable to CCC with respect to any commodity which, before or after export from the U.S., is lost or damaged, destroyed or deteriorated to the extent that the commodity cannot be used for the purposes described in the section 416(b) Foreign Donation Program Agreement unless such loss or damage was due to the fault or negligence of the Cooperating Sponsor.

(4) Cooperating Sponsors shall distribute agricultural commodities only to eligible recipients. Distribution shall be made without regard to nationality, race, color, sex, or religious or political beliefs of recipients.

(5) Funds derived from voluntary contributions by recipients may be used by Cooperating Sponsors for payment of program costs. Contributions must not be required from a recipient as a condition for participation in a program and the amount of such contributions must not exceed a minor portion of the market value of the commodity or product. Program costs are such costs as transportation, storage, handling, insect and rodent control, rebagging of damaged or infested commodities, and other program expenses specifically authorized by A.I.D. to carry out the program for which the commodities were furnished. The agreement may require Cooperating Sponsors who collect voluntary contributions to comply with some or all of the reporting requirements which apply to sales of donated commodities, where the nature of the program and the total amount of fees to be collected justify this requirement.

(6) Sales or barters. (i) Foreign donations of agricultural commodities under section 416(b) are intended primarily as food aid. However, with CCC approval, some or all of the commodities donated may be sold or bartered when such sale or barter is incidental to the donation of agricultural commodities, e.g. the sale of damaged commodities. Any other sale or barter must be pursuant to an approved Plan of Operations. Such plans will be approved by CCC and A.I.D. on a case-by-case basis for the following purposes only:

(A) To finance the distribution, handling or processing costs of the donated commodities in the importing country, or in a country through which the commodities must be transshipped; or

(B) Where the sale or barter is to finance other activities in the importing country that are consistent with providing food assistance to needy people; or

(C) In the case of Cooperating Sponsors which are intergovernmental organizations, for sales or barter that are consistent with their normal programming procedures in the distribution of commodities; or

(D) In the case of Cooperating Sponsors which are nonprofit and voluntary agencies, or cooperatives, for sales that are to finance the transportation, storage, distribution or otherwise enhance the effectiveness of the use of the donated commodities, and to implement income generating community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities.

(ii) The agricultural commodities may be sold or bartered only in the importing country, unless otherwise approved, or unless incidental to donation per § 210.6(b)(6)(i) above.

(iii) No part of the proceeds or services realized from sales or barters may be used for operating and overhead expenses (except as may be permitted for intergovernmental organizations under § 210.6(b)(6)(i)(C) above, or for personnel and administrative costs of local cooperatives).

(iv) Cooperating Sponsors which sell or barter commodities must enter into a written agreement with the other party. A copy of the executed agreement must be provided to the USAID or Diplomatic Post concerned.

(v) Cooperating Sponsors do not need to monitor, manage, report on or account for the distribution or use of commodities after all sales proceeds have been fully deposited in an account established by the cooperating sponsor and title to the commodities has passed to buyers or other third parties pursuant to a sale under a monetization program. However, the sales proceeds and the uses thereof must be monitored, managed, reported and accounted for as provided in § 210.11 and other relevant sections of this Regulation.

(vi) It is not mandatory that commodities approved for monetization be imported and sold free of all duties and taxes, but nongovernmental cooperating sponsors may negotiate agreements with the host government permitting the tax-free import and sale of such commodities. Even where the cooperating sponsor negotiates tax-exempt status, the prices at which the cooperating sponsor sells the commodities to the purchaser should reflect prices that would be obtained in a commercial transaction, i.e., the prices would include the cost of duties and taxes. Thus, the amounts normally paid for duties and taxes would accrue for the benefit of the cooperating sponsor's approved program.

(7) Use of funds. Funds accruing from recipient contributions or any other program income or monetization proceeds may be used for payment of indigenous or third country personnel employed by Cooperating Sponsor or recipient agencies in support of the section 416(b) programs and for other costs allowable under the approved program (provided, that no portion of the proceeds or services realized from sales or barter of commodities subject to this Regulation may be used to meet operating and overhead expenses, except for personnel and administrative costs of local cooperatives, and except by intergovernmental agencies or organizations, as consistent with their normal programming procedures in the distribution of commodities). However, such funds may not be used to acquire, develop, construct, alter or upgrade land, buildings or other real property improvements or structures that are either (i) owned or managed by a church or other organization engaged exclusively in religious activity, or (ii) used in whole or in part for sectarian purposes.

The Cooperating Sponsor shall use commercially reasonable procurement practices in purchasing goods or services with monetization proceeds, funds derived from the program or funds provided by the U.S. Government, and shall employ procedures that prevent fraud, self-dealing, conflicts of interest or noncompetitive procurement. Each voluntary agency (including cooperatives) agrees to use monetization proceeds, program income and funds provided by the U.S. Government only for costs such as would be allowable under Office of Management and Budget (OMB) Circular No. A–122, "Cost Principles for Nonprofit Organizations, available at the Office of Administration, OMB, Publications Unit, Room G–236, New Executive Office Building, Washington, DC 20503. Title to real and personal property acquired with monetization proceeds, program income or funds provided by the U.S. Government shall be vested in the cooperating sponsor, but the cooperating sponsor shall dispose of such property as directed by the USAID Mission or the Diplomatic Post in the event the program terminates or is transferred to another entity. Records and documents regarding procurements using monetization proceeds, program income or funds provided by the U.S. Government shall be maintained and made available for inspection as required in § 210.11 below.

(8) In the case of a section 416(b) Foreign Donation Program Agreement with a foreign government, the foreign government will be asked to provide data showing commercial and non-commercial imports of the types of agricultural commodities requested, for the past five years, by country of origin. Such an agreement with a foreign government may include a usual marketing requirement, and a prohibition on the re-export of donated commodities as well as of other related commodities specified in the agreement.

(9) Shipment of commodities may be suspended at any time upon a determination by CCC:

(i) That storage facilities are not adequate to prevent spoilage or waste or are not available at the time of export of the commodity, or

(ii) That distribution of the commodity in the recipient country will result in a substantial disincentive to, or interference with, domestic production or marketing in the recipient country.

(10) In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be arranged by the Cooperating Sponsor unless otherwise provided in the section 416(b) Foreign Donation Program Agreement.

(11) If a Cooperating Sponsor books cargo for ocean transportation and is unable to have a vessel at U.S. port of export for loading in accordance with the agreed shipping schedule and CCC thereby incurs additional expenses, the Cooperating Sponsor shall reimburse CCC for such expenses if CCC determines that the expenses were incurred as a result of the fault or negligence of the Cooperating Sponsor.

**§ 210.7 Processing, repackaging and labeling of commodities in a foreign country.**

(a) Cooperating Sponsors may arrange for the processing of donated commodities into different end-products and for packaging or repackaging prior to distribution. When commercial facilities are used for processing, packaging or repackaging, Cooperating Sponsors shall enter into written agreements for such services. Copies of the executed agreements shall be provided to the USAID or Diplomatic Post in the country of distribution. A portion of the donated commodities may be sold or bartered to defray costs of processing, packaging or repackaging but only if authorized in an approved Plan of Operations.

(b) If prior to distribution the Cooperating Sponsor arranges for packaging or repackaging donated agricultural commodities the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled in the language of the country in which the commodities are to be distributed with the following information:

(1) Name of Commodity.

(2) Furnished by the people of the United States of America.

(3) Not to be sold or exchanged. Emblems or other identification of cooperating sponsors may also be added.

(4) If the donated commodities are to be sold or bartered pursuant to an approved Plan of Operations after reprocessing, packaging or repackaging, paragraphs (b)(2) and (b)(3) of this section, will not apply.

**§ 210.8 Arrangements for entry and handling in foreign country.**

(a) Except for commodities which are to be monetized (see § 210.6(b)(vi) above), agricultural commodities shall be admitted duty free and exempt from all taxes.

(b) Cooperating Sponsors shall make all necessary arrangements for receiving the donated commodities and for prompt entry and transit in the foreign country, and will be responsible for storage and maintenance from time of delivery at port of entry or point of entry abroad. The Cooperating Sponsor will be responsible for maintaining the commodities in such manner as to assure that they remain in good condition until their distribution, sale or barter.

(c) If the packages of agricultural commodities are discharged from vessel in a damaged condition, and are repackaged to ensure that the commodities arrive at the distribution point in wholesome condition, CCC will only reimburse Cooperating Sponsors who are nonprofit private humanitarian organizations for approved expenses incurred for such repackaging. No prior approval is required for such expenses equaling $500 or less. If such expense is estimated to exceed $500, the authority to repackage and incur such expense must be approved by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived in writing by the USAID or Diplomatic Post.

**§ 210.9 Disposition of commodities unfit for authorized use.**

Damaged commodities are to be disposed of in accordance with § 211.8 of A.I.D. Regulation 11, 22 CFR Part 211. Such a disposition should be reported to the Chief, Claims and Collections Division, KCMO/ASCS/USDA, P.O. Box 205, Kansas City, Missouri 64141.

**§ 210.10 Liability for loss, damage or improper distribution of commodities—claims and procedures.**

(a) Notwithstanding transfer of title to the Cooperating Sponsor, CCC shall have the right to file, pursue, and retain the proceeds of collections from claims arising from ocean transportation cargo loss and damage, including loss and damage occurring between the time of transfer of title and loading aboard a vessel. CCC assumes general average contributions in all valid general average incidents which may arise from the movement of commodity to the destination port. CCC shall receive and retain all allowances in general average. The Cooperating Sponsor shall promptly notify CCC of any situation involving the loss, damage or deterioration of the commodity and of any salvage services or declaration of general average. CCC will reimburse the Cooperating Sponsor for any salvage costs and related costs arising from salvage services. All cargo loss documents shall be forwarded to: Chief, Claims and Collections Division, KCMO/ASCS/USDA, P.O. Box 419205, Kansas City, Missouri 64141–0205. The Cooperating Sponsor shall promptly furnish such office any assignment of rights which may be requested. Where the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from any claims related to ocean freight charged.

(b) The Cooperating Sponsor shall promptly provide written notice to A.I.D. or the Diplomatic Post of the circumstances pertaining to any loss, damage or misuse of commodities occurring within the recipient country or intermediate country. Proceeds from any resultant claim actions shall be forwarded to USAID Missions and/or Diplomatic Posts for deposit with the U.S. Disbursing Officer, American Embassy, preferably, in U.S. dollars with instructions to credit the deposit to CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401.

(c) Unless the instructions issued by CCC referred to in paragraph (a) of this section provide otherwise for certain designated Cooperating Sponsors, the Claims and Collections Division, KCMO/ASCS/USDA will arrange for the services of an independent cargo surveyor to survey the discharge of section 416(b) commodities at the foreign discharge port.

(d) Cooperating Sponsors shall send copies of all reports and documents pertaining to the discharge of commodities to Chief, Claims and Collections Division, KCMO/ASCS/USDA, P.O. Box 419205, Kansas City, Missouri 64141–0205.

(e) CCC will reimburse Cooperating Sponsors for the costs incurred by them in obtaining the services of an independent surveyor to conduct examinations of the cargo and render its report.

(f) Claims arising prior to loading of the agricultural commodities on ocean vessels, and claims against ocean carriers, will be handled according to procedures established by CCC. Claims arising after discharge will be handled according to procedures established by A.I.D. for handling inland Pub. L. 480, Title II claims (A.I.D. Regulation 11, § 211.9, and Chapter 8 of A.I.D. Handbook 9).

(g) When payment is to be made for commodities misused, lost or damaged, the value shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred, or, in case it is not feasible to determine such market price, the f.o.b. or f.a.s. commercial export price, of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the U.S. Government in making delivery to the Cooperating Sponsor. When the value is determined on a cost basis, the Cooperating Sponsor may add to the value any provable costs it has incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the U.S. Government. With respect to claims other than ocean carrier loss and/or damage claims, the value of misused, lost or damaged commodities may be determined on some other justifiable basis, at the request of the Cooperating Sponsor and/or upon the recommendation of the USAID or Diplomatic Post.

**§ 210.11 Records and reporting requirements of cooperating sponsor.**

(a) The Cooperating Sponsor shall maintain records and documents for a period of three years from the close of the U.S. fiscal year to which they pertain, or longer, upon request by A.I.D. for cause, such as in the case of litigation on a claim or audit concerning such records and documents, in a manner which will accurately reflect all transactions pertaining to the receipt, transportation, storage and distribution of the commodities, and pertaining to the receipt and disbursement of any currency generated from sale or other distribution of any goods, or to services generated from barter of the commodities. In the case of sale or barter this requirement shall not be deemed to include the distribution of the commodities after such sale or barter.

(b) The Cooperating Sponsor shall cooperate with and give reasonable assistance to U.S. Government representatives to enable them at any reasonable time to examine any activities and transactions of the Cooperating Sponsor pertaining to the receipt, processing, repackaging, distribution or use of the commodities, and pertaining to the receipt and use of any local currency proceeds or goods and services generated from the sale or barter of the commodities.

(c) The Cooperating Sponsor shall submit a semi-annual report to the Chief, Projects and Coordination Division, Office of Food for Peace, FVA Bureau, A.I.D., Washington, DC, 20523, U.S.A., and a copy to the Chief, Food For Development Division, USAID Mission, c/o American Embassy containing the information required, below, by this subsection. The first report must be submitted by the date specified in the section 416(b) Foreign Donation Program Agreement and is to cover the full period since the date of that agreement. Reports thereafter should cover each subsequent six-month period in which commodities received are being distributed by the Cooperating Sponsor, or local currency proceeds are being held or disbursed. The reports must contain the following data as applicable:

(1) Receipts of agricultural commodity including the name of each vessel, discharge port(s), and date discharge was completed;

(2) Quantity of agricultural commodities sold, amount of proceeds generated from the sale and barter of the agricultural commodity, amount or value of goods or services bartered, and proceeds deposited into the special account during the reporting period;

(3) An accounting for and report on the use of any local currency proceeds generated from the sale of commodities, or goods and services.

(4) An accounting for and report on the use of all local currency generated from the sale of containers and from recipient contributions, or any other program income.

(5) Estimated commodity inventory at the end of the reporting period;

(6) Quantity of commodity on order and in transit at the end of the reporting period;

(7) Status of claims for commodity losses, both resolved and unresolved, during the reporting period;

(8) Quantity of commodity damaged or declared unfit during the reporting period;

(9) Knowledge of any disincentive to local production and marketing, or disruption of U.S. or other international commerical sales.

### § 210.12 Additional responsibilities of cooperating sponsor.

(a) The Cooperating Sponsor shall, within thirty (30) days after export, furnish evidence of export of the agricultural commodities to the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, DC 20250. If export is by water or air, two copies of the onboard carrier bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service shall be furnished. The evidence of export must show the kind and quantity of agricultural commodities exported, the date of export and the destination country.

(b) The Cooperating Sponsor warrants that it has not employed any person to solicit or secure the section 416(b) Foreign Donation Program Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee and that no consideration or payment has been made or will be made. Breach of this warranty shall give the U.S. Government the right to annul the section 416(b) Foreign Donation Program Agreement.

### § 210.13 Termination of program.

All or any part of the assistance provided under the section 416(b) Foreign Donation Program Agreement, including commodities in transit, may be suspended or terminated by CCC, if:

(a) The Cooperating Sponsor fails to comply with the provisions of its agreement or this part, or

(b) It is recommended by A.I.D. that the continuation of such assistance is no longer necessary or desirable.

CCC suspension and debarment regulations will apply to any such suspension or termination of program assistance. A.I.D. may temporarily suspend assistance in extraordinary circumstances where such suspension is necessary to maintain the integrity of the section 416(b) Foreign Donation Program. If it is determined that any commodity authorized to be supplied under the section 416(b) Foreign Donation Program Agreement is no longer available for section 416(b) Foreign Donation programs, such authorization shall terminate with respect to any commodities which, as of the date of such determination have not been delivered f.o.b. or f.a.s. vessel, provided every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

### § 210.14 Waiver and amendment authority.

(a) The Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance, A.I.D., with the approval of CCC, may waive, withdraw, or amend at any time, any or all of the provisions of this part if such provision is not statutory and it is determined to be in the best interest of the U.S. Government to do so.

(b) A section 416(b) Foreign Donation Program Agreement may be amended by written agreement of A.I.D., CCC and the Cooperating Sponsor.

### § 210.15 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements in Part 210 have been approved by the Office of Management and Budget under control number 0412–0517.

### Appendix I—Section 416(b) Foreign Donation Program Agreement Country

United States Government—Agricultural Commodity Foreign Donation Program Agreement (section 416(b))

In order to effect the distribution of agricultural commodities for the assistance of persons outside the United States, the Agency for International Development (A.I.D.), the Commodity Credit Corporation (CCC), and the (Cooperating Sponsor) agree as follows:

1. CCC agrees to donate to the Cooperating Sponsor agricultural commodities of the kind and amounts specified in section 2 of this agreement pursuant to the authority of section 416(b) of the Agricultural Act of 1949, as amended. CCC shall deliver such commodities in accordance with the delivery schedule specified in section 2.

2. Agricultural commodities to be donated to the Cooperating Sponsor are as follows:

| Commodity | Quantity pounds/metric tons | Requested delivery month to U.S. port [1] | Foreign port destination |
|---|---|---|---|
| | | | |

[1] Point where title transfers if other than U.S. port.

Note.—The Cooperating Sponsor will promptly inform CCC of any desired change in the above delivery schedule by notifying the Chief, Export Operations Branch, Agricultural Stabilization and Conservation Service/USDA, Kansas City, Missouri, 64141-0205, telephone (816) 926–6658, and CCC will endeavor to coordinate a mutually acceptable revised delivery schedule. CCC is not required to deliver commodities later than the delivery dates specified above unless a revised delivery schedule is agreed upon.

3. The payment of all costs associated with the processing, packaging, transporting, handling and other charges incurred in the distribution of the agricultural commodities will be apportioned as follows:

A. CCC agrees to donate the commodities without charge and to pay the following costs: (These costs will be determined during the negotiation of program approval.)

B. The Cooperating Sponsor agrees to pay the following costs: (These costs are determined during the negotiation of program approval).

4. The Cooperating Sponsor agrees to use the agricultural commodities only in accordance with this Agreement and the approved program.

5. The terms and conditions set forth in A.I.D. Regulation 10 and the approved Plan of Operations are incorporated into and made a part of this agreement.

Agency for International Development

By ____________________

Title: Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance (or as delegated)

Date: ____________________

Commodity Credit Corporation

By ——————————

Title: General Sales Manager, FAS and Vice President, Commodity Credit Corporation (or as delegated)

Date: ——————————

Request and Acceptance

The assistance described in this Agreement is requested and the terms and conditions of this Agreement and of A.I.D. Regulation 10, except as otherwise specifically provided herein, are accepted.

Cooperating Sponsor

By: ——————————

Title:

Date: ——————————

Dated: September 6, 1988.

**Jay F. Morris,**

*Acting Administrator.*

[FR Doc. 88-28699 Filed 12-16-88; 8:45 am]

BILLING CODE 6116-01-M

federal register

Monday
December 19, 1988

# Part III

# International Development Cooperation Agency

## Aid for International Development

## 22 CFR Part 211

**Transfer of Food Commodities for Use in Disaster Relief, Economic Development and Other Assistance; Proposed Rule**

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**

**Agency for International Development**

**22 CFR Part 211**

**[A.I.D. Reg 11]**

## Transfer of Food Commodities for Use in Disaster Relief, Economic Development and Other Assistance

**AGENCY:** Agency for International Develolpment (A.I.D.), IDCA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Regulation at 22 CFR Part 211 Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance, to conform the Regulation to amendments made to Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), by legislation including Pub. L. 96-53, August 14, 1979; the Food Security act of 1985, Pub. L. 99-198, dated December 23, 1987; Pub. L. 100-202 (Continuing Appropriations), December 22, 1987; and would make other necessary changes.

**DATE:** Comments on these proposed rules must be received on or before February 17, 1989.

**ADDRESS:** Comments should be submitted to: Ms Jessie C. Vogler, Office of Food for Peace, Bureau of Food for Peace and Voluntary Assistance, Agency for International Development, Washington DC 20523. Telephone: (703) 875-4438.

**FOR FURTHER INFORMATION CONTACT:** Ms Donna Rosa, Actg. Chief, Project Coordination Division, Office of Food for Peace, Bureau for Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (702) 875-4706.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under A.I.D.'s required procedures. It has been determined that these program provisions will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since A.I.D. is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. It has been determined that the provisions of 5 U.S.C. 553 do not apply to this rule since the subject matter of the rule involves foreign affairs functions of the United States and a matter relating to grants.

Comments are requested within 60 days after publication and the proposed rule will be reviewed in order that a final document discussing any comments received and any desirable amendments may be published in the **Federal Register.** The final document will be made effective upon publication in the **Federal Register.**

The proposed revisions listed below are intended to update A.I.D. Regulation 11 to incorporate new legislation, Agency programming and policy changes and to make other changes of a clarifying nature concerning Pub. L. 480, Title II activities. The principal changes in the Regulation are as follows:

1. The statutory excerpts in § 211.1(b) subsections (2) through (12) have been revised to conform them to changes in Pub. L. 480.

2. Section 211.2—Definitions. This section has been revised for clarification and to include additional Title II programming terms.

3. Section 211.3(c) has been added which outlines steps necessary to commence a program.

4. Section 221.4(d) has been revised to reflect the transfer from USDA to A.I.D. of the responsibility for booking Pub. L. 480, Title II government-to-government cargo.

5. Section 221.5 has been revised to include an outline for the Title II plan of operations, to provide that foreign currencies generated from any partial or full sales or barter of commodities by a non-profit voluntary agency or cooperative are to be used to transport, store, distribute, or otherwise enhance the effectiveness of the commodities, or to implement income generating community development, health, nutrition, cooperative development, agricultural programs or other developmental activities. Section 211.5(c) has been revised: To clarify the cooperating sponsor's responsibility for conducting internal reviews; to require that a systematic method be used to assure timely resolutions to implement findings and recommendations. Section 211.5(i) "Use of Funds" has been revised to clarify the proper use of funds generated under the Title II program including use for costs allowable under OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations." Section 211.5(j) is a new item which requires an annual report on funds generated and their use. Section 211.5 (o) and (p) are new sections concerning monetization programs and trilateral exchange programs.

6. Section 211.7(b) has been revised to clarify the cooperating sponsor's responsibility with respect to duty, taxes and consular invoices.

7. Section 211.7(e)(1) has been revised to clarify the limitations on reimbursement of repackaging costs.

8. Section 211.9(c)(1)(v) is a new subparagraph concerning contracting by CCC for the survey of cargo on shipments furnished under Transfer Authorizations; § 211.9(c)(2), "Claims against Ocean Carriers," has been revised to reflect the transfer from USDA to A.I.D. the responsibility for booking all Pub. L. 480, Title II Government-to-Government cargoes. Section 211.9(e)(2) is revised to clarify that individual inland claims should not be artificially subdivided. Section 211.9(e) (3) and (4) have been added to clarify cooperating sponsors' responsibility concerning inland claims. In § 211.9(g) "Handling Claims Proceeds," the following has been added "With respect to monetized proceeds and program income, amounts recovered shall be deposited in the special account used for such funds and may thereafter be used for purposes of the approved program."

9. Section 211.10(a) has been revised to add the following to the last sentence * * * "or longer upon request by A.I.D. for cause such as in the case of litigation of a claim or audit concerning such periods. The cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D."

10. Other grammatical or minor revisions have been made for clarification purposes.

**List of Subjects in 22 CFR Part 211**

Agriculture, Foreign aid, Foreign relations.

Because of the substantial revisions proposed, the proposed A.I.D. Regulation 11, as revised, is printed below in its entirety.

It is proposed to revise 22 CFR Part 211 to read as follows:

## PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT, AND OTHER ASSISTANCE

Sec.

**Authority:** Secs. 105, 201, 202, 203, and 207, Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1705, 1721, 1722, 1723, and 1726a; 68 Stat. 454, as amended.

### § 211.1 General purpose and scope.

(a)(1) *Terms and conditions.* This Part 211, also known as A.I.D. Regulation 11, prescribes the terms and conditions governing the transfer of agricultural commodities to foreign governments, to private or public agencies, including nonprofit voluntary agencies, cooperatives, and to intergovernmental organizations (except the World Food Program (WFP) and United Nations Relief and Works Agency (UNRWA)) pursuant to Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480, 83rd Congress, as amended ("Pub. L. 480")). (For the WFP and UNRWA, see A.I.D. Handbook 9).

(2) *Organization.* This Regulation starts by quoting pertinent legislation in force as of the date of issuance of this Regulation, and goes on to provide information on Title II programs, and the rules under which they are conducted. The material is organized in the sequence in which events take place in the program; starting with how programs are commenced; continuing with responsibilities and authorities pertinent to the course of a program (on such matters as disposals, claims, and records and reporting); and going on to program termination, and some administrative matters.

(b) *Legislation.* See Appendix I to the Regulation. The legislation implemented by the Regulation in this part (as of the date of issuance of this part) includes sections of the Agricultural Trade Development Assistance Act of 1954, as amended (Pub. L. 480) as follows: Sections 2(3), 201, 202, 203, 204, 206, 207, 208, 401, 402, and 404.

### § 211.2 Definitions.

(a) "A.I.D." means the Agency for International Development or any successor agency, including, when applicable, each USAID. "USAID" means an office of A.I.D. located in a foreign country. "A.I.D./W" means the Office of A.I.D. located in Washington, D.C.

(b) "Annual Estimate of Requirements (AER)" (Form A.I.D. 1550-3, Exhibit E, A.I.D. Handbook 9) is a statistical update of the Operational Plan which is signed by the cooperating sponsor requesting commodities under Title II estimating the quantities required.

(c) "CCC" means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

(d)(1) "Cooperating sponsor" means an entity, within or without the United States, governmental or not, such as the foreign government, the American Red Cross, the Intergovernmental organization, the U.S. nonprofit voluntary agency or the cooperative registered with and approved by the Agency for International Development, which enters into an agreement with the U.S. Government for the use of agricultural commodities of funds (including local currencies), and which is directly responsible under the agreement for administration and implementation of the agreement, including reporting on programs involving the use of the commodities or funds made available to meet the requirements of eligible recipients. The term includes foreign nonprofit voluntary agencies registered with and approved by the Agency for International Development, which may be utilized to provide assistance following a determination of unavailability of a U.S. registered nonprofit voluntary agency to provide the assistance.

(2) "Governmental Cooperating Sponsor" means a cooperating sponsor which is a foreign government.

(3) "Non-Governmental Cooperating Sponsor" means a cooperating sponsor which is a non-profit voluntary agency, a cooperative, the American Red Cross, or other private or public agency; an intergovernmental organization is also treated as a nongovernmental cooperating sponsor in this part (Regulation 11) unless the text or context indicates otherwise.

(4) Note: Governmental Cooperating Sponsors are treated here as a group separate from other cooperating sponsors since their circumstances are different in such matters as, e.g., rules governing shipping; and in certain other aspects of agreements.

(e) "Diplomatic Posts" means the offices of the Department of State located in foreign countries, and may include Embassies, Legations, and Consular offices.

(f) "Disaster relief organizations" means organizations which are authorized by A.I.D./W, USAID, or by a Diplomatic Post to assist disaster victims.

(g) "Disaster victims" means persons who, because of flood, drought, fire, earthquake, other natural or manmade disasters, or extraordinary relief requirements, are in need of food, feed, or fiber assistance.

(h) "Duty free" means exempt from all customs duties, duties, tolls, taxes or governmental impositions levied on the act of importation.

(i) "f.o.b./f.a.s." stands for "free on board/free along side." Bulk shipments are normally loaded f.o.b.; all other shipments, f.a.s.; and title there are transferred.

(j) "Food for Peace Program Agreement" constitutes the agreement between the cooperating sponsor(s) and the U.S. Government. The Food for Peace Program Agreement may be specific, listing the kinds and quantities of commodities to be supplied, program objectives, criteria for eligibility of recipients, plan for distribution of commodities, and other specific program provisions in addition to the provisions set forth in this part; or it will state that the cooperating sponsor will comply with this part and such other terms and conditions as set forth in other A.I.D. programming documents.

(k) "General Average" means the proportional sharing of a loss or extraordinary expense incurred to protect the whole cargo.

(l) "Institutions" means nonpenal, public or nonprofit private establishments that operated for charitable or welfare purposes where needy persons reside and receive meals including, but not limited to, homes for the aged, mentally and physically handicapped, refugee camps, and leprosy asylums.

(m) "Intergovernmental organizations" means agencies sponsored and supported by the United Nations organization or by two or more nations, one of which is the United States of America.

(n) "Maternal-child feeding, primary school and other child feeding programs":

(1) Maternal and preschool feeding programs means programs conducted for women of child bearing age, with emphasis on pregnant and lactating women, for mothers with preschool children, and for children below the usual enrollment age for the primary grade at public schools.

(2) School feeding programs refers to programs conducted for the benefit of children enrolled in primary schools.

(3) Other child feeding programs refers to programs designed to reach

preschool or primary school age, needy children in child care centers, orphanages, institutions, nurseries, kindergartens and similar activities.

(o) "Nonprofit" means that the residue of income over operating expenses accruing in any activity, project, or program is sued solely for the operation of such activity, project, or program.

(p) "Plan of Operation" is a plan submitted by the potential cooperating sponsor describing the proposed use of commodity and/or monetized proceeds of sale thereof.

(q) "Primary School" means a public or nonprofit facility, or an activity within such facility, which has as its primary purpose the education of children at education levels which are generally comparable to those of elementary schools in the United States.

(r) "Program Income" means gross income earned from activities supported under the approved program.

(s) "Recipient agencies" means schools, institutions, welfare agencies, disaster relief organizations, and public or private agencies whose food distribution functions are sponsored by the cooperating sponsor and who receive commodities for distribution to eligible recipients. A cooperating sponsor may be a recipient agency.

(t) "Recipients" means persons who are in need of food assistance because of their economic or nutritional condition or who are otherwise eligible to receive commodities for their own use in accordance with the terms and conditions of the Food for Peace Program Agreement.

(u) "Registered Nonprofit Voluntary Agency" means a nonprofit voluntary agency or cooperative registered with, and approved by A.I.D. The term includes foreign as well as U.S. registered nonprofit voluntary agencies. Under Pub. L. 480, section 202(a), a foreign registered nonprofit voluntary agency may be utilized if no U.S. registered nonprofit voluntary agency is available. As to registration, see 22 CFR Part 203, A.I.D. Regulation 3, "Registration of Agencies for Voluntary Foreign Aid."

(v) "Refugees" means persons who fled or were forced to leave their country of nationality or residence and are living in a country other than that of which they hold or have held citizenship or in a part of their country of nationality or residence other than that which they normally consider their residence, and become eligible recipients.

(w) "Transfer Authorization" or "TA" means the document signed by the cooperating sponsor and A.I.D. which describes commodities and the program they will be used in, incorporates A.I.D. Regulation 11, and authorizes CCC to ship the commodities.

(x) "USDA" means the U.S. Department of Agriculture.

(y) "Voluntary Agency" means the American Red Cross and any U.S. or foreign voluntary nonprofit agency or cooperative registered with, and approved by, the Agency for International Development.

(z) "Welfare agencies" means public or nonprofit private agencies that provide care, including food assistance, to needy persons who are not residents of institutions.

**§ 211.3 Cooperating sponsor agreements.**

(a) *Food for Peace Program Agreement.* The cooperating sponsor shall enter into a written agreement with A.I.D. by signing a Food for Peace Program Agreement which shall incorporate by reference or otherwise the terms and conditions set forth in this part (A.I.D. Regulation 11).

(b) *Individual Country Food for Peace Program Agreement.* Voluntary agencies, including cooperatives, or intergovernmental organizations shall, in addition to the Food for Peace Program Agreement, enter into a separate written Food for Peace Agreement with the foreign government of each cooperating country. This agreement shall incorporate by reference or otherwise the terms and conditions set forth in this part (A.I.D. Regulation 11) and shall be approved by A.I.D. prior to being executed. This agreement also shall provide that the cooperating country shall indemnify the cooperating sponsor, irrespective of the fault or liability of any person other than employees of the cooperating sponsor, for the value of commodities lost, damaged or misused while in the possession of the cooperating country, or any of its state or local governments, or any public or quasi-private instrumentalities thereof. This agreement should acknowledge that the commodities have been donated by the United States for the benefit of the people in the cooperating country and state that the cooperating country will pay the United States, upon the request of A.I.D. or the Diplomatic Post, for the value of any commodities lost, damaged or misused while in the possession of the cooperating country (irrespective of the fault or liability of any person other than employees of the cooperating sponsor). Where such written agreement is not feasible or practicable, the USAID or Diplomatic Post shall assure A.I.D./W, in writing, that the program can be effectively implemented in compliance with this part without such an agreement.

(c) *Commencement of a Program*—(1) *Requests for Programs.* A program may be requested by any cooperating sponsor, including nonprofit voluntary agencies, cooperatives, foreign governments, and international organizations. (In cases of emergencies, A.I.D., the Secretary of State, or the President may initiate an offer.)

(2) *Approval of Programs.* Although A.I.D. is vested with most functions of administering Title II (derived from Executive Order 12220, June 27, 1980, 45 FR 44245), other agencies, in particular the Department of Agriculture, play key roles. Agreement between the agencies, and approval of Title II programs, is reached in the Development Coordination Committee Food Aid Subcommittee and its Working Group.

(3) *Format for Approval of Programs.* There are two basic patterns of decision employed in granting approval to a request for Title II assistance:

(i) *Format for Approving Regular Programs.* The cooperating sponsor submits to A.I.D. a plan of operations (see § 211.5), describing the program proposed. The plan of operations provides the basic information for preparation or amendment of a Food for Peace Program Agreement (see definition and § 211.3(a) above), and often an Individual Country Food for Peace Program Agreement (see definition) between the cooperating sponsor and the country concerned (these Agreements will include by reference this Regulation 11). Also, there will be submitted to A.I.D. an Annual Estimate of Requirements or A.E.R. along with the program plan of operations (see definition), estimating the quantities of commodities required for each program proposed. Upon approval by the Working Group of the DCC Food Aid Subcommittee, A.I.D.'s signature on the A.E.R., completes this decision process.

(ii) *Format for Approving Individual Programs.* The other basic pattern of decision making on these programs results in Transfer Authorization ("TA"; see definition). The TA is used for all government-to-government programs, and for non-governmental cooperating sponsor programs which do not fit within the Program Agreement/AER framework. The TA will include by reference Regulation 11.

(iii) *Timing of Decision.* Under Pub. L. 480, section 208(a), within 45 days of its submission to A.I.D./W, a decision must be made on a proposal submitted by a nonprofit voluntary agency or cooperative, concurred in by the appropriate United States Government field mission. The decision shall detail the reasons for approval or denied, and if denied, conditions to be met for approval.

**§ 211.4 Availability of commodities; shipment.**

(a) *Shipment, distribution and use of commodities.* Commodities shall be available for shipment, distribution and use in accordance with the provisions of the Food for Peace Program Agreement or Transfer Authorization and this part.

(b) *Transfer of title and delivery.* (1) Unless the Food for Peace Program Agreement or Transfer Authorization provides otherwise, title to the commodity shall pass to the cooperating sponsor at the time and place of delivery f.o.b. or f.a.s. vessel at the U.S. port, except that in the case of nongovernmental cooperating sponsors title may pass at the discretion of USDA at other points in the United States.

(2) Nongovernmental cooperating sponsors shall make the necessary arrangements to accept commodities at the points of delivery designated by the USDA.

(c) *Processing, handling, transportation and other costs.* (1) The United States will pay processing, handling, transportation, and other incidental costs incurred in making commodities available to cooperating sponsors free on board (f.o.b.) or free along side (f.a.s.) vessel at U.S. ports, or free at inland destinations in the United States, except as otherwise provided in this paragraph (c).

(2) Nongovernmental cooperating sponsors shall reimburse the United States for expenses incurred at their request and for their accommodation which are in excess of those which the United States would have otherwise incurred in making delivery—

(i) At the lowest combination inland and ocean transportation costs to the United States as determined by the United States or

(ii) In sizes and types of packages announced as available.

(3) All costs and expenses incurred subsequent to the transfer of title in the United States to cooperating sponsors except as otherwise provided herein shall be borne by them. Upon the determination that it is in the interests of the program to do so, the United States may pay or make reimbursement for ocean transportation costs from U.S. ports to the designated ports of entry abroad; or to designated points of entry abroad in the case—

(i) Of landlocked countries,

(ii) Where ports cannot be used effectively because of natural or other disturbances,

(iii) Where carriers to a specific country are unavailable, or

(iv) Where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports.

(d) *Transportation authorization.* A transportation authorization will be issued to cover the ocean freight paid directly by the United States. When A.I.D. contracts for ocean carriage, disbursement to the carriers shall be made by A.I.D. upon presentation of Standard Form 1034 and three copies of 1034A (Public Voucher for purchases and services other than personal), together with three copies of the related onboard ocean bill of lading, one copy of which must contain the following certification signed by an authorized representative of the steamship company:

I certify that this document is a true and correct copy of the original onboard ocean bill of lading under which the goods herein described were located on the above-named vessel and that the original and all other copies thereof have been clearly marked as not to be certified for billing.

________________________

(Name of steamship co.)

By

(Authorized representative)

Such voucher should be submitted to: Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523. Except for duty, taxes and other costs exempted in § 211.7 (a) and (b) of this part, cooperating sponsors booking their own vessels will be reimbursed as provided in A.I.D. Regulation 2 (Part 202 of this chapter) for ocean freight authorized by the United States upon presentation to A.I.D./W or to a U.S. bank holding and A.I.D. Letter of Commitment) of proof of payment to the ocean carrier. A.I.D. will only reimburse voluntary agencies or cooperatives up to a maximum of 2½ percent commission paid to their freight forwarders as a result of booking Pub. L. 480, Title II cargo. Proof of commissions paid must be submitted with requests for reimbursements.

(e) *Shipping instructions*—(1) Shipments booked by A.I.D. Requests for shipment of commodities shall originate with the cooperating sponsor and shall be submitted to USAID or Diplomatic Post for clearance and transmittal to A.I.D./W. A.I.D./W shall, through cables, airgrams or letters to USAID or Diplomatic Posts, provide cooperating sponsors (and where applicable voluntary agency headquarters) with names of vessels, expected times of arrival (ETAs), and other pertinent information on shipments booked by A.I.D. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail, or by the fastest means available, by the freight forwarder representing A.I.D. to USDA, to USAID or Diplomatic Posts (and where applicable to USAID Controller, voluntary agency headquarters, and voluntary agency field representative), and to the consignee in sufficient time to advise of the arrival of the shipment.

(2) *Shipments booked by non-governmental cooperating sponsor.* Requests for shipment of commodities shall originate with the cooperating sponsor and shall be cleared by the USAID or Diplomatic Post before transmittal to the cooperating sponsor's headquarters for concurrence and issuance. USAID or Diplomatic Post shall promptly clear such requests for shipment of commodities or, if there is reason for delay disapproval, advise the cooperating sponsor and A.I.D./W within seven (7) days of receipt of requests for shipment. After the cooperating sponsor headquarters concurs in the request and issues the order, the original will be sent promptly to A.I.D./W–FFP who forwards it to USDA/ASCS for procurement action with a copy to the USAID or Diplomatic Posts. Headquarters of cooperating sponsors which book their own shipments shall provide their representatives and the USAID or Diplomatic Posts with the names of vessels, expected times of arrival (ETAs) and other pertinent information on shipments booked. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail or by the fastest means available by the freight forwarder, representing the cooperating sponsors to USDA, the USAID or Diplomatic Post (and where applicable to USAID Controller voluntary agencies' representatives), and to the consignee in the country of destination in sufficient time to advise of the arrival of the shipment. However, voluntary agencies will also forward cable advice of actual exportation to their program directors in countries within the Caribbean area which are supplied by vessels having a rapid and short run from U.S. port to destination.

(f) *Tolerances.* Delivery by the United States to the cooperating sponsor at point of transfer of title within a tolerance of 5 percent (2 percent in the case of quantities over 10,000 metric tons) plus or minus, of the quantity ordered for shipment shall be regarded as completion of delivery. There shall be no tolerance with respect to the ocean carrier's responsibility to deliver the entire cargo shipped and the United States assumes no obligation for failure by an ocean carrier to complete delivery to port of discharge.

**§ 211.5 Obligations of cooperating sponsor.**

(a) *Plan of operations.* Each cooperating sponsor shall submit to the USAID or Diplomatic Post for their approval, upon which it is submitted for approval of A.I.D./W, within such times and on the forms prescribed by A.I.D./W, a description of the programs it is sponsoring or proposes to sponsor. This plan of operations will be made a part of the Food For Peace Program Agreement after approval by A.I.D. Within the overall objectives of the approved program, elements of the plan of operations may be changed by written agreement of the authorized representatives of the cooperating sponsor, on the one hand, and A.I.D. and CCC, within their respective areas of responsibility, on the other, without formal amendment of the agreement. In case of conflict between the text of the agreement and the approved plan of operations the text of the agreement prevails. This plan of operations will also provide the basic information for preparation of Individual Country Food for Peace Program Agreements developed and renewed annually (or in other period designated) with the cooperating sponsors' counterpart organization and host government where necessary. In addition to any other requirement of law or regulation, the plan for operations will include the following information:

(1) A description of program goals and criteria for measuring progress toward reaching the goals. Each program should be designed to achieve measurable objectives within a specific period of time.

(2) Program Description:

(i) Problem statement: What are the characteristics, extent and severity of problems that the program will address?

(ii) Specification of objectives: Clear concise statement of specific objectives for each program and criteria for measuring progress towards reaching objectives. If there are several objectives, indicate priorities.

(iii) Description of the target population by program, including economic/nutrition related characteristic, that is sufficient to permit a determination of recipient eligibility for Title II commodities. Description of the educational and employment characteristics of the target group, as may be relevant to program objectives. The rationale for selection of the target group. The rationale for selection of geographical areas where programs will be carried out. Calculation of coverage: Percent of total target population reached.

(iv) Description of intervention including: (A) Ration composition: Description of rations, rationale for size and composition, assessment of effectiveness (dilution, sharing, acceptance).

(B) Complementary program components and inputs: Identification of existing or potential complementary program components, i.e., education, growth monitoring, training, etc., that are necessary to achieve program impact, including determination of financial costs and sources of funding.

(C) Monetization of commodities: Describe to whom the food will be sold; the sales price (which shall not be less than the value of the food commodities f.a.s. or f.o.b.), and arrangements for deposit of the monetization proceeds in a segregated, interest bearing account, pending use of the proceeds plus interest for the program.

(D) Intervention strategy: Describe how the food, monetization proceeds, and other program components will address problems.

(v) Linkages with other development activities, such as health or agricultural extension services: Describe specific areas of collaboration relative to program purposes.

(vi) Monitoring and Evaluation: Evaluation plan, including description of information to be collected for purposes of assessing program operations and impact. Description of monitoring system for collection, analysis and utilization of information. Plans for evaluation, as well as plans for conducting internal reviews (§ 211.5(c)).

(vii) Title II programs assume that U.S.G. support will be limited in time. The plan of operation should cover a multi-year time frame, normally three to five years. Such a period should allow enough time for a program to become fully operational and to permit evaluation of its effectiveness, including specific measurement of progress in achieving the stated program goals. Plans for and considerations involved in phasing-out U.S.G. support, and any phasing-over to non-U.S.G. support, should be discussed.

(3) Details of host government, cooperating sponsor and other non-U.S.G. support for the proposed program, with specific budgetary information on how these funds are to be used (e.g. complementary inputs, transport, administration). Where relevant, discussion of arrangements which will be made covering voluntary contributions.

(4) Statement as to how the requirements for public recognition, container markings, and use of funds set forth in § 211.5 (g), (h) and (i) below, and in § 211.6 (a) and (b) below will be met.

(5) A logistics plan that demonstrates the adequacy and availability in a recipient country of port facilities, transportation and storage facilities to handle the flow of commodities to recipients to prevent spoilage or waste. A further affirmation must be made at the time of exportation of the commodity.

(6) Sufficient information concerning the plan of distribution and the target group of recipients so that a determination can be made as to whether the proposed food distribution would result in substantial disincentive to domestic food production.

(7) Description of the method to be used to supervise, monitor, and account for the distribution or sale of commodities and the use of monetized proceeds and other program income.

(8) Information to show approval of foreign government to import the donated commodities duty free.

(9) A Plan of Operations is required for all regular i.e., non-emergency Title II nongovernmental cooperating sponsor programs as part of their submission along with the Annual Estimate of Requirements (AER), to the USAID and/or Diplomatic Post and AID/W. When new multi-year plans of operation are required, they should be prepared and submitted in advance of the year in which they are to begin, in order to permit adequate time for substantive review and approval. In any event, nongovernmental cooperating sponsor plans of operations should be submitted to A.I.D./W no later than the Mission Action Plan covering the following fiscal year's program. Once a plan of operation has been approved, only an updating will be required on an annual basis, unless there has been a significant change from the approved plan program directives, methodology, design or magnitudes. Updates should be submitted each year for review with the AERs.

(10) Plans of Operations for Emergency Programs. The response to emergency situations using Title II resources does not usually permit the same degree of detail and certainty of analysis that is expected in planning Title II non-emergency programs. However, plans of operations are required for all nongovernmental cooperating sponsors emergency programs, along with the AER. A plan of operation for an emergency program must cover the same basic elements, set

forth above, as for a non-emergency program. Thus, all of the above basic issues set forth in the plan of operations format must be addressed when proposing Title II emergency programs as well as regular non-emergency programs.

(11) USAID Mission and/or Diplomatic Posts are expected to comment on the substance and adequacy of the nongovernmental cooperating sponsor plans of operations when submitted to A.I.D./W along with a program request and to address the plan's relationship to and consistency with the Mission's Country Development Strategy.

(12) Cooperating sponsors agree not to deviate from the program as described in the Plan of Operations and other program documents approved by A.I.D., without the prior written approval of A.I.D.

(13) Emergency Assistance Proposals. Any cooperating sponsor (governmental or nongovernmental) may initiate an emergency assistance proposal under Pub. L. 480, Title II. Requests are received by USAID Missions or Diplomatic Posts and reviewed and approved before forwarding to AID/W with appropriate recommendations.

(i) Non-governmental emergency requests can be cabled by the Mission for AID/W review based on information provided and using procedures established for regular programs per § 211.5(a)(2) above; AER and Plan of Operation.

(ii) A foreign government (government-to-government or international organization other than World Food Program) emergency request normally requires more Mission involvement in program design and management.

However, as in the case of non-governmental programs, the approval will be based on a cabled program summary based on the program plan outlined in § 211.5(a)(2) above. On approval, A.I.D./W will prepare a Transfer Authorization (TA) to be signed by the recipient government specifying terms of the program and reporting requirements. USAIDs will find additional guidance in preparing government-to-government or international organizations emergency requests in Chapter 9, and Exhibit A of A.I.D. Handbook 9. The TA serves as the Food for Peace Agreement between the U.S. Government and the cooperating sponsor, serves as the project authorization document, and serves as the authority for the CCC to ship commodities. (Under Pub. L. 480, section 208(c), not later than 15 days after receipt of a call forward from a field mission for commodities, the order shall be transmitted to the CCC.)

(14) Local Currency Projects (Sections 204, 206 and 207). A.I.D./W–FFP and USAIDs will find additional guidance for preparing, approving, implementing and administering these projects in Chapters 6 and 11 of AID Handbook 9.

(b) *Program supervision.* Cooperating sponsors shall provide adequate supervisory personnel for the efficient operation of the program, including personnel to plan, organize, implement, control, and evaluate programs involving distribution of commodities or use of generated funds, and in accordance with A.I.D. guidelines, to make internal reviews including warehouse inspections, physical inventories, and end-use checks of food or funds. Maximum use of volunteer personnel shall be encouraged, but U.S. cooperating sponsors shall be represented by a U.S. citizen, resident in the country of distribution or other nearby country approved by A.I.D./W, who is appointed by and responsible to the cooperating sponsor for distribution of commodities or use of funds in accordance with the provisions of this part. Intergovernmental organizations, foreign cooperating sponsors and the American Red Cross shall be represented by a person appointed by and responsible to these organizations for the supervision and control of the program in the country of distribution in accordance with the provisions of this part.

(c) *Internal Reviews*—(1) *By Nongovernmental cooperating sponsors.* These cooperating sponsors shall perform or arrange to have performed internal reviews on a schedule mutually agreed to, in writing, between USAIDs or the Diplomatic Post and the cooperating sponsor. These should be scheduled at least once a year for multi-year projects and sent to Washington before submitting future commodity requests. Such reviews shall be made by individuals who are sufficiently independent of those who authorize the distribution of Title II commodities, to produce unbiased opinions, conclusions or judgments, in writing. These reviews are to ascertain the effectiveness or management systems and procedures to meet the terms and conditions of this Regulation and the program agreement. The internal review will represent a complete review of the Title II program(s) and the system used should contain a systematic method to assure timely and appropriate resolutions of review findings and recommendations. Copies of these internal reviews must be promptly submitted to AID/W–FFP/PCD, USAID Missions and/or Diplomatic Posts as required in § 211.10(b)(4).

(2) *By Other Cooperating Sponsors.* In the case of programs administered by cooperating governments and by intergovernmental organizations, responsibility for conducting internal audit examinations shall be determined by AID/W on a case by case basis. For records and reporting requirements for emergency programs see § 211.10.

(d) *Commodity requirements; Annual Estimate of Requirements (AER).* Each cooperating sponsor shall submit to the USAID or Diplomatic Post, within such times and on the form (usually the AER) prescribed by A.I.D./W, estimates of requirements showing the quantities of commodities required for each program proposed. Requirements shall be summarized for all programs in the country on a form prescribed by A.I.D./W.

(e) *Determination of eligibility of recipients.* Cooperating sponsors shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities are eligible in accordance with the terms and conditions of the Food for Peace Program Agreement and this part (Regulation 11). Cooperating sponsors shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute commodities are eligible. Commodities shall be distributed free of charge except as provided in paragraph (i) of this section or § 211.5(o), below, or as otherwise authorized by A.I.D./W, but in no case will recipients be excluded from receiving commodities because of inability to make contributions to cooperating sponsor programs.

(f) *No discrimination.* Cooperating sponsors shall distribute commodities to and conduct operations (with food or generated funds) only with eligible recipient agencies and eligible recipients without regard to nationality, race, color, sex, or religious or political beliefs, and shall impose similar conditions upon distribution by recipient agencies.

(g) *Public recognition.* To the maximum extent practicable, and with the cooperation of the host government adequate public recognition shall be given in the press, by radio, and other media that the commodities have been furnished by the people of the United States. At distribution and feeding centers the cooperating sponsor shall, to the extent feasible, display banners, posters, or similar media which shall contain information similar to that prescribed for containers in § 211.6(c).

Recipients' individual identification cards shall, insofar as practicable, be imprinted to contain such information.

(h) *Containers*—(1) *Markings.* Unless otherwise specified in the Food for Peace Program Agreement, when commodities are packaged for shipment from the United States, bags and other containers shall be marked with the CCC contract number or other identification, the A.I.D. emblem and the following information stated in English and, as far as practicable, in the language of the country receiving the commodity:

(i) Name of commodity.

(ii) Furnished by the people of the United States of America.

(iii) Not to be sold or exchanged (where applicable). Emblems or other identification of nongovernmental cooperating sponsors may also be added.

(2) *Disposal of containers.* Cooperating sponsors may dispose of containers, other than containers provided by carriers, in which commodities are received in countries having approved Title II programs, by sale or exchange, or may distribute the containers free of charge to eligible food or fiber recipients for their personal use. If the containers are to be used commercially, the cooperating sponsors must arrange for the removal or obliteration of or cross out the U.S. Government markings from the containers prior to such use.

(i) *Use of funds.* In addition to funds accruing to cooperating sponsors from the sale of containers, funds may also be available from contributions made in maternal, preschool, school and other child feeding programs where voluntary contributions by the recipients will be encouraged on the basis of ability to pay. Funds from these or from any other source under the program shall be used for payment of program costs such as transportation, storage (including the improvement of storage facilities and the construction of warehouses), handling, insect and rodent control, rebagging of damaged or infested commodities, and other expenses specifically authorized by A.I.D. Actual and reasonable out-of-pocket expenses including third party costs incurred in effecting any sale of containers may be deducted from the sales proceeds. Such funds may also be used for payment of indigenous and/or third country personnel employed by cooperating sponsor or recipient agencies in support of Title II programs and for other costs allowable under the approved program. Specifically, foreign currencies generated from any partial or full sales or barter of commodities by a nonprofit voluntary agency or cooperative may be used to transport, store, distribute, and otherwise enhance the effectiveness of the use of commodities and the products thereof donated under Title II; and to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities agreed upon between such agency or cooperative and A.I.D. However, such funds may not be used to acquire, develop, construct, alter or upgrade land, buildings or other real property improvements or structures that are either

(1) Owned or managed by a church or other organizations engaged exclusively in religious activity, or

(2) Used in whole or in part for sectarian purposes.

Cooperating sponsors shall follow their own requirements relating to bid guarantees, performance bonds and payments bonds where program income is used to finance construction or facility improvements, and no more than $100,000 of program income may be used for such purposes unless A.I.D. determines that the U.S. Government's interest is adequately protected by such requirements. The cooperating sponsor shall use commercially reasonable procurement practices in purchasing goods or services with monetization proceeds, funds derived from the program or funds provided by the U.S. Government, and shall employ procedures that prevent fraud, self-dealing, conflicts of interest or noncompetitive procurement. Each voluntary agency including cooperative agrees to use monetization proceeds, program income and funds provided by the U.S. Government only for such costs as would be allowable under the Office of Management and Budget (OMB) Circular No. A–122, "Cost Principles for Nonprofit Organizations," available at the Office of Administration, OMB, Publications Unit, Room G–236, New Executive Office Building, Washington, DC 20503. Title to real and personal property acquired with monetization proceeds, program income or funds provided by the U.S. Government shall be vested in the cooperating sponsor, but the cooperating sponsor shall dispose of such property as directed by the USAID Mission or the Diplomatic Post in the event the program terminates or is transferred to another entity. Records and documents regarding procurement using monetization proceeds, program income or funds provided by the U.S. Government shall be maintained and made available for inspection as required in § 211.10 below.

(j) *Report on Funds.* The cooperating sponsor headquarters shall annually provide A.I.D./W-Office of Food for Peace a report on the receipt and disbursement of all funds. This report should include the source of the funds, by country, and how the funds were used. The cooperating sponsor shall maintain at its headquarters the records supporting the annual report. The annual report should be submitted to A.I.D./W-Office of Food for Peace by December 31 of each calendar year for the fiscal year ended September 30 of that calendar year.

(k) *No displacement of sales.* Except in the case of emergency or disaster situations, the donation of commodities furnished for these programs shall not result in increased availability for export by the foreign country of the same or like commodities and shall not interfere with or displace sales in the recipient country which might otherwise take place. A country may be exempt from this proviso if circumstances warrant. Missions should seek AID/W guidance on this matter.

(l) *Commodities borrowed or exchanged for programs.* After the date of the program approval by A.I.D./W, but before arrival at the distribution point of the commodities authorized herein, the cooperating sponsor may, with prior approval of the USAID or Diplomatic Post, borrow the same or similar commodities from local sources to meet program requirements provided that:

(1) Such of the commodities borrowed as are used in accordance with the terms of the applicable Food for Peace Program Agreement will be replaced with commodities authorized herein on an equivalent value basis at the time and place that the exchange takes place as determined by mutual agreement between the cooperating sponsor and USAID or Diplomatic Post, except that at the request of the cooperating sponsor, the USAID or Diplomatic Post may determine that such replacement may be made on some other justifiable basis;

(2) Packaged commodities which are borrowed shall be appropriately identified in the language of the country of distribution as having been furnished by the people of the United States; and

(3) Suitable publicity shall be given to the exchange of commodities as provided in paragraph (g) of this section and containers for borrowed commodities shall be marked to the extent practicable in accordance with § 211.6(c).

(m) *Commodity transfer between programs.* After the date of program approval by A.I.D./W, but before distribution of the commodities authorized herein by the recipient agency, the USAID or the Diplomatic Post, or the cooperating sponsor with prior approval of the USAID or Diplomatic Post, may transfer commodities between approved Title II programs to meet emergency disaster requirements or to improve efficiency of operation; for example, to meet temporary shortages due to delays in ocean transportation, or provide for rapid distribution of stocks in danger of deterioration. Transfers may also be made to disaster organizations for use in meeting exceptional circumstances. Commodity transfers shall be made at no cost to the U.S. Government and with the concurrence of the cooperating sponsor or disaster organization concerned. The USAID or the Diplomatic Post may, however, provide funds to pay the costs of transfers to meet extraordinary relief requirements, in which case A.I.D./W shall be advised promptly of the details of the transfer. Commodities transferred as described above shall not be replaced by the U.S. Government unless A.I.D./W authorizes such replacement.

(n) *Disposal of excessive stock of commodities.* If commodities are on hand which cannot be utilized in accordance with the applicable Food for Peace Program Agreement, the cooperating sponsor shall promptly advise USAID or the Diplomatic Post of the quantities, location, and condition of such commodities, and where possible shall propose an alternate use of the excess stocks; USAID or Diplomatic Post shall determine the most appropriate use of the excess stocks, and with prior A.I.D./W concurrence, shall issue instructions for disposition. Transportation costs and other charges attributable to transferring commodities from one program to another within the country shall be the responsibility of the cooperating sponsor, except that in case of disaster or emergency, A.I.D./W may authorize the use of disaster or emergency funds to pay for the costs of such transfers. (As to unfit commodity disposal, see § 211.8 below.)

(o) *Monetization programs.* For programs in which the sale of commodities is authorized by A.I.D., § 211.5 (e) and (f) herein are not applicable to the extent they prohibit or restrict the sale or distribution to end users of the commodities approved for monetization, and §§ 211.5(h) and 211.6(c) herein are not applicable to the extent they require the marking or labeling of the containers of such commodities. Cooperating sponsors do not need to monitor, manage, report on or account for the distribution or use of commodities after all sales proceeds have been fully deposited in an account established by the cooperating sponsor and title to the commodities has passed to buyers or other third parties pursuant to a sale under a monetization program. However, the sales proceeds and the uses thereof must be monitored, managed, reported and accounted for as provided in §§ 211.5(i), 211.5(j), 211.10 and other relevant sections of this Regulation. It is not mandatory that commodities approved for monetization be imported and sold free of all duties and taxes, but nongovernmental cooperating sponsors may negotiate agreements with the host government permitting the tax-free import and sale of such commodities. Even where the cooperating sponsor negotiates tax-exempt status, the prices at which the cooperating sponsor sells the commodities to the purchaser should reflect prices that would be obtained in a commercial transaction, i.e., the prices would include the cost of duties and taxes. Thus, the amounts normally paid for duties and taxes would accrue for the benefit of the cooperating sponsor's approved program.

(p) *Trilateral exchange programs.* The restrictions herein regarding the distribution, use or labeling of commodities shall not apply to commodities furnished by the CCC in exchange for other commodities received from third parties ("exchanged commodities") to be distributed in a recipient country under a trilateral exchange program. Except as the U.S. Government and the cooperating sponsor may otherwise agree in writing, title to the exchanged commodities will pass to the cooperating sponsor upon delivery to and acceptance by the cooperating sponsor at the point of delivery specified in the program documents. After title passes to the cooperating sponsor the exchanged commodities shall be deemed "commodities" covered by this Regulation with respect to all post-delivery obligations of the cooperating sponsor contained in this Regulation, including obligations regarding labeling, distribution, monitoring, reporting, accounting and use of commodities.

### § 211.6 Processing, repackaging, and labeling commodities.

(a) *Commercial processing and repackaging.* Cooperating sponsors or their designees may arrange for processing commodities into different end products and for packaging or repackaging commodities prior to distribution. When commercial facilities are used for processing, packaging or repackaging, cooperating sponsors or their designees shall enter into written agreements for such services. Except in the case of commodities and/or containers provided to foreign governments for sale under section 206 of Pub. L. 480, the agreements must have the prior approval of the USAID or Diplomatic Post in the country of distribution. Except as A.I.D./W otherwise agrees, the executed agreements shall provide as a minimum that:

(1) No part of the commodities delivered to the processing, packaging, or repackaging company shall be used to defray processing, packaging, repackaging, or other costs, except as provided in paragraph (a)(2) of this section, immediately below.

(2) When the milling of grain is authorized in the cooperating country, the U.S. will not pay any part of the processing costs, directly or indirectly, except that with the prior approval of A.I.D./W, the value of the offal may be used to offset such part of the processing costs as it may cover.

(3) The party providing such services shall:

(i) Fully account to the cooperating sponsor for all commodities delivered to the processor's possession and shall maintain adequate records and submit periodic reports pertaining to the performance of the agreement;

(ii) Be liable for the value of all commodities not accounted for as provided in § 211.9(g);

(iii) Return or dispose of the containers in which the commodity is received from the cooperating sponsor according to instructions from the cooperating sponsor; and

(iv) Plainly label carton, sacks, or other containers containing the end product in accordance with paragraph (c) of this section, below.

(b) *Use of cooperating sponsor facilities.* When cooperating sponsors utilize their own facilities to process, package, or repackage commodities into different end products, and when such products are distributed for consumption off the premises of the cooperating sponsor, the cooperating sponsor shall plainly label the containers as provided in paragraph (c) of this section, and banners, posters, or similar media which shall contain information similar to that prescribed in paragraph (c) of this section, shall be displayed at the distribution center. Recipients' individual identification cards shall to the maximum extent practicable be imprinted to contain such information.

(c) *Labeling.* If prior to distribution the cooperating sponsor arranges for packaging or repackaging donated commodities, the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled with the A.I.D. emblem, in the language of the country in which the commodities are to be distributed, with the following information:

(1) Name of commodity;

(2) Furnished by the people of the United States of America; and

(3) Not to be sold or exchanged (where applicable). Emblems or other identification of nongovernmental cooperating sponsors may also be added.

(d) Where commodity containers are not used. When the usual practice in a country is not to enclose the end product in a container, wrapper, sack, etc., the cooperating sponsor shall, to the extent practicable, display banners, posters, or other media, and imprint on individual recipient identification cards information similar to that prescribed in paragraph (c) of this section.

**§ 211.7 Arrangements for entry and handling in foreign country.**

(a) *Costs at discharge ports.* Except as otherwise agreed upon by A.I.D./W and provided in the applicable shipping contract or in paragraphs (d) and (e) of this section, the cooperating sponsor shall be responsible for all costs, other than those assessed by the delivering carrier either in accordance with its applicable tariff for delivery to the discharge port or in accordance with the applicable charter or booking contract. The cooperating sponsor shall be responsible for all costs for:

(1) Distributing the commodity as provided in the Food for Peace Program Agreement to end users,

(2) For demurrage, detention, and overtime, and

(3) For obtaining independent discharge survey reports as provided in § 211.9.

The cooperating sponsor shall also be responsible for wharfage, taxes, dues, and port charges assessed and collected by local authorities from the consignee, and for lighterage (when not a custom of the port), and lightening costs when assessed as a charge separate from the freight rate.

(b) *Duty, taxes, and consular invoices.* Except for commodities which are to be monetized (sold) under an approved Plan of Operation (see § 211.5(o) above), commodities shall be admitted duty free and exempt from all taxes. Consular invoices shall not be required unless specific provision is made in the Food for Peace Program Agreement. If required, they shall be issued without cost to the cooperating sponsor or to the Government of the United States. The cooperating sponsor shall be responsible for ensuring prompt entry and transit in the foreign country(ies) and for obtaining all necessary import permits, licenses or other appropriate approvals for entry and transit, including phytosanitary, health and inspection certificates.

(c) *Storage facilities and transportation in foreign countries.* Cooperating sponsors shall make all necessary arrangements for receiving the commodities and assume full responsibility for storage and maintenance of commodities from time of delivery at port of entry abroad or, when authorized, at other designated points of entry abroad agreed upon between the cooperating sponsor and A.I.D. Before recommending approval of a program to A.I.D./W, USAID or Diplomatic Post shall obtain from the cooperating sponsor, assurance that provision has been made for internal transportation, and for storage and handling which are adequate by local commercial standards. The cooperating sponsor shall be responsible for the maintenance of commodities in such manner as to assure distribution of the commodities in good condition to recipient agencies or eligible recipients.

(d) *Inland transportation in intermediate countries.* In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be arranged by the cooperating sponsor unless otherwise provided in the Food for Peace Program Agreement or other program document. Nongovernmental cooperating sponsors shall handle claims arising from loss or damage in the intermediate country, in accordance with § 211.9(e). Other cooperating sponsors shall assign any rights that they may have to any claims that arise in the intermediate country to USAID which shall pursue and retain the proceeds of such claims.

(e)(1) *Authorization for Reimbursement of Costs.* If, because of packaging damage, it is determined by a nongovernmental cooperating sponsor that commodities must be repackaged to ensure that the commodities arrive at the distribution point in a wholesome condition, the nongovernmental cooperating sponsor may incur expenses for such repackaging up to $500.00 and such costs will be reimbursed to the nongovernmental cooperating sponsor by CCC. If costs will exceed $500.00, the authority to repackage and incur the costs must be approved by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived, in writing, by the USAID or Diplomatic Post. For losses in transit, the $500.00 limitation shall apply to all commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. For other losses, the $500.00 limitation shall apply to each loss situation, e.g., if 700 bags are damaged in a warehouse due to an earthquake, the $500.00 limitation applies to the total cost of repackaging the 700 bags. Shipments are not to be artificially divided into multiple units, in search of multiple $500 limitations.

(2) *Method of Reimbursement.*—(i) *Repackaging Required Because of Damage Occurring Prior to or During Discharge from the Ocean Carrier.* Costs of such reconstitution or repackaging should be included, as a separate item in claims filed against the ocean carrier (see § 211.9(c)). Full reimbursement of such costs up to $500.00 will be made by CCC, Kansas City Management Office, upon receipt of invoices or other documents to support such costs. For amounts expended in excess of $500.00, reimbursement will be made upon receipt of supporting invoices or other documents establishing the costs of repackaging and showing the prior approval of the USAID or Diplomatic Post to incur the costs (unless approval waived, see § 211.7(e)(1)).

(ii) *Repackaging Required Because of Damage Caused After Discharge of the Cargo from the Ocean Carrier.* Costs of such repackaging will be reimbursed to the agency or organization by CCC (USDA-ASCS Financial Management Division, 14th & Independence Avenue, Washington, DC 20250) upon receipt of documentation as set forth in § 211.7(e)(2) of this chapter.

**§ 211.8 Disposition of commodities unfit for authorized use.**

(a) *Prior to delivery to cooperating sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to the cooperating sponsor (other than a nongovernmental cooperating sponsor, which shall arrange for such inspection) at discharge port or point of entry overseas, the USAID or Diplomatic Post shall immediately arrange for inspection by a public health official or other competent authority. If the commodity is determined to be unfit for human consumption, the USAID or Diplomatic Post shall dispose of it in accordance with the priority set forth in paragraph

(b) of this section. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by USAID or the Diplomatic Post from the sales proceeds, from CCC Account No. 20 FT 401 or from special Title II, Pub. L. 480 Agricultural Commodity Account. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer American Embassy, for the credit of CCC Account No. 20 FT 401.

(b) *After delivery to cooperating sponsor.* If after arrival in a foreign country it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Food for Peace Program Agreement, the cooperating sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by USAID or the Diplomatic Post. If no competent local authority is available, the USAID or Diplomatic Post may determine whether the commodities are unfit for human consumption, and if so may direct disposal in accordance with paragraphs (b)(1) through (4) of this section, below. The cooperating sponsor shall arrange for the recovery for authorized use of that part designated during the inspection as suitable for program use. If, after inspection, the commodity (or any part thereof) is determined to be unfit for authorized use the cooperating sponsor shall notify USAID or the Diplomatic Post of the circumstances pertaining to the loss or damage as prescribed in § 211.9(f). With the concurrence of USAID or the Diplomatic Post, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(1) By transfer to an approved Food for Peace Program for use as livestock feed. A.I.D./W shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(2) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated, removed or crossed out;

(3) By donation to a governmental or charitable organization for use as animal feed or for other nonfood use; and

(4) If the commodity is unfit for any use or if disposal in accordance with paragraph (b) (1), (2), or (3) of this section, immediately above, is not possible, the commodity shall be destroyed under the observation of a representative of USAID or Diplomatic Post, if practicable, in such manner as to prevent its use for any purpose. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by the cooperating sponsor unless it is determined by the USAID or the Diplomatic Post that the damage could not have been prevented by the proper exercise of the cooperating sponsor's responsibility under the terms of the Food for Peace Program Agreement. Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sales proceeds and, except for monetization programs, the net proceeds shall be deposited with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20 FT 401. In monetization programs, net proceeds shall be deposited in the special account used for such funds for purposes of the approved program. The cooperating sponsor shall promptly furnish USAID or the Diplomatic Post a written report of all circumstances relating to the loss and damage. The report or supplemental report shall include a certification by a public health official or other competent authority of the exact quantity of the damaged commodity disposed of because it was determined to be unfit for human consumption.

**§ 211.9 Liability for loss, damage or improper distribution of commodities.**

(a) *Fault of cooperating sponsor prior to loading on ocean vessel.* If a nongovernmental cooperating sponsor books cargo for ocean transportation and is unable to have a vessel at the U.S. port of export for loading in accordance with the agreed shipping schedule, the nongovernmental cooperating sponsor shall immediately notify the USDA. The USDA will determine whether the commodity shall be:

(1) Moved to another available outlet;

(2) Stored at the port for delivery to the nongovernmental cooperating sponsor when a vessel is available for loading; or

(3) Disposed of as the USDA may deem proper.

When additional expenses are incurred by CCC as a result of a failure of the voluntary agency or intergovernmental organization, or their agent, to meet the agreed shipping schedule, or to make necessary arrangements to accept commodities at the points of delivery designated by CCC, and it is determined by CCC that the expenses were incurred because of the fault or negligence of the nongovernmental cooperating sponsor, the cooperating sponsor shall reimburse CCC for such expenses or take such action as directed by CCC.

(b) *Fault of others prior to loading on ocean vessel.* Upon the happening of any event creating any rights against a warehouseman, carrier, or other person for the loss of or damage to a commodity occurring between the time title is transferred to a non-governmental cooperating sponsor and the time the commodity is loaded on board vessel at designated port of export, the non-governmental cooperating sponsor shall immediately notify CCC and promptly assign to CCC any rights to claims which may accrue to them as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate and prosecute, and retain the proceeds of all claims for such loss or damage.

(c) *Ocean carrier loss and damage*—(1) *Survey and outturn reports.* (i) Cooperating sponsors shall arrange for an independent cargo surveyor to attend the discharge of the cargo and to count or weigh the cargo and examine its condition, unless USAID or the Diplomatic Post determines that such examination is not feasible, or if CCC has made other provisions for such examinations and reports. The surveyor shall prepare a report of its findings showing the quantity and condition of the commodities discharged. The report shall also show the probable cause of any damage noted, and set forth the time and place when the examination was made. If practicable, the examination of the cargo shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties. Customs receipts, port authority reports, shortlanding certificates, cargo boat notes, stevedore's tallies, etc., where applicable, shall be obtained and furnished with the report of the surveyor. The cooperating sponsor shall obtain a certification by public health official or similar competent authority as to—

(A) The condition of the commodity in any case where a damaged commodity appears to be unfit for its intended use; and

(B) A certificate of disposition in the event the commodity is determined to be unfit for its intended use.

Such certificates shall be obtained as soon as possible after discharge of the cargo. In any case where the cooperating sponsor can provide a narrative chronology or other commentary to assist in the adjudication of ocean transportation claims, such information should be forwarded. Cooperating sponsors shall prepare such a statement in any case where the loss is estimated to be in excess of $5,000.00. All documentation shall be in English or supported by an English translation and shall be forwarded as set forth in paragraph (c) (1) (iii) and (iv) of this section, below. The cooperating sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the cooperating sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the cooperating sponsor shall provide the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. In the case of bulk grain shipments, the cooperating sponsor shall obtain the services of an independent surveyor to—

(A) Observe the discharge of the cargo,

(B) Report on discharging techniques and furnish information as to whether cargo was carefully discharged in accordance with the customs of the port,

(C) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence,

(D) Advise on the quality of sweepings,

(E) Obtain copies of port and/or vessel records, if possible, showing quantity discharged,

(F) Provide immediate notification to cooperating sponsor if additional services are necessary to protect cargo interests or if surveyor has reason to believe that the correct quantity was not discharged.

The cooperating sponsor, in the case of damage to bulk grain shipments, shall obtain and provide the same documentation regarding quality of cargo as set forth in § 211.8(a) of this part and paragraph (c)(1)(i) of this section, above. In the case of shipments arriving in container vans, cooperating sponsors shall require the independent surveyor to list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying the contents as soon as possible after opening.

(iii) Cooperating Sponsors shall send copies to USDA of all reports and documents pertaining to the discharge of commodities.

(iv) CCC will reimburse the nongovernmental cooperating sponsor for the costs incurred by them in obtaining the services of an independent surveyor to conduct examinations of the cargo and render the report set forth above. Reimbursement by CCC will be made upon receipt by CCC of the survey report and the surveyor's invoice or other documents that establish the survey cost. However, CCC will not reimburse a nongovernmental cooperating sponsor for the costs of only a delivery survey, in the absence of a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless such deviation from the documentation requirements of this part, § 211.9(c)(1), is justified to the satisfaction of CCC.

(v) CCC will normally contract for the survey of cargo on shipments furnished under Transfer Authorizations. Survey contracts will normally be let on a competitive bid basis. However, if a USAID or Diplomatic Post desires that CCC limit its consideration to only certain selected surveyors, the USAID or Diplomatic Post shall furnish A.I.D./W a list of eligible surveyors for forwarding to CCC. Surveyors may be omitted from the list, for instance, based on foreign relations considerations, conflicts of interest, and/or lack of demonstrated capability to properly carry out surveying responsibilities as set forth in the requirements of CCC. A.I.D./W will furnish CCC's surveying requirements to a USAID or Diplomatic Post upon request. If CCC is unable to find a surveyor at a port to which a shipment has been consigned, CCC may request A.I.D./W to contact the USAID or Diplomatic Post to arrange for a survey. The surveyor's bill for such services shall be submitted to the USAID or Diplomatic Post for review. After the billing has been approved, the USAID or Diplomatic Post may either pay the bill or forward the bill to A.I.D./W for transmittal to CCC for payment. If the USAID or Diplomatic Post pays the bill, A.I.D./W shall be advised of the amount paid and CCC will reimburse the USAID or Diplomatic Post.

(2) *Claims against ocean carriers.* (i) Whether or not title to the commodities has been transferred from CCC to the cooperating sponsor, if A.I.D. or its agents or representatives contracted for the ocean transportation, CCC shall have the right to initiate and prosecute, and retain the proceeds of, all claims against ocean carriers for cargo loss and damage arising out of shipments of commodities transferred or delivered by the CCC hereunder.

(ii)(A) Unless otherwise provided in the Food for Peace Program Agreement or other program document, nongovernmental cooperating sponsors shall file notice of any cargo loss and damage with the carrier immediately upon discovery of any such loss and damage and shall promptly initiate claims against the ocean carriers for cargo loss and damage and shall take all necessary action to obtain restitution for losses within any applicable periods of limitations and shall transmit to CCC copies of all such claims. However, the nongovernmental cooperating sponsor need not file a claim when the cargo loss is not in excess of $25, or in any case when the loss is in excess of $25, but not in excess of $100 and it is determined by the nongovernmental cooperating sponsor that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental cooperating sponsor shall transmit to CCC copies of all claims filed with the ocean carriers for cargo loss and damage, as well as information and/or documentation on shipments when no claim is to be filed. When General Average (see definition) has been declared, no action will be taken by the nongovernmental cooperating sponsor to file or collect claims for loss or damage to commodities. (See paragraph (c)(2)(iii) of this section, below.)

(B) *Determination of value.* When payment is made for commodities misused, lost or damaged, the value shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred, or, in case it is not feasible to obtain or determine such market price, the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the Government of the United States in making delivery to the cooperating sponsor. When the value is determined on a cost basis, the nongovernmental cooperating sponsors may add to the value any provable costs they have incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss and/or damage claims, at the request of the cooperating sponsor and/or upon the recommendation of the USAID or Diplomatic Post, A.I.D./W may determine that such value may be determined on some other justifiable basis. When replacement is made, the value of commodities misused, lost or damaged, shall be their value at the time and place the misuse, loss, or damage occurred and the value of the replacement commodities shall be their value at the time and place replacement is made.

(C) Amounts collected by nongovernmental cooperating sponsors on claims against ocean carriers not in excess of $100 may be retained by the nongovernmental cooperating sponsor. On claims involving loss or damage having a value in excess of $100 the nongovernmental cooperating sponsors may retain from collections received by them, the larger of—

(1) The amount of $100 plus 10 percent of the difference between $100 and the total amount collected on the claim, up to a maximum of $350, or

(2) Actual administrative expenses incurred in collection of the claim; provided retention of such expenses is approved by CCC.

Collection costs shall not be deemed to include attorneys fees, fees of collection agencies, and the like. In no event will collection costs in excess of the amount collected on the claim be paid by CCC. The nongovernmental cooperating sponsors may also retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling, packing, and insurance costs, which the nongovernmental cooperating sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(D) The nongovernmental cooperating sponsor may redetermine claims on the basis of additional documentation or information, not considered when the claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by CCC is not required regardless of amount. However copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(E) The nongovernmental cooperating sponsor may negotiate compromise settlements of claims regardless of the amount thereof, except that proposed compromise settlements of claims having a value in excess of $5,000 shall not be accepted until such action has been approved in writing, by CCC. When a claim is compromised, the nongovernmental cooperating sponsor may retain from the amount collected, the amounts authorized in paragraph (c)(2)(ii)(c) of this section, above, and in addition, an amount representing such percentage of the special charges described in paragraph (c)(2)(ii)(c) of this section as the compromised amount is to the full amount of the claim. When a claim is not in excess of $600, the nongovernmental cooperating sponsor may terminate collection activity on the claim according to the standards set forth in 4 CFR 104.3. Approval of such termination by CCC is not required but the nongovernmental cooperating sponsor shall notify CCC when collection activity on a claim is terminated.

(F) All amounts collected in excess of the amounts authorized herein to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by the nongovernmental cooperating sponsor from the proceeds of claims filed against ocean carriers, the word "claim" shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. If a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the liable party or parties, the rights of the nongovernmental cooperating sponsor to the claim shall be assigned to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Nongovernmental cooperating sponsors shall promptly assign their claim rights to CCC upon request. In the event CCC effects collection or other settlement of the claim after the rights of the nongovernmental cooperating sponsor to the claim have been assigned CCC, CCC shall, except as shown below, pay to the nongovernmental cooperating sponsor the amount the agency or organization would have been entitled to retain had they collected the same amount. However, the additional 10 percent on amounts collected in excess of $100 will be payable only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is deemed to be commensurate with the extra efforts exerted in further documenting claims. Further, if CCC determines that the documentation requirements of § 211.9(c)(1), above, have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC reserves the right to deny payment of all allowances to the nongovernmental cooperating sponsor.

(G) When nongovernmental cooperating sponsors fail to file claims, or permit claims to become time-barred, or fail to provide for the right of CCC to assert such claims, as provided in this § 211.9, and it is determined by CCC that such failure was due to the fault or negligence of the nongovernmental cooperating sponsor, the agency or organization shall be liable to the United States for the cost and freight (C&F) value of the commodities lost to the program.

(iii) If a cargo loss has been incurred on a nongovernmenal cooperating sponsor shipment, and general average has been declared, the nongovernmental cooperating sponsor shall furnish to the Chief Claims and Collections Division, Kansas City ASCS Management Office, P.O. Box 205, Kansas City, Missouri, ZIP 64141, with a duplicate copy to A.I.D./ W-PDC/FFP/POD, 2201 C Street, NW., Washington, DC 20523—

(A) Copies of booking confirmations and the applicable on-board bill(s) of lading,

(B) The related outturn or survey report(s),

(C) Evidence showing the amount of ocean transportation charges paid to the carrier(s), and

(D) An assignment to CCC of the cooperating sponsor's right to the claim(s) for such loss.

(d) *Fault of cooperating sponsor in country of distribution.* If the cooperating sponsor improperly distributes or permits a commodity or proceeds from the sale thereof or program income to be used for a purpose not permitted under the Food for Peace Program Agreement, other program documents or this part, or causes loss or damage to a commodity through any act or omission or fails to provide proper storage, care, and handling, the cooperating sponsor shall pay to the United States the value of the commodities, proceeds or program income, lost, damaged, or misused (or may, with prior USAID approval, replace such commodities with similar commodities of equal value), unless it is determined by A.I.D. that such improper distribution or use, or such loss or damage, could not have been prevented by proper exercise of the cooperating sponsor's responsibility under the terms of the agreement. Normal commercial practices in the country of distribution shall be considered in determining whether there was a proper exercise of the cooperating sponsor's responsibility. Payment by the cooperating sponsor shall be made in accordance with paragraph (g) of this section.

(e) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey and/or outturn reports to determine ocean carrier loss and damage, the cooperating sponsor shall, in the case of land-locked countries, arrange for an independent survey at the point of entry into the recipient country and to make a report as set forth in § 211.9(c)(1), above. CCC will reimburse the cooperating sponsor for the costs of survey as set forth in § 211.9(c)(1)(iv).

(2) Upon the happening of any event creating any rights against a warehouseman, carrier or other person for the loss of, damage to, or misuse of any commodity or for the loss or misuse of monetized proceeds or program income, the cooperating sponsor shall make every reasonable effort to pursue collection of claims against the liable party or parties for the value of the commodity lost, damaged, or misused or the value of the monetized proceeds or program income and furnish a copy of the claim and related documents to USAID or Diplomatic Post. Cooperating sponsors who fail to file or pursue such claims shall be liable to A.I.D. for the value of the commodities or monetized proceeds or program income lost, damaged, or misused: Provided, however, That the cooperating sponsor may elect not to file a claim if the loss is less than $300 and such action is not detrimental to the program. Cooperating sponsors may retain $100 of any amount collected on an individual claim. In addition, cooperating sponsors may, with the written approval of the USAID or Diplomatic Post, retain special costs such as legal fees that they have incurred in the collection of a claim. Any proposed settlement for less than the full amount of the claim must be approved by the USAID or Diplomatic Post prior to acceptance. When the cooperating sponsor has exhausted all reasonable attempts to collect a claim, it shall request the USAID or Diplomatic Post to provide further instructions.

(3) Claims Resulting on Shipments of Commodities from Port of Entry Enroute to Point of Destination in Landlocked Countries. These claims should be filed by the cooperating sponsor based on losses from an entire shipment as an individual claim (i.e. based on an ocean freight Bill of Lading or independent survey report conducted at the time the commodity is offloaded at port of entry), assuming that the claim covers a contract with one carrier, and that the shipment has not been artificially broken down. The individual claim may not be artificially broken down by the cooperating sponsor in order to enlarge the amount that the cooperating sponsor may retain.

(4) Reasonable attempts to collect the claim shall not be less than follow-up of initial billings with three progressively stronger demands at not more than 30-day intervals. If these efforts fail to elicit a satisfactory response, legal action in the judicial system of the cooperating country should be pursued unless liability of the third party is not provable, the cost of pursuing the claim would exceed the amount of the claim or the A.I.D. Mission or Diplomatic Post otherwise approves a request from the cooperating sponsor that it should not take further action on the claim. A cooperating sponsor's decision that liability is not provable or the cost of legal action would exceed the amount of the claim must be supported by the opinion of competent counsel and must be submitted to the USAID Mission or Diplomatic Post for review and approval.

(5) If the A.I.D. Mission or Diplomatic Post approves a cooperating sponsor's decision not to take further action on the claim, the cooperating sponsor shall assign the claim to A.I.D. upon request, and shall provide to A.I.D. all documentation relating to the claim. The rights of the cooperating sponsor to the claim shall be assigned to A.I.D. in sufficient time to permit the filing of legal action, if A.I.D. chooses to do so, prior to the expiration of any period of limitation applicable to the claim under the laws of the cooperating country.

(6) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the cooperating sponsor and the cooperating country may agree to settle disputed claims by an appropriate administrative procedure and/or arbitration. This alternative may be established in the Individual Country Food for Peace Program Agreement required under § 211.3(b), or by a separate formal understanding and must be submitted to the USAID Mission or Diplomatic Post for review and approval. Resolution of disputed claims by any administrative procedure or arbitration agreed to by the cooperating sponsor and the cooperating country should be final and binding on the parties.

In the event it is necessary for the USAID Mission or Diplomatic Post to take an assignment of a claim or claims from a cooperating sponsor, the A.I.D. Mission or Diplomatic Post shall consult with A.I.D./Washington regarding the appropriate action to take on the assigned claim or claims.

(f) *Reporting losses to USAID or Diplomatic Post.* The cooperating sponsor shall promptly notify USAID or the Diplomatic Post, in writing, of the circumstances pertaining to any loss, damage, or misuse occurring within the country of distribution or intermediate country and shall include information as to the name of the responsible party; kind and quantities of commodities; size and type of containers; the time and place of misuse, loss or damage, the current location of the commodity; and the Food for Peace Program Agreement number, the CCC contract numbers, if known, or if unknown, other identifying numbers printed on the commodity containers, the action taken by the cooperating sponsor with respect to recovery or disposal; and the estimated value of the commodity. If any of the above information is not available, an explanation of its unavailability shall be made by the cooperating sponsor. Similar information should also be reported regarding any loss or misuse of monetized proceeds or program income.

(g) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in currency in which freight is paid, or a pro rata share of each) and shall be remitted (less amounts authorized to be retained) by nongovernmental cooperating sponsors to CCC. Claims against nongovernmental cooperating sponsors shall be paid to CCC or A.I.D./W in U.S. dollars. With respect to commodities lost, damaged or misused, amounts paid by other cooperating sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably, in U.S. dollars with instructions to credit the deposit to CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401. With respect to monetized proceeds and program income, amounts recovered may be deposited in the special account used for such funds and may thereafter be used for purposes of the approved program.

(h) *General average.* CCC shall—

(1) Be responsible for settling general average and marine salvage claims,

(2) Retain the authority to make or authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted, and receive and retain any monetary proceeds resulting from such disposition,

(3) In the event of a declaration of general average, initiate and prosecute, and retain all proceeds of, cargo loss and damage claims against ocean carriers, and

(4) Receive and retain any allowance in general average.

CCC will pay any general average or marine salvage claims determined to be due.

### § 211.10 Records and reporting requirements of cooperating sponsor.

(a) *Records.* Cooperating sponsors shall maintain records and documents in a manner which will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale, inspection and use of commodities. This shall include a periodic summary report and records of receipt and disbursement of any funds accruing from the sale of commodities and the operation of the program. Such records shall be retained for a period of 3 years from the close of the U.S. fiscal year to which they pertain, or longer, upon request by A.I.D. for cause, such as in the case of litigating a claim or audit concerning such records. The cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D.

(b) *Reports.* Cooperating sponsors shall submit reports to the USAID or Diplomatic Post and to A.I.D./W, not less than annually relating to progress and problems in the implementation of the program, and inspection or evaluation reports, as required by A.I.D./W or as agreed upon between USAID or Diplomatic Post and the cooperating sponsor and approved by A.I.D./W. The following is a list of the principal types of reports that are to be submitted:

(1) Periodic summary reports showing receipt, distribution, and inventory of commodities and proposed schedules of shipments or call forwards.

(2) In the case of Title II sales monetization agreements in accordance with section 206 or section 207 of the Act, the cooperating sponsor, whether governmental or nongovernmental, is directly responsible for reporting on programs involving the use of funds for purposes specified in the agreement.

(3) Reports relating to progress and problems in the implementation of the program, and inspection reports, as may be required from time to time by A.I.D./W or as may be agreed upon between the USAID or Diplomatic Post and the cooperating sponsor and approved by A.I.D./W.

(4) Reports of all comprehensive internal reviews prepared in accordance with § 211.5(c), above, shall be submitted to the USAID or Diplomatic Post for review as soon as completed and in sufficient detail to enable the USAID or Diplomatic Post to assess and to make recommendations as to the ability of the cooperating sponsors to effectively plan, manage, control and evaluate the Food for Peace programs under their administration.

(5) Emergency Programs. At the time that an emergency program under Pub. L. 480, Title II is initiated, whether on a governmental or nongovernmental basis, the Mission should:

(i) Make a determination regarding the ability of the cooperating sponsor to perform the record-keeping required by this § 211.10 and

(ii) In those instances in which those specific record-keeping requirements cannot be followed, due to emergency circumstances, specify exactly which essential information will be recorded in order to account fully for Title II commodities.

(6) Reports accounting for the generation and use of program income.

(c) *Inspection and audit.* Cooperating sponsors shall cooperate with and give reasonable assistance to U.S. Government representatives to enable them at any reasonable time to examine activities and records of the cooperating sponsors, processors, or others, pertaining to the receipt, storage, distribution, processing, repackaging, sale and use of commodities by recipients; to inspect commodities in storage, or the facilities used in the handling or storage of commodities; to inspect and audit records, including financial records and reports pertaining to storage, transportation, processing, repackaging, distribution, sale and use of commodities; the deposit of and use of any Title II generated local currencies; to review the overall effectiveness of the program as it relates to the objectives set forth in the Food for Peace Program Agreement; and to examine or audit the procedure and methods used in carrying out the requirements of this part (Regulation 11). Inspections and audits of Title II emergency programs will take into account the circumstances under which such programs are carried out.

### § 211.11 Termination of program.

All or any part of the assistance provided under the program, including commodities in transit, may be terminated or suspended by A.I.D. at its discretion if the cooperating sponsor fails to comply with the provisions of the Food for Peace Program Agreement, this part, or if it is determined by A.I.D. that the continuation of such assistance is no longer necessary or desirable. Under such circumstances title to commodities which have been transferred to the cooperating sponsor, or Title II generated funds, shall at the written request of USAID, the Diplomatic Post, or A.I.D./W, be transferred to the U.S. Government by the cooperating sponsor. Any excess commodities on hand at the time the program is terminated shall be disposed of in accordance with § 211.5(l) or as otherwise instructed by USAID or the Diplomatic Post. If it is determined that any commodity to be supplied under the Food for Peace Program Agreement is no longer available for Food for Peace programs, such authorization shall terminate with respect to any commodities which, as of the date of such determination have not been delivered f.o.b. or f.a.s. vessel, provided every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

### § 211.12 Waiver and amendment authority.

The Assistant Administrator for Food for Peace and Voluntary Assistance, may waive, withdraw, or amend, at any time, any or all of the provisions of this Part 211 (Regulation 11) if such provision is not statutory and it is determined to be in the best interest of the U.S. Government to do so. Any cooperating sponsor which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto may at the discretion of A.I.D. be suspended or disqualified from further participation in any distribution program.

Reinstatement may be made at the option of A.I.D.

Disqualification shall not prevent A.I.D. from taking other action through other available means when considered necessary.

## Appendix I to Part 211—Legislation

The Agricultural Trade Development Assistance Act of 1954, as amended (Public Law 480) implemented by the Regulation in this part (as of the date of issuance of this part) includes legislation pertaining to Pub. L. 480, Title II activities as follows:

*Title II Legislation*

(1) Section 2(3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides that in furnishing food aid, the President shall:

"relate United States food assistance to efforts by aid-receiving countries to increase their own agricultural production, with emphasis on development of small, family farm agriculture, and improve their facilities for transportation, storage, and distribution of food commodities."

(2) Section 201 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) The President is authorized to determine requirements and furnish agricultural commodities on behalf of the people of the United States of America, to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing areas, and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. The Commodity Credit Corporation shall make available to the President such agricultural commodities determined to be available under section 401 as he may request.

(b) The minimum quantity of agricultural commodities distributed under this title for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, shall be 1,900,000 metric tons, of which not less than 1,425,000 metric tons for nonemergency programs shall be distributed through nonprofit voluntary agencies, cooperatives, and the World Food Program; unless the President determines and reports to the Congress, together with his reasons, that such quantity cannot be used effectively to carry out the purposes of this title.

(c)(1) Except as provided in paragraph (2), in distributing agricultural commodities under this title, the President shall:

(A) consider

(i) the nutritional assistance to recipients and benefits to the United States that would result from distributing such commodities in the form of processed and protein-fortified products, including processed milk, plant protein products, and fruit, nut, and vegetable products;

(ii) the nutritional needs of the proposed recipients of the commodities;

(iii) the cost effectiveness of providing such commodities, for purposes of selecting commodities for distribution under nonemergency programs; and

(iv) the purposes of this title; and

(B) ensure that at least 75 percent of the quantity of agricultural commodities required to be distributed each fiscal year under subsection (b) for nonemergency programs be in the form of processed or fortified products or bagged commodities.

(2) The president may waive the requirement under paragraph (1)(B) or make available a smaller percentage of fortified or processed food than required under paragraph (1)(B) during any fiscal year in which the President determines that the requirements of the programs established under this title will not be best served by the distribution of fortified or processed food in the amounts required under paragraph (1)(B)."

(3) Section 202 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) The President may furnish commodities for the purposes set forth in section 201 through such friendly governments and such agencies, private or public, including intergovernmental organizations such as the world food program and other multilateral organizations in such manner and upon such terms and conditions as he deems appropriate. The President shall, to the extent practicable, utilize nonprofit voluntary agencies or cooperatives registered with, and approved by the Agency for International Development. If no United States nonprofit voluntary agency or cooperative registered with and approved by the Agency for International Development is available, the President may utilize a foreign nonprofit voluntary agency or cooperative which is registered with and approved by the Agency for International Development. Insofar as practicable, all commodities furnished hereunder shall be clearly identified by appropriate markings on each package or container in the language of the locality where they are distributed as being furnished by the people of the United States of America. Except in the case of emergency, the President shall take reasonable precaution to assure that commodities furnished hereunder will not displace or interfere with sales which might otherwise be made.

(b)(1) Assistance to needy persons under this title shall be directed, insofar as practicable, toward community and other self activities designed to alleviate the causes of need for such assistance.

(2) In order to assure that food commodities made available under this title are used effectively and in the areas of greatest need, entities through which such commodities are distributed shall be encouraged to work with indigenous institutions and employ indigenous workers, to the extent feasible, to assess nutritional and other needs of beneficiary groups, help these groups design and carry out mutually acceptable projects, recommend ways of making food assistance available that are most appropriate for each local setting, supervise food distribution, and regularly evaluate the effectiveness of each project.

(3) In distributing food commodities under this title, priority shall be given, to the extent feasible, to those who are suffering from malnutrition by using means such as (A) giving priority within food programs for preschool children to malnourished children, and (B) giving priority to poorest regions of countries.

(4) In the case of commodities distributed under this title by nonprofit voluntary agencies, consideration shall be given to nutritional and development objectives as established by those agencies in light of their assessment of the needs of the people assisted.

(c)(1) In agreements with nonprofit voluntary agencies and cooperatives for nonemergency assistance under this title, the President is encouraged, if requested by the nonprofit voluntary agency or cooperative, to approve multiyear agreements to make agricultural commodities available for distribution by that agency or cooperative. Such agreement shall be subject to the availability each fiscal year of the necessary appropriations and agricultural commodities.

(2) Paragraph (1) does not apply to an agreement which the President determines should be limited to a single year because of the past performance of the nonprofit voluntary agency or cooperative or because the agreement involves a new program of assistance.

(3) In carrying out a multiyear agreement pursuant to this subsection, a nonprofit voluntary agency or cooperative shall not be required to obtain annual approval from the United States Government in order to continue its assistance program pursuant to the agreement, unless exceptional and unforeseen circumstances have occurred which the President determines require such approval."

(4) Section 203 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"The Commodity Credit Corporation may, in addition to the cost of acquisition, pay with respect to commodities made available under this title costs for packaging, enrichment, preservation, and fortification; processing, transportation, handling, and other incidental costs up to the time of their delivery free on board vessels in United States ports; ocean freight charges from United States ports to designated ports of entry abroad; transportation from United States ports to designated points of entry abroad in the case (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disturbances, (3) where carriers to a specific country are unavailable, or (4) where a substantial savings in cost or time can be effected by utilization of points of entry other than ports; in the case of commodities for urgent and extraordinary relief requirements, including pre-positioned commodities, transportation costs from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs; and charges for general average contributions arising out of the ocean transport of commodities transferred pursuant thereto."

(5) Section 204 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"Programs of assistance shall not be undertaken under this title during any fiscal year which call for an appropriation of more than $1,000,000,000 to reimburse the Commodity Credit Corporation for all costs incurred in connection with such programs (including the Corporation's investment in commodities made available) plus any amount by which programs of assistance undertaken under this title in the preceding fiscal year have called or will call for appropriations to reimburse the Commodity Credit Corporation in amounts less than were authorized for such purpose during such preceding year. The President may waive the limitation in the preceding sentence if the President determines that such waiver is necessary to undertake programs of assistance to meet urgent humanitarian needs. In addition to other funds available for such purposes under any other act, funds made available under this title may be used in an amount not exceeding $7,500,000 annually to purchase foreign currencies accruing under title I of this Act in order to meet costs (except the personnel and administrative costs of cooperating sponsors, distributing agencies, and recipient agencies, and the costs of construction or maintenance of any church owned or operated edifice or any other edifices to be used for sectarian purposes) designed to assure that commodities made available under this title are used to carry out effectively the purposes for which such commodities are made available or to promote community and other self-help activities designed to alleviate the causes of the need for such assistance: Provided, however, that such funds shall be used only to supplement and not substitute for funds normally available for such purposes from other non-United States Government sources."

(6) Section 206 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) Except to meet famine or other urgent or extraordinary relief requirements, or for nonemergency programs conducted by nonprofit voluntary agencies or cooperatives, no assistance under this title shall be provided under an agreement permitting generation of foreign currency proceeds unless (1) the country receiving the assistance is undertaking self-help measures in accordance with Section 1709 of this title [Section 109 of this Act], (2) the specific uses to which the foreign currencies are to be put are set forth in a written agreement between the United States and the recipient country, and (3) such agreement provides that the currencies will be used for (A) alleviating the causes of the need for the assistance in accordance with the purposes and policies specified in Section 2151a of Title 22 [Section 103 of the Foreign Assistance Act of 1961], (B) programs and projects to increase the effectiveness of food distribution and increase the availability of food commodities provided under this title to the neediest individuals in recipient countries, or (C) health programs and projects, including immunization of children. The President shall include information on currencies used in accordance with this section in the reports required under Section 1736(b) of this title [Section 408 of this Act] and Section 2417 of Title 22 [Section 634 of the Foreign Assistance Act of 1961].

(b) Not later than February 15, 1988, and annually thereafter, the President shall report to Congress on sales and barter, and use of foreign currency proceeds, under this section and Section 207 during the preceding fiscal year. Such report shall include information on—(1) the quantity of commodities furnished for such sale or barter; (2) the amount of funds (including dollar equivalents for foreign currencies) and value of services generated from such sales and barter in the preceding fiscal year; (3) how such funds and services were used; (4) the amount of foreign currency proceeds that were used under agreements under this section and section 207 in the preceding fiscal year, and the percentage of the quantity of all commodities and products furnished under this section and section 207 in such fiscal year such use represented; (5) the President's best estimate of the amount of foreign currency proceeds that will be used under agreements under this section and section 207, in the then current fiscal year and the next following fiscal year (if all requests for such use are agreed to), and the percentage that such estimated use represents of the quantity of all commodities and products that the President estimates will be furnished under this section and section 207 in each such fiscal year; (6) the effectiveness of such sales, barter, and use during the preceding fiscal year in facilitating the distribution of commodities and products under this section and section 207; (7) the extent to which such sales, barter, or uses—(A) displace or interfere with commercial sales of United States agricultural commodities and products that otherwise would be made; (B) affect usual marketings of the United States; (C) disrupt world prices of agricultural commodities or normal patterns of trade with friendly countries; or (D) discourage local production and marketing of agricultural commodities in the countries in which commodities and products are distributed under this title; and (8) the President's recommendations, if any, for changes to improve the conduct of sales, barter, or use activities under this section and Section 207."

(7) Section 207 of the Agricultural Trade Development and Assistance Act of 1954, as amended provides as follows:

"(a) A nonprofit voluntary agency or cooperative requesting a nonemergency food assistance agreement under this title shall include in such request a description of the intended uses of any foreign currency proceeds that would be generated with the commodities provided under the agreement. (b) Such agreements shall provide, in the aggregate for each fiscal year, for the use of foreign currency proceeds under this subsection in an amount that is not less than 10 percent of the aggregate value of the commodities distributed under nonemergency programs under this title for such fiscal year. (c) Foreign currencies generated from any partial or full sales or barter of commodities by a nonprofit voluntary agency or cooperative shall be used—(1) to transport, store, distribute, and otherwise enhance the effectiveness of the use of commodities and the products thereof donated under this title; and (2) to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities."

(8) Section 208 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"Periods for Review and Comment.

(a) Response. If a proposal to make agricultural commodities available under this title is submitted by a nonprofit voluntary agency or cooperative with the concurrence of the appropriate United States Government field mission or if a proposal to make agricultural commodities available to a nonprofit voluntary agency or cooperative is submitted by the United States Government field mission, a decision on the proposal shall be provided within 45 days after receipt by the Agency for International Development Office in Washington, DC. The response shall detail the reasons for approval or denial of the proposal. If the proposal is denied, the response shall specify the conditions that would need to be met for the proposal to be approved.

(b) Notice and Comment. Not later than 30 days before the issuance of a final guideline to carry out this title, the President shall—(1) provide notice of the proposed guideline to nonprofit voluntary agencies and cooperatives that participate in programs under this title, and other interested persons, that the proposed guideline is available for review and comment; (2) make the proposed guideline available, on request, to the agencies, cooperatives and others; and (3) take any comments received into consideration before the issuance of the final guideline.

(c) Deadline for Submission of Commodity Orders. Not later than 15 days after receipt of a call forward from a field mission for commodities or products that meets the requirements of this title, the order for the purchase or the supply, from inventory, of such commodities or products shall be transmitted to the Commodity Credit Corporation."

(9) Section 401 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) After consulting with other agencies of the Government affected and within policies laid down by the President for implementing this Act, and after taking into account productive capacity, domestic requirements, farm and consumer price levels, commercial exports and adequate carryover, the Secretary of Agriculture shall determine the agricultural commodities and quantities thereof available for disposition under this Act, and the commodities and quantities thereof which may be included in the negotiations with each country. No commodity shall be available for disposition under this Act if such disposition would reduce the domestic supply of such commodity below that needed to meet domestic requirements, adequate carryover, and anticipated exports for dollars as determined by the Secretary of Agriculture at the time of exportation of such commodity, unless the Secretary of Agriculture determines that some part of the supply thereof should be used to carry out urgent humanitarian purposes of this Act.

(b) No agricultural commodity may be financed or otherwise made available under the authority of this Act except upon determination by the Secretary of Agriculture that (1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity, and (2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country."

(10) Section 402 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides, in part as follows:

"The term 'agricultural commodity' as used in this Act shall include any agricultural commodity produced in the United States (including fish, without regard to whether such fish are harvested in acquaculture operations), or product thereof produced in the United States: Provided, however, That the term 'agricultural commodity' shall not include alcoholic beverages, and for the purposes of title II of this Act, tobacco or products thereof."

(11) Section 404 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

(a) The programs of assistance conducted under this Act, and the types and quantities of agricultural commodities to be made available, shall be directed in the national interest toward the attainment of humanitarian and developmental objectives as well as the development and expansion of United States and recipient country agricultural commodity markets. To the maximum extent possible, either the commodities themselves shall be used to improve the economic and nutritional status of the poor through effective and sustainable programs, or any proceeds generated from the sales of agricultural commodities shall be used to promote policies and programs that benefit the poor.

(b) Country assessments shall be carried out whenever necessary in order to determine the types and quantities of agricultural commodities needed, the conditions under which commodities should be provided and distributed, the relationship between United States food assistance and other development resources, the development plans of that country, the most suitable timing for commodity deliveries, the rate at which food assistance levels can be effectively used to meet nutritional and developmental needs, and the country's potential as a new or expanded market for both United States agricultural commodities and recipient country foodstuffs."

(12) Section 405 of the Agricultural Trade and Development Assistance Act of 1954, as amended, provides as follows:

"The authority and funds provided by this Act shall be utilized in a manner that will assist friendly countries that are determined to help themselves toward a greater degree of self-reliance in providing enough food to meet the needs of their people and in resolving their problems relative to population growth."

Dated: September 2, 1988.

**Alan Woods,**

*Administrator, Agency for International Development.*

[FR Doc. 88-28700 Filed 12-16-88; 8:45 am]

BILLING CODE 6116-01-M

federal register

Monday
December 19, 1988

# Part IV

# Department of Health and Human Services

## Food and Drug Administration

**21 CFR Part 130**
**Sulfiting Agents in Standardized Foods; Labeling Requirements; Proposed Rule**

**21 CFR Parts 182 and 184**
**Sulfiting Agents; Affirmation of GRAS Status; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 130**

**[Docket No. 84N-0103]**

## Sulfiting Agents in Standardized Foods; Labeling Requirements

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing a regulation that will require that when sulfiting agents have a functional effect in a standardized food or when they are present in a standardized food at a detectable level, their presence must be declared on the label of that food. The proposed regulation states that a detectable level of sulfites is 10 parts per million (ppm) or more. It also sets forth the circumstances under which FDA proposes to find that a standardized food that contains indirectly added sulfiting agents conforms to the applicable standard even though no provision for sulfites is made in that standard. Published elsewhere in this issue of the **Federal Register** is a proposed rule affirming, with specific limitations, that certain uses of sulfiting agents are generally recognized as safe. With FDA's previous rulemakings concerning sulfiting agents and the two proposed rules published in this issue of the **Federal Register**, the agency believes that it has addressed the most significant sources of concern about the use of sulfites in food in ways that will minimize the potential for allergic-type responses.

**DATE:** Comments by February 17, 1989.

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

**FOR FURTHER INFORMATION CONTACT:** Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Labeling of Sulfites in Nonstandardized Foods*

Recent scientific developments have shown that sulfiting agents (sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite) in food can cause allergic-type responses in a significant minority of the population. Responses have been reported that have ranged from mild discomfort to life-threatening episodes. It is essential, therefore, that sulfite-sensitive individuals be protected from unexpected exposure to these ingredients.

Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2) requires that all of the ingredients in a nonstandardized food be declared on the label of that food by their common or usual names unless FDA has exempted the ingredients from that requirements. FDA has established such an exemption in 21 CFR 101.100(a)(3) for "incidental additives" that are present in foods at insignificant levels and that do not have any technical or functional effect in the foods. In the absence of specific guidance from FDA, sulfites generally have been treated by manufacturers as incidental additives whose presence did not have to be declared on labels except when they were directly added to a food for a technical effect.

As a result of evidence that sulfites can cause allergic-type responses, however, FDA decided that consumers should be advised when these ingredients are present in foods. In the **Federal Register** of July 9, 1986 (51 FR 25012), the agency adopted 21 CFR 101.100(a)(4), which states that sulfiting agents will be considered to be present in foods in insignificant amounts only if no detectable amount of sulfite is present in the finished food. Section 101.100(a)(4) states that a detectable amount of a sulfiting agent is 10 ppm or more. This regulation became effective on January 9, 1987. It requires that the presence of detectable amounts of sulfiting agents be declared on the labels of all foods that are subject to the requirements of 21 U.S.C. 343(i). When a sulfiting agent is added directly to a nonstandardized food, it must be declared on the label by its common or usual name. In the preamble to the final rule, however, FDA stated that where sulfiting agents are added indirectly to the food and do not have a technical or functional effect on the food, the collective term "sulfiting agents" may be declared on the label rather than the common or usual name of the specific sulfiting agents. (See paragraph 14 under "Other Comments" (51 FR 25012 at 25015).) The regulation left open the question of the treatment of sulfites on the labels of many standardized foods.

### *B. Labeling Sulfites in Standardized Foods*

A food that is represented to be or purports to be a standardized food is misbranded under section 403(g) of the act (21 U.S.C. 343(g)) unless (1) it conforms to the relevant definition and standard, and (2) its label bears the common or usual names of optional ingredients (other than spices, flavoring, and coloring) required to be listed by the standard.

#### 1. Standardized Foods Subject to Optional Ingredient Listing Requirement

In recent years, FDA has amended many of its regulations for standardized foods to make all ingredients optional. This change has meant that the common or usual names of each of the ingredients must be declared on the label in accordance with the provisions of 21 CFR Part 101. As a result, components of these ingredients, such as sulfiting agents, must be declared on the labels of foods unless the components qualify for the incidental additive ingredient labeling exemption of § 101.100(a)(3) (21 CFR 101.100(a)(3)). Under § 101.100(a)(4)) (21 CFR 101.100(a)(4)), however, detectable amounts of sulfiting agents cannot qualify for this exemption.

#### 2. Standardized Foods Not Subject to Ingredient Listing Requirements

FDA has not amended all of its regulations for standardized foods in this manner. The unamended regulations have no provisions addressing the need for label declaration of sulfiting agents. Some standards allow sulfiting agents to be present but do not require the listing of these ingredients on the label. For example, the standards for glucose sirup (21 CFR 168.120) and dried glucose sirup (21 CFR 168.121) permit the presence of 40 milligrams per kilogram (40 parts per million) or less of sulfur dioxide, but these standards have no sulfur dioxide listing requirement. Other standards do not directly provide for the presence of sulfiting agents, but sulfiting agents may be present in the food as components of permitted ingredients.

This situation is of concern to FDA because if the presence of the sulfiting agents is not declared on the label of a food, a sulfite-sensitive individual could be misled into believing that he or she can eat that food without risk.

#### 3. Standardized Foods in Which Sulfiting Agents Are Components of Ingredients

Under 21 CFR 130.8(a), a food does not conform to a definition and standard of identity if it contains an ingredient for which no provision is made in such standard, "unless such ingredient is an incidental additive introduced at a nonfunctional and insignificant level as a result of its deliberate and purposeful addition to another ingredient permitted by the terms of the applicable standard and the presence of such incidental additive in unstandardized foods has been exempted from label declaration as provided in § 101.100 of this chapter."

Sulfiting agents are frequently used in foods that are intended to become ingredients of standardized foods. Before the adoption of 21 CFR 101.100(a)(4), many firms that produced standardized foods with sulfite-treated ingredients assumed that if the sulfiting agents had no effect in the finished food, and if the sulfites were used in the ingredient in accordance with current good manufacturing practice, the sulfiting agents were incidental additives. These firms also concluded that under 21 CFR 130.8(a), the finished foods complied with the relevant food standards, despite the fact that there was no provision for the sulfiting agents in the standard.

In adopting 21 CFR 101.100(a)(4), FDA took the position that sulfiting agents in amounts of 10 ppm or more were significant. As a result, there are a number of foods that technically do not conform to the relevant standards of identity because these foods contain sulfiting agents that are not provided for in the standards and that are not incidental additives.

FDA recognizes that it could declare such foods to be misbranded until they are reformulated, or until the standards are amended to provide for the presence of sulfites. However, the agency has concluded that such action would make little sense. It would mean a significant disruption in the food supply for a violation that would not have any health significance if the presence of the sulfiting agents were declared on the label of the food.

## II. Requirement To Declare Presence of Sulfites in Standardized Foods

### *A. The Proposed Action*

To ensure that consumers can determine at point of sale whether any food, standardized or nonstandardized, contains added sulfites, FDA is proposing to amend its regulations to require that the presence of sulfiting agents be declared on the label of all standardized foods that contain an amount of these ingredients that has a functional effect in the food or that is detectable. (If the sulfiting agents have a technical effect in the food, their use must, of course, be consistent with the standard of identity, or the food would be adulterated under 21 U.S.C. 343(g)(1)).

Proposed § 130.9(a) states that any standardized food that contains a sulfiting agent that has a functional effect or that is present at a level of 10 ppm or more in the finished food [1] is misbranded unless the presence of the sulfiting agent is declared on the label. This provision will require that the presence of the sulfiting agent be declared even if the relevant standard does not require the listing of optional ingredients, and even if the sulfiting agent has been indirectly incorporated into the food as, for example, a component of an optional or required ingredient or as a processing aid. Failure to declare the presence of the sulfiting agent will render the food misbranded.

### *B. Legal Basis*

FDA believes that this proposal is fully consistent with the act. Under section 403(a) of the act (21 U.S.C. 343(a)), a food is misbranded if its labeling is false or misleading in any respect. Under section 201(n) (21 U.S.C. 321(n)), the extent to which labeling fails to reveal facts material with respect to the consequences of use of an article shall be taken into account in determining whether the labeling of that article is misleading. Because, as stated above, sulfiting agents can cause allergic-type responses of unpredictable severity, the presence of a detectable amount of sulfites (as defined by 21 CFR 101.100(a)(4) as 10 ppm or more sulfites) in a food is a material fact. Therefore, the absence on the label of a food of the material fact that the food contains sulfiting agents renders that label misleading and the food misbranded under sections 403(a) and 201(n) of the act.

### *C. Means of Compliance*

FDA recognizes that the labels of many standardized foods do not bear an ingredient list. Only those foods whose standard of identity requires the listing of optional ingredients will bear such a list.

[1] The term "finished food" refers to the food as it is packaged and sold. The term also refers to food sold to be further processed, mixed, or repackaged, unless there is a written agreement between the shipper and the receiver of the food (in accordance with the provisions of 21 CFR 101.100(d)) that contains the information necessary for appropriate labeling of the food. However, the term "finished food" does not refer to the food as it will ultimately be consumed. Thus, dehydrated finished foods must declare the presence of sulfiting agents without consideration of further rehydration treatment before consumption. Also, the term "finished food" does not refer to portions of the food that are inedible or invariably discarded (e.g., shells from shellfish and crustaceans and packing mediums for products such as cooked lobster meat in brine). Such portions will be excluded from sulfite analyses. Where packing mediums may be used for other home recipes (e.g., canned clam medium in dips) however, the packing medium will not be excluded from sulfite analysis.

Should the agency adopt this proposal, it will consider the regulation to be satisfied if the presence of the sulfiting agent is declared prominently on the label. Four situations seem likely:

If there is no ingredient list on the label, and the sulfites are directly added to the food, a statement such as "This food contains (common or usual name of sulfiting agent)" should be placed on the label.

If the sulfiting agent is directly incorporated in the food as a preservative, under section 403(k) of the act (21 U.S.C. 343(k)), the declaration of the presence of the sulfiting agent must be accompanied by an appropriate statement of this fact (e.g., "With (common or usual name of sulfiting agent), a preservative;" "Contains ________, a preservative;" or "to retard spoilage").

If the sulfiting agent is indirectly incorporated in a standardized food whose standard requires the listing of all ingredients in accordance with Part 101, the presence of the sulfiting agents is declared on the label in accordance with 21 CFR 101.4 (a) and (b)(2). However, FDA will not take action against these foods if the sulfites are listed in parentheses following the name of the food of which they are a component, for example, "________ (with added (common or usual name of sulfiting agent))."

If the sulfiting agents are indirectly incorporated in a standardized food whose standard does not require the listing of all ingredients, the presence of the sulfiting agents is declared prominently on the label. A statement such as "An ingredient in this food contains added (common or usual name of sulfiting agent)" or "Contains ________ with added (common or usual name of sulfiting agent)" may be utilized.

In the preamble to the final rule that published in the **Federal Register** of July 9, 1986 (51 FR 25012), requiring that the presence of detectable amounts of sulfiting agents be declared on the labeling of nonstandardized foods, the agency discussed flexibility concerning the declaration of sulfiting agents. (See paragraph 14 under "Other Comments" (51 FR 25012 at 25015.) FDA announced that, with respect to sulfiting agents that are directly added to, or that have a technical effect in, food, the name of the specific sulfiting agent that is added must be declared on the label. However, the agency agreed that some flexibility is warranted in the declaration of sulfiting agents that are indirectly added to a food and that have no technical or functional effect in the food. An indirectly added sulfite is present in a food as a component of an ingredient in the food, as a processing aid, or as a migrant from food packaging. The purpose of declaring sulfiting agents that are indirectly added and that have no technical or functional effect is to provide information to the consumer who wishes to avoid foods that contain sulfites. The agency stated that it will consider amending the regulations in which collective terms permitted in ingredient declarations are listed (21 CFR 101.4(b)) to include a collective term for the sulfiting agents. However, pending promulgation of a provision in § 101.4(b), the agency will not take legal action against standardized foods that declare sulfiting agents as follows: (1) when sulfiting agents remain in a food in a significant amount but no longer have a technical or functional effect, they may be declared by the term "sulfiting agents;" and (2) when a food contains a sulfiting agent that has a technical or functional effect in the food and that is declared in the list of ingredients by its common or usual name, any nonfunctional sulfiting agents present in the food need not be declared separately in the list of ingredients. However, FDA emphasizes that this flexibility applies only if the sulfite is indirectly added and does not perform a technical or functional effect in the food.

The agency also advises that there is no requirement for quantitative declaration of sulfites. The only information that is required to be included in the label is the name of the sulfiting agent, or, in the circumstances explained in the preceding paragraph, the term "sulfiting agents."

The agency specifically solicits comments as to whether consumers are aware of the common or usual names of the specific sulfiting agents, particularly sulfur dioxide, and whether consumers understand that if they are sulfite-sensitive, they should avoid foods containing any of these sulfiting agents. FDA also solicits comments as to whether the agency should include in any final rule a requirement that where the specific sulfiting agent is declared on the label by its common or usual name, this common or usual name must be followed by the term "a sulfiting agent." For example: "contains sulfur dioxide (a sulfiting agent)."

### III. Compliance With Standard of Identity

FDA is also acting to remove the uncertainty about the status of standardized foods to which sulfites are indirectly added at levels that have no technical effect. The agency is proposing in § 130.9(b) to find that standardized foods that contain sulfites that would have been considered to be incidental additives before the adoption of § 101.100(a)(4) are not misbranded under 21 U.S.C. 343(g)(2) so long as:

(1) The sulfiting agents in the finished standardized food are nonfunctional;

(2) The sulfiting agents have indirectly become components of the standardized food as a result of a use that is in accordance with current good manufacturing practice; and

(3) The presence of the sulfiting agents in the standardized food is declared on the label. Such declaration should be made in accordance with the principles outlined above.

FDA considers this proposed finding to be fully consistent with the act. Under section 306 of the act (21 U.S.C. 336), FDA has discretion not to take action against minor violations of the act if it finds that the public interest will be adequately served by a suitable notice or warning. The failure of a food to comply with the applicable standard of identity because it contains nonfunctional levels of sulfiting agents is a minor violation so long as the public, particularly sulfite-sensitive individuals, are made aware of the presence of sulfiting agents in the food by an appropriate label statement. Such a statement provides adequate notice to sulfite-sensitive individuals of the risks that they face if they consume the food product.

### IV. Effective Date

Consistent with its action in adopting the final rule requiring that the presence of detectable amounts of sulfiting agents be declared on the labels of nonstandardized foods (21 CFR 101.100(a)(4)), FDA proposes that this regulation to establish similar requirements for standardized foods become effective 6 months after publication of the final rule rather than on the next uniform effective date for compliance with new food labeling requirements that is periodically announced. Thus, the agency proposes that by 6 months after the date of publication of any final regulation, all finished foods in which a sulfiting agent has a technical or functional effect, or in which there is a detectable amount of a sulfiting agent, that are initially introduced or initially delivered for introduction into interstate commerce must bear labeling that declares the presence of the sulfiting agent. The agency recognizes that this proposed regulation would require some manufacturers who do not declare sulfites on the labels of their products to revise their labels. Nonetheless, FDA is proposing the 6-month effective date because information about the presence of sulfiting agents is not merely informative but is necessary to protect the health of sensitive individuals. On the basis of its experience, the agency believes that 6 months is an adequate amount of time for manufacturers to change their labeling. The agency urges manufacturers and distributors of standardized foods, however, to declare sulfiting agents on their labels as soon as possible.

Consistent with the agency's response to a similar 6-month effective date for the labeling requirements for nonstandardized foods (see paragraph 16 under "Other Comments" (51 FR 25012 at 25016)), this proposed labeling regulation has as its basis a serious health concern. Although FDA is sympathetic to the problems processors may encounter with a 6-month effective date, the agency cannot ignore the potential hazard to sulfite-sensitive consumers. The labeling requirement in this proposed regulation will apply to foods that are initially introduced into interstate commerce after the effective date of any final rule. If it adopts this regulation, the agency will not take action against foods that are in interstate commerce on the effective date of the final rule.

The agency, however, specifically solicits comments on the appropriateness of the proposed 6-month effective date.

### V. Economic Impact

In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has considered the effect that this proposed rule would have on small entities including large and small businesses and has determined that the proposed labeling requirements will not result in a significant impact on a substantial number of small entities. Furthermore, in accordance with Executive Order 12291, the agency has analyzed the economic effects of this regulation and has determined that the rule, if promulgated, will not be a major rule as defined by that Order.

A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (address above).

### VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VII. Paperwork Reduction Act of 1980

Section 130.9 of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

## VIII. Submission of Comments

Interested persons may, on or before February 17, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In addition to requesting comments concerning the proposal in its entirety, the agency solicits specific comments concerning consumer awareness of the common or usual names of sulfiting agents, particularly sulfur dioxide; consumer understanding of the need of sulfite-sensitive individuals to avoid foods containing any of these sulfiting agents; whether FDA should include in any final rule a requirement that where the specific sulfiting agent is declared on the label be its common or usual name, this common or usual name must be followed by the term "a sulfiting agent;" and the appropriateness of the proposed 6-month effective date.

## List of Subjects in 21 CFR Part 130

Food additives, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 130 be amended as follows:

## PART 130—FOOD STANDARDS: GENERAL

1. The authority citation for 21 CFR Part 130 is revised to read as follows:

Authority: Secs. 201(n) and (s), 306, 401, 403, 701, 52 Stat. 1041 as amended, 72 Stat. 1784 as amended, 52 Stat. 1045–1046, 1047–1048 as amended, 1055–1056 as amended (21 U.S.C. 321(n) and (s), 336, 341, 343, 371); 21 CFR 5.11.

2. New § 130.9 is added to Subpart A to read as follows:

**§ 130.9 Sulfites in standardized food.**

(a) Any standardized food that contains a sulfiting agent or combination of sulfiting agents that is functional and provided for in the applicable standard or that is present in the finished food at a detectable level is misbranded unless the presence of the sulfiting agent or agents is declared on the label of the food. A detectable amount of sulfiting agent is 10 parts per million or more of the sulfite in the finished food. The level of sulfite in the finished food will be determined using sections 20.123 through 20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th ED. (1984), which is incorporated by reference in accordance with 5 U.S.C. 552(a), and the refinements of the "Total Sulfurous Acid" procedure in the "Monier-Williams Procedure (with Modifications) for Sulfites in Foods," which is Appendix A to Part 101 of this chapter. A copy of sections 20.123 through 20.125 of the "Official Methods of Analysis of the Association of Official Analytical Chemists" is available from the Association of Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(b) Any standardized food that, as a result of actions that are consistent with current good manufacturing practice, contains an indirectly added sulfiting agent that has no functional effect in the food and that would, in the absence of § 101.100(a)(4) of this chapter, be considered to be an incidental additive for purposes of § 130.8, conforms to the applicable definition and standard of identity if the presence of the sulfiting agent is declared on the label of the food.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

**Otis R. Bowen,**

*Secretary for Health and Human Services.*

Dated: August 22, 1988.

[FR Doc. 88-29032 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Parts 182 and 184

[Docket No. 81N-0314]

## Sulfiting Agents; Affirmation of GRAS Status

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to affirm, with specific limitations, that certain uses of sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite (collectively known as "sulfiting agents" or "sulfites") are generally recognized as safe (GRAS). This action is based upon FDA's review of all available information on sulfiting agents including new information on sulfiting agents received in response to a proposal to affirm the GRAS status of sulfiting agents published in the **Federal Register** of July 9, 1982 (47 FR 29956); the January 31, 1985, final report of the Federation of American Societies for Experimental Biology (FASEB) on the Reexamination of the GRAS Status of Sulfiting Agents; the hearing conducted by the Advisory Committee on Hypersensitivity to Food Constituents; recently published reports in the medical literature; and other relevant information.

**DATE:** Comments by February 17, 1989.

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

**FOR FURTHER INFORMATION CONTACT:** Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

## I. Background/Regulatory History

### *A. Select Committee Review and 1982 Proposal*

In the **Federal Register** of July 9, 1982 (47 FR 29956) (Ref. 1), FDA proposed to affirm, with specific limitations, the GRAS status of the use of sulfur dioxide, sodium bisulfite, and sodium and potassium metabisulfite. The document also proposed to delete sodium sulfite and potassium bisulfite from the list of substances whose use is GRAS because the agency believed that use of these substances had been discontinued except for the known food additive use, under 21 CFR 173.310, of sodium sulfite as a boiler water additive.

The agency based its 1982 proposal on a report on the health aspects of the use of sulfiting agents as food ingredients (Ref. 2) issued by the Select Committee on GRAS Substances (the Select Committee) of FASEB in 1976, during the agency's review of the safety of GRAS substances (Ref. 3). That report presented an analysis of human exposure and toxicological date on sulfiting agents and was based partly on a review of available scientific literature from 1920 through 1972 (Ref. 4). The report stated that it was reasonable to conclude that the daily intake of sulfur dioxide from sulfited foods consumed in the United States did not exceed 2 milligrams per kilogram of body weight for adults and probably was not more than 0.2 milligram per kilogram for the great majority of the population.

The 1976 report surveyed all the available toxicological data on sulfites, including data on metabolism, acute and chronic oral toxicity, other long-term studies, teratology, carcinogenicity, and mutagenicity. On the basis of this review, the Select Committee concluded that:

> There is no evidencde in the available information on potassium bisulfite, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, sodium sulfite and sulfur dioxide that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard.

In the 1982 proposal, the agency stated that it had undertaken its own evaluation of all available information on sulfiting agents. It supplemented the Select Committee's exposure data on sulfites with more recent data obtained by the National Academy of Science/National Research Council (NAS/NRC) in 1977 (Ref. 5).

The agency tentatively concluded in the 1982 proposal that, based upon the available safety data, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, and sulfur dioxide should be affirmed as GRAS with specific limitations. The agency proposed not to affirm potassium bisulfite and sodium sulfite as GRAS because it did not possess any evidence of food use for potassium bisulfite nor sufficient information relating to the uses of sodium sulfite as a GRAS food ingredient. Therefore, the agency could not establish limitations on the use of these two sulfiting agents.

The comment period for the 1982 proposal closed on September 7, 1982. In the **Federal Register** of November 2, 1982 (47 FR 49666), FDA extended the comment period to December 7, 1982, in response to two requests for extensions. Since the extended comment period closed, the agency has continued to receive comments regarding sulfiting agents.

The agency has received a large number of comments from consumers, Congressional representatives on behalf of consumers, health professionals, consumer groups, and State government officials that reported the possibility that some susceptible individuals may experience allergic-type responses after consuming food treated with sulfiting agents. (The agency is using the term "allergic-type responses" to describe the range of symptoms that individuals have suffered after eating certain sulfite-treated foods. These symptoms resemble the symptoms of a response to an allergen. The scientific community, however, is unsure at this time about the actual mechanism by which a response is elicited by the sulfite ingredient.) These responses have ranged from mild discomfort to life-threatening episodes.

On October 28, 1982, the agency received a citizen petition regarding the use of sulfiting agents in food and drugs. This petition addressed the problems of exposure of sensitive individuals to sulfites in foods and drugs. It expressed concern about the possibility that unsuspecting sulfite-sensitive individuals might have a severe response after eating foods or taking medications that contain sulfiting agents. The petition urged the agency to take certain regulatory steps to restrict the use of sulfites in food and drugs.

### *B. Health Concerns and FASEB Review*

The new information that the agency received in response to its 1982 proposal raised public health concerns for two reasons. First, this information raised the possibility of severe and unpredictable allergic-type responses in a significant subgroup of the U.S. population. Second, it revealed that the number of uses and the levels of use of sulfiting agents had significantly increased in the U.S. food supply since the survey relied upon by the Select Committee was taken. This new information prompted the agency to ask FASEB to reexamine the GRAS status of the use of sulfiting agents.

FASEB established an ad hoc Review Panel on the Reexamination of GRAS Status of Sulfiting Agents (the Panel). On July 9, 1984 (49 FR 27994), FDA announced the formation of the Panel. The agency asked FASEB to have the Panel address the following question:

> In view of the currently available information relevant to the use and safety of sulfiting agents, which of the five types of conclusions for the appraisal of GRAS substances that were developed by the Select Committee now applies to the use of sulfiting agents? The conclusion which is reached should be supported by the discussions of the rationale behind the conclusion.

The Panel evaluated recent scientific publications and new information and data submitted to FDA in response to its 1982 proposal. The Panel supplemented this information with additional materials that it acquired independently. The Panel conducted an open meeting on November 29, 1984, at which individuals and organizations presented their views on sulfite-related issues. On January 31, 1985, the Panel issued its final report (Ref. 6).

In that report, the Panel concluded that for the majority of the population, "there is no evidence in the available information * * * that demonstrates or suggests reasonable grounds to suspect a hazard." The Panel further concluded, however, that for the fraction of the public that is sulfite sensitive, "there is evidence in the available information * * * that demonstrates or suggests reasonable grounds to suspect a hazard of unpredictable severity to such individuals when they are exposed to sulfiting agents in some foods at levels that are now current and in the manner now practiced." (Ref. 6, p. 60.)

An analysis of consumer complaints compiled by FDA and made available to the Panel indicated that the majority of incidents involving allergic-type responses to sulfites in food could be attributed to sulfited fruits and vegetables that are intended to be served raw or sold raw to consumers or are presented to consumers as fresh and to certain sulfited potatoes and potato products. Thus, the Panel determined that, although most uses of sulfites on food appear to present no safety concerns for most people, certain uses of these ingredients, particularly on popular unlabled food items often consumed in food-service establishments, could present a significant risk for some sulfite-sensitive individuals.

### *C. FDA's Response*

Based on the Panel's findings and on its own review of the available evidence, FDA took several actions to minimize the risk to health from the use of sulfiting agents. The agency's first action was to move to provide indivdiuals who know that they are sulfite-sensitive with the information that they need to avoid certain processed foods that contain sulfites. In the **Federal Register** of April 3, 1985 (50 FR 13306), FDA proposed to clarify the circumstances in which sulfiting agents could be considered to be incidental additives under 21 CFR 101.100(a)(3) (Ref. 7). That rulemaking was published as a final rule in the **Federal Register** of July 9, 1986 (51 FR 25012) (Ref. 8).

Under § 101.100(a)(3), substances that are present in a food at insignificant levels and that do not have any functional effect in that food are incidental additives and thus are exempt from being declared in the list of ingredients. In the July 9, 1986, final rule, FDA added § 101.100(a)(4), which provides that added sulfiting agents are present in food in an insignificant amount only if no detectable amount of these substances is present in the finished food. The regulation defines a detectable amount of a sulfiting agent as 10 parts per million (ppm) or more of the sulfite in the finished food when analyzed under the modified Monier-Williams procedure, which is set forth in Appendix A to Part 101. As a result of this rulemaking, sulfiting agents must be listed on the labels of nonstandardized foods when they are present at detectable but nonfunctional levels in the foods.

Sulfiting agents present at functional levels in nonstandardized foods have always been required to be declared in ingredient lists because these ingredients have never been exempted from Part 101 labeling requirements. In addition, sulfiting agents present as optional ingredients in standardized foods whose standards require the listing of optional ingredients in accordance with Part 101 have also always been required to be declared.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposal to clarify the circumstances in which the presence of sulfiting agents in other standardized foods must be declared on the label. That notice proposes that sulfiting agents be listed on the label of these foods whenever they have a functional effect in these foods, or when they remain in the finished food at detectable levels. The agency believes, after a preliminary review, that the presence of the sulfiting agents should be declared in these circumstances because sections 201(n) and 403(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n) and 343(a)) provide that labeling is misleading if it fails to reveal facts material with respect to the consequences of use of the article. The presence of sulfiting agents may create a hazard of unpredictable severity for individuals sensitive to these ingredients and is consequently a material fact. Thus, the agency's preliminary view is that the failure to declare the presence of a detectable amount of a sulfiting agent would render the label misleading.

The proposal also addresses the circumstances in which foods that fail to conform to the relevant standards of identity because they contain sulfiting agents that had been considered to be incidental additives under 21 CFR 130.8 before the adoption of 21 CFR 101.100(a)(4) will be considered to be misbranded under 21 U.S.C. 343(g). The agency's preliminary view is to not consider such foods to be misbranded if the presence of the sulfiting agents is declared on the label.

In addition to clarifying how foods that contain sulfiting agents must be labeled, the agency published a proposal in the **Federal Register** of August 14, 1985 (50 FR 32830), that announced its preliminary conclusion that the use of sulfiting agents on fruits and vegetables intended to be served raw or sold raw to consumers cannot be considered GRAS (Ref. 9a). Subsequently the agency published in the **Federal Register** of July 9, 1986 (51 FR 25021), a final rule confirming its preliminary conclusion and amending the regulations to except the use of sulfiting agents on fruits and vegetables intended to be served raw or sold raw to consumers from the uses of these substances that are GRAS (Ref. 9b). FDA took this action to address the sources of sulfite exposure that the agency found were associated with the greatest number of allergic-type responses.

In addition, the agency proposed in the **Federal Register** of December 10, 1987 (52 FR 46968), to revoke the GRAS status of the use of sulfites on "fresh" potatoes served or sold unpackaged and unlabeled to consumers (Ref. 10). In that proposal, the agency also asked for information about the other uses of sulfites on potatoes. That proposal is intended to control another major source of sulfite exposure that has been associated with severe allergic-type responses in sulfite-sensitive persons.

With those rulemakings, the agency believes that it has addressed the most significant sources of concern about the use of sulfites on food and, thus, has adequately responded to the concerns raised by the Panel. The primary purpose of the present rulemaking, therefore, is to announce the agency's tentative determination that the remaining uses of sulfiting agents, except those uses on meats and on foods that are significant sources of thiamine, are GRAS.

## II. Uses of Sulfiting Agents on Food Products

### *A. Technical Effects*

Sulfiting agents have numerous uses in food. They have been used for centuries in food processing as sanitizing (disinfection) agents for food containers and fermentation equipment. They have been used as preservatives to reduce or to prevent microbial spoilage of food; as selective inhibitors of undesirable microorganisms by the fermentation industries; and as antioxidants and inhibitors of enzymecatalyzed oxidative discoloration and nonenzymatic browning during the preparation, storage, and distribution of many foods. They also are used as dough conditioners, bleaching agents, processing aids, and pH control and stabilizing agents (Ref. 11). To accomplish these purposes, sulfiting agents are added directly to certain fresh foods or are added under controlled conditions during processing of some foods.

*B. Currently Regulated Uses and Use Levels of Sulfites*

Existing regulations state that the use of potasium bisulfite (21 CFR 182.3616), potasium metabisulfite (21 CFR 182.3637), sodium bisulfite (21 CFR 182.3739), sodium metabisulfite (21 CFR 182.3766), sodium sulfite (21 CFR 182.3798), and sulfur dioxide (21 CFR 182.3862) is GRAS, except when they are used in meats or foods recognized as a source of thiamine (vitamin $B_1$), or on fruits or vegetables intended to be served raw or sold raw to consumers or to be presented to consumers as fresh. Other sections that refer to the use of sulfiting agents are as follows: caramel (21 CFR 73.85(a)(2)(iii)); dextrose monohydrate (21 CFR 168.111(b)(2)); glucose sirup (21 CFR 168.120(b)(2)); food starch-modified (21 CFR 172.892(b)); boiler water additives (21 CFR 173.310(c)); cellophane (21 CFR 177.1200(c)); and water-insoluble hydroxyethyl cellulose film (21 CFR 177.1400). The Bureau of Alcohol, Tobacco and Firearms (BATF) lists sulfites as materials authorized for treatment of wine (27 CFR 240.1051).

The listings for dextrose monohydrate, glucose sirup, and food starch-modified limit residual sulfur dioxide concentrations in these products to not more than 20, 40, and 500 ppm, respectively. The Food Chemicals Codex (3d Ed.) specifications place an upper limit of 80 ppm residual sulfure dioxide in modified food starches (Ref. 12).

The agency did not set specific limits for levels of use of sulfiting agents in the current GRAS regulations (21 CFR Part 182). Rather, the regulations on these ingredients in Part 182 invoke the concept of "good manufacturing practice" (defined in § 182.1), which restricts the quantity of a substance that can be added to food to a level that does not exceed that reasonably required to accomplish the intended technical effect.

It is important to note that the level of sulfiting agent added to a particular food (the "treatment level") may differ considerably from the level of sulfiting agent remaining on that food at the time processing is complete (the "residual level"). The residual levels of sulfites in finished foods are generally lower than the amount of sulfites added during processing because during processing, sulfites can combine with other food components, may be liberated as sulfur dioxide, or may be oxidized to sulfate. Although good manufacturing practice based on treatment levels may be more convenient for food processors, limits on residual levels of sulfites in finished foods are better suited for public health protection. For that reason, the agency is basing the regulations of this rulemaking on residual levels of sulfites measured as sulfur dioxide equivalents found in the finished food product. (A sulfur dioxide equivalent is defined as that proportion of the weight of a sulfiting agent that can dissociate into sulfur dioxide. It provides a uniform and scientifically consistent means by which the sulfite content of foods can be reported.)

*C. Prior Sanctions for the Use of Sulfites on Foods*

Section 201(s)(4) of the act (21 U.S.C. 321(s)(4)) exempts from the definition of a food additive "any substance used in accordance with a sanction or approval granted" under the act, the Meat Inspection Act, or the Poultry Products Inspection Act before the enactment of the Food Additives Amendment of 1958. This type of sanction or approval is generally referred to as a "prior sanction." Neither the act nor its legislative history defines the term "prior sanction." However, FDA has adopted a regulation (21 CFR 170.3(l)) that defines this term as "an explicit approval granted with respect to use of a substance in food prior to September 6, 1958 * * *" under any of the three statutes listed above. Another FDA regulation (21 CFR 181.5(a)) states that a prior sanction "shall exist only for a specific use(s) of a substance in food, i.e., the level(s), condition(s), product(s), etc., for which there was explicit approval * * *."

The "explicit approval" required to establish a prior sanction may be either formal or informal. In the event that a formal approval, such as a food standard regulation promulgated under the act before 1958, does not exist, the agency recognizes that correspondence issued by authorized agency officials can constitute an informal prior sanction.

FDA has tentatively acknowledged "prior sanctions" for a number of specific uses of sulfiting agents in food. In the 1982 proposal, the agency noted several prior sanctions that allow the use of sodium sulfite and sulfur dioxide at levels of 200 to 300 ppm in molasses, dried fruits, and foods that are not good sources of vitamin $B_1$ (thiamine). In that proposal, the agency also stated that sodium bisulfite solution is prior-sanctioned for use as a dip to prevent darkening of fresh-peeled, uncooked potatoes, and that sodium bisulfite is also prior-sanctioned as a dip to control the incidence of black spot on shrimp (Ref. 1). For uses of sulfites different from those proposed as GRAS in the 1982 proposal, the agency requested any person intending to rely on a prior sanction to submit proof of its existence.

On November 13, 1985, the Grocery Manufacturers of America (GMA) submitted to the agency a report entitled "Documentation of Explicit Prior Sanctions for the Specific Use of Sulfites as Preservatives in Food and for Other Particular Food Uses" (the GMA Report) (Ref. 56). This report states that a prior sanction exists for the use of sulfites as preservatives in food, except in meat and in foods that are good sources of vitamin $B_1$, and thus that such use is exempt from regulation under the food additive provisions of the act.

The GMA report also claims that "[p]articular prior sanctions also exist for the use of sulfites in a number of specific food categories." The GMA report states that FDA sanctioned the use of sulfites as preservatives in dehydrated potato products, beverages, citrus fruit products, dehydrated fruits and vegetables, fresh fruits and vegetables, soft drinks, and other foods. The report states also that FDA sanctioned the use of sodium bisulfite and sodium sulfite to prevent the discoloration of, and to preserve, precut peeled potatoes. The report states that other prior sanctions exist for particular uses of sulfites in cherries, bakery products, beer and malt beverages, corn products, dough, gelatin, molasses, mushrooms, onion and garlic products, coconut, pickles and pickled vegetables, sauerkraut and horseradish, shrimp, syrups, wine, and wine vinegar.

Although GMA has claimed that there is a prior sanction for the use of sulfites on fresh fruits and vegetables, in an earlier rulemaking (51 FR 25021) the agency determined that this use of sulfiting agents may render the food injurious to health and thus adulterated under section 402(a)(1) of the act. Therefore, the agency has revoked the prior sanction for this use. GMA's claims with respect to prior sanctions for the use of sulfites on certain types of potatoes and potato products are under consideration in another rulemaking (52 FR 46968).

Many of the other prior sanctions claimed by GMA are for uses of sulfites that FDA is proposing to affirm as GRAS in this document. For these uses, FDA is establishing specific limitations on the amount of residual sulfite that may be present in finished foods. In some cases, the limitations proposed in this document are less stringent (that is, permit a higher level of sulfites in certain finished foods) than those that GMA asserts are prior sanctioned. In these cases, the agency believes that there is no reason to acknowledge the prior sanctions that do exist by separate regulation. In a few cases, the limitations stated in this rulemaking are more stringent than those under the claimed prior sanctions in the GMA report, consistent with current good manufacturing practices and the range of levels reported now in use for various food products. Also, certain of the prior sanctions that GMA listed in its report are for uses of sulfites in food categories that were not considered or catalogued by the Panel because of the absence of data on the particular use. The agency discusses the status of these claimed prior sanctions in Section VII.B. of this preamble.

In addition to GMA's report, the agency has received two citizen petitions requesting that the agency recognize prior sanctions for the use of sulfites in maraschino cherries and glacé fruit and in beer and other malt beverages. The former petition (FAP 6CP3941), submitted by the Maraschino Cherry and Glacé Fruit Processors Association, was filed on May 16, 1986. The latter petition (FAP 6CP3960), submitted by the Beer Institute, was filed on July 30, 1986. The agency will respond to these two petitions in Section VII.B. below.

## III. Summary of the Panel's Report on All Uses of Sulfites

On January 31, 1985, the Panel released its final report entitled "The Reexamination of the GRAS Status of Sulfiting Agents" (Ref. 6). That report provides the most recent, complete, and authoritative compilation of scientific information available about the use of sulfiting agents on food. It contains a thorough review of estimated levels of human exposure to sulfiting agents from a variety of food categories. It also contains a review of biological information relevant to sulfite exposure, including data from toxicological studies as well as clinical data relating to hypersensitivity reactions in humans. The report provides conclusions with respect to the GRAS status of the use of sulfiting agents in food. Those conclusions form a basis for FDA's tentative GRAS determinations in this document.

### *A. Exposure of Humans to Sulfiting Agents Used in Food*

To estimate the per capita daily food intake of sulfites in the United States, the Panel used three basic types of information: (1) The amount of the ingredient present in various components of a diet at the time of consumption; (2) the kinds of foods in the daily diet and the frequency with which each is consumed; and (3) the average portion size for the various foods consumed. To obtain this information the Panel used data from the following sources: (1) "The 1977 Survey of Industry on the Use of Food Additives" by the National Research Council (Ref. 5); (2) information provided to FDA by the food industry in response to FDA's proposed rule in 1982 on the GRAS status of sulfites (Ref. 1); (3) the 1977–1978 National Food Consumption Survey of the U.S. Department of Agriculture (USDA) (Refs. 13, 14, and 15); (4) Agricultural Statistics (Ref. 16) and other USDA statistical publications (Refs. 17 and 18); and (5) "U.S. Imports for Consumption and General Imports" (Ref. 19). The Panel also gathered information from manufacturers and users of sulfiting agents.

From these sources the Panel created a table containing the following information: (1) Added and residual levels of sulfiting agents in processed foods; (2) estimated levels of sulfites in finished foods; (3) human intake of specific foods or categories of food; and (4) estimated per capita daily intake of sulfites (Ref. 6, Table 1). The table contains estimates of the daily intake of sulfites (measured as sulfur dioxide equivalents), in milligrams per person per day, from the following food categories for which data were available: baked goods and baking mixes, grain products, coffee and tea, condiments, dairy analogs, fish and seafood, fresh fruit, dried fruit, fruit juices, frozen fruit, canned fruit, fresh vegetables, canned vegetables, dried vegetables, frozen vegetables, vegetable juices, sugar, sweet sauces, jams and jellies, gravies and sauces, nonalcoholic beverages, alcoholic beverages, soups, gelatin, snack foods, protein isolates, and nut products.

The Panel noted several characteristics and problems in interpreting the exposure data in the table. The Panel pointed out that there is no relationship, necessarily, between "added" and "residual" levels of sulfites for a given food, because companies frequently reported values for either one or the other sulfite level but not both. The Panel also acknowledged that sulfites may be used in foods not included in the table. The Panel noted that it had contacted experts in food science and technology in USDA, in universities, and in industry and industry associations and had also consulted the literature to resolve uncertainties in the data of the table.

The Panel reported, after considering the whole body of exposure data available to it, as well as the associated uncertainties in those data, that the total per capita daily intake of sulfites from food is about 6 milligrams, as measured in "sulfur dioxide equivalents." The Panel stated that beer provides an additional 0.4 milligram per capita per day. It found some uncertainty with regard to the sulfite intake from wine. Based on the national food consumption survey intake data (Ref. 6, p. 28), the Panel found that wine provides an additional 0.8 milligrams per capita per day, but that it provides 3.7 milligrams per capita per day if one relies on the total quantity of wine distributed. Thus, the Panel found that it was reasonable to conclude that the mean daily intake of sulfur dioxide equivalents from food, wine, and beer does not exceed 10 milligrams (0.17 milligram per kilogram body weight for a 60-kilogram person).

For those individuals who consume wine or beer or both regularly, the Panel noted that there would be an additional 30 milligrams of sulfur dioxide equivalents for each 200 milliliters of wine and 10 milligrams for each liter of beer consumed. In comparison, the Codex Alimentarius Commission estimated in 1975 that heavy consumers of foods and beverages containing high levels of sulfites (99th percentile consumption) might have a daily intake of 177 milligrams sulfur dioxide equivalents (Ref. 6).

After consideration of all the data, the Panel concluded that the 99th percentile intake, including regular consumption of wine and beer, probably does not exceed 180 milligrams of sulfur dioxide equivalents per day (3 milligrams per kilogram body weight per day).

Thus, in summary, the Panel concluded that the mean daily intake of sulfites does not exceed 0.17 milligram per kilogram of body weight per day, and the 99th percentile intake does not exceed 3 milligrams per kilogram of body weight per day.

### *B. Biological Studies*

The Panel reviewed in detail studies completed since the original 1976 evaluation of the GRAS status of sulfites conducted by the Select Committee. The information the Panel reviewed included studies on the metabolism and metabolic effects of sulfites, short-term and long-term toxicity studies, teratogenicity studies, and mutagenicity and carcinogenicity studies. The Panel also reviewed clinical data and other information on sulfite sensitivity reactions that may occur when asthmatics or other sulfite-sensitive individuals ingest foods or beverages containing sulfites, inhale sulfur dioxide, or are given medications containing sulfites. That review of sulfite-sensitivity reactions was referenced in the agency's previous rulemakings concerning the use of sulfites on fresh fruits and vegetables and on "fresh" potatoes (Refs. 9 and 10). For that reason it will not be repeated here but is incorporated by reference (see, e.g., 50 FR 32830; 51 FR 25021; and 52 FR 46968).

1. Metabolism of Sulfites

Based on information it reviewed on the metabolism of sulfites, the Panel found that virtually all consumed sulfite is metabolized by sulfite oxidase in the mitochondria of various organs and tissues at a rate that is probably diffusion limited. The Panel stated that:

> The amount of endogenous sulfite is several orders of magnitude greater than that normally obtained from exogenous sources. Except for the few individuals identified as having congenital sulfite oxidase deficiency, it would appear that most individuals have sufficient enzyme to metabolize both endogenous and exogenous sulfite. Whether sulfite oxidase-deficient patients are sulfite sensitive as well remains to be established.

The Panel stated that "there is sufficient information in the current literature to conclude that some individuals, or a select subpopulation with a congenital deficiency of sulfite oxidase activity, would metabolize sulfite more slowly and may be subject to adverse effects from sulfite at the current level of intake." The Panel concluded, however, that there is "no reason to presume that individuals with the usual levels of sulfite oxidase activity and adequate nutritional status should develop adverse health effects from consumption of sulfite in foods at the levels currently used."

2. Toxicity Studies on Sulfites

The Panel was unable to locate any animal feeding studies on the acute oral toxicity of sulfiting agents published after 1976. Acute exposure seems to be a factor in sensitivity reactions associated with ingestion of foods or beverages containing sulfiting agents, but sensitivity reactions appear to be separate and distinct from other manifestations of acute oral toxicity. Feron and Wensvoort (Ref. 20) and Til et al. (Refs. 21 and 22) reported gastric lesions in several chronic feeding studies published before 1976. In one study by Beems et al. (Ref. 23), the types of gastric lesions induced by feeding sodium metabisulfite to Wistar Random rats were examined by enzyme histochemistry and light and electron microscopy. Animals were fed thiamine-supplemented diets containing 0, 4, and 6 percent sodium metabisulfite for 4, 7, 14, 21, or 28 days in a time-sequence study. Fundic mucosa of the rats fed sodium metabisulfite contained scattered hyperplastic glands lined with enlarged hyperactive gastric chief cells containing large numbers of pepsinogen granules but no fat, glycogen, or mucus. Findings from the time-sequence study suggested that preexisting chief cells were transformed to hyperactive chief cells having proliferative capabilities.

Gunnison et al. examined the subchronic toxicity of sulfite in female rats with low levels of sulfite oxidase activity that had been induced by their being fed low molybdenum diets, which contained tungstate, for 9 weeks (Ref. 24). Beginning on day 21, drinking water for two groups of animals also included 25 or 50 millimolar of sulfite ($SO_3^{2-}$). This treatment resulted in levels of hepatic sulfite oxidase activity 1 percent of that in untreated rats and 10 percent of that in normal humans. The authors reported that the general health of the rats appeared normal, and that the differences in weight gains and organ weights of pregnant and nonpregnant animals were not correlated with exogenous sulfite levels. Nonpregnant animals given sulfite did not develop anemia, and hematologic measurements in pregnant animals showed changes normally associated with pregnancy. Erythrocyte glutathione concentrations and prothrombin times were not affected, and hepatic thiamine concentrations were not significantly reduced by administration of sulfite to rats with low levels of sulfite oxidase activity. S-sulfonate concentrations in aorta pinna, and plasma were elevated in animals with low levels of sulfite oxidase activity. Administration of sulfite produced additional increments in S-sulfonate levels in aorta. Trends appeared similar, but data were incomplete for pinna and plasma concentrations of S-sulfonates.

With regard to short- and long-term toxicity studies, the Panel concurred with the conclusion of the Select Committee (Ref. 2) concerning the "no-observed-adverse-effect level" of sulfiting agents for chronic toxic effects. The Select Committee concluded that the level of sulfite that produces no observed toxic effects varies from about 30 to 100 milligrams of sulfur dioxide per kilogram of body weight per day, depending on the species and experimental conditions.

The Panel stated that it had not found any new data that was inconsistent with the data considered earlier by the Select Committee. Moreover, the Panel stated that it is evident from examination of experimental protocols that the no-observed-adverse-chronic-effect level is probably nearer the upper portion of the range (100 milligrams sulfur dioxide) than the lower portion of the range (30 milligrams sulfur dioxide).

3. Teratogenicity Studies on Sulfites

Dulak et al. studied the reproductive performance of female Wistar-derived rats that had induced sulfite oxidase deficiency and that were exposed to 25 or 50 millimolar sulfite (160 or 280 milligrams per kilogram of body weight per day) as sodium metabisulfite in drinking water from 3 weeks before mating until day 20 of gestation (Ref. 25). No treatment-related trends in reproductive performance or malformations were reported after animals having deficient or normal levels of sulfite oxidase activity were exposed to sulfite.

In a study by Murray et al., inhalation of sulfur dioxide in filtered room air for 7 hours per day by CF-1 mice (25 ppm on days 6 through 15 of gestation) and New Zealand rabbits (70 ppm on days 6 through 18 of gestation) resulted in no evidence of maternal toxicity except for decreased food consumption by both species during the first few days of exposure (Ref. 26). An increase in minor skeletal variants in both species was associated with maternal exposure to sulfur dioxide, but no teratogenic effects were observed in either species (Ref. 26).

It was the opinion of the Panel that the available data, including the studies considered by the 1976 Select Committee, do not provide evidence that sulfiting agents have teratogenic effects.

4. Mutagenicity and Carcinogenicity Studies on Sulfites

The Panel noted that Shapiro has reported that bisulfite (10 millimolar; pH not specified) induced mutations in *Staphylococcus aureus*, and that bisulfite (5 millimolar) induced mutations at pH 3.6 but not pH 5.5 in *Saccharomyces cerevisiae* (Ref. 27). Mallon and Rossman reported that bisulfite (0.1 molar) did not cause mutations in *Escherichia coli* (Ref. 28). Khoudokormoff and Gist-Brocades reported in 1978 that, in a *Bacillus subtilis* test system, concentrations of sulfur dioxide similar to those found in wines (150 ppm, pH 3.0 to 6.5) did not elicit any mutagenic activity (Ref. 29). Also Chang et al. have reported that, in a *B. subtilis* test system, higher concentrations of a sodium sulfite-bisulfite mixture (0.1 molar to 0.5 molar; pH 7) showed mutagenic effects, whereas a lower concentration of this mixture (0.05 molar; pH 7) caused no mutagenic activity. Cells treated with adducts of sodium bisulfite and cytidine monophosphate or uridine monophosphate showed mutagenic effects at concentrations of 0.25 molar and 0.5 molar (Ref. 30).

DiPaolo et al. have reported that transformation of Syrian hamster embryo cells treated with 1, 5, or 10 millimolar bisulfite for 24 hours at neutral pH was increased in a dose-dependent fashion (Ref. 31a). These authors suggested, however, that this transformation might not occur by a mutagenic mechanism because bisulfite in combination with ultraviolet irradiation did not synergistically increase transformation. Further work by Doniger et al. in this system indicated that bisulfite caused no detectable deoxyribonucleic acid (DNA) damage and may have decreased the rate of DNA replication per cell by blocking operation of part of the functioning replicons (Ref. 31b). MacRae and Stich reported that in Chinese hamster ovary cells, dose- and time-dependent inductions of sister chromatid exchange were seen following exposure to 0.03 millimolar to 7.3 millimolar concentrations of bisulfite for 2 or 24 hours (Ref. 32).

In contrast, Mallon and Rossman have demonstrated that Chinese hamster cells exposed for 15 minutes to 10 and 20 millimolar bisulfite exhibited no mutations to ouabain resistance (Ref. 28). Likewise, exposure for 15 minutes to 10 millimolar bisulfite produced no mutations to 6-thioguanine resistance. Long-term exposure of Chinese hamster V79 cells (exposed continually and recultured for 8 weeks in a complete growth medium containing 5 millimolar bisulfite) also failed to induce ouabain resistant mutations (Ref. 28). According to Schneider and Calkins, cultures of lymphocytes from human peripheral blood exhibited chromosomal abnormalities (clumping) and decreases in DNA synthesis, cell growth, and mitotic indices after a single exposure to 100 milliliters of 5.7 ppm sulfur dioxide in air on day 0 or day 1 of incubation but not on day 2 or day 3 (Ref. 33).

While chromosomal aberrations have been observed in response to sulfites in in vitro systems, mutagenic effects have not been reported in intact animals exposed to sulfur dioxide or sulfites. Generoso et al. have reported the dominant-lethal mutations were not increased in 10- to 12-week-old (C3H x 101) $F_1$ female mice given one intraperitoneal injection of 550 milligrams per kilogram of sodium bisulfite and mated with untreated (101 x C3H) $F_1$ males within 4.5 days of treatment (Ref. 34). In the same study, neither heritable translocations nor dominant-lethal mutations were detected when (101 x C3H) $F_1$ male mice were mated with (C3H x C57BL) $F_1$ females after intraperitoneal injections of 400 milligrams per kilogram of sodium bisulfite 20 times during a 26-day period or of 300 milligrams per kilogram 38 times during a 54-day period.

Jagiello et al. reported that chromosomal aberrations were not found in oocytes of female Camm mice given one intravenous injection of 1.0, 2.5, or 5.0 milligrams sodium sulfite although structural damage was reported during meiosis when cultures of Camm mouse oocytes were treated with sodium sulfite (Ref. 35). Renner and Wever have reported that no cytogenetic effects (measured by sister chromatid exchange, chromosomal aberration, and micronucleus tests) were induced in bone marrow cells of either Chinese hamsters or NMRI mice (made sulfite oxidase-deficient by feeding a low molybdenum diet plus administration of sodium tungstate in drinking water) in response to subcutaneous or intraperitoneal injection or oral administration of sodium metabisulfite solution (Ref. 36). However, the authors noted that the control animals tolerated higher doses of sulfite than those made sulfite oxidase-deficient (Ref. 36).

According to Tanaka et al., male and female ICR/JCL mice administered 1 and 2 percent potassium metabisulfite in drinking water for 24 months had no increased incidence of tumors over control animals, suggesting that potassium metabisulfite is not carcinogenic in mice (Ref. 37). Peacock and Spence have reported that exposure to sulfur dioxide by inhalation was associated with an increase in lung tumors, but the increase was not statistically significant (Ref. 38). According to Laskin et al., inhalation of sulfur dioxide in combination with benz(a)pyrene resulted in an increased incidence of tumors in rats over exposure to either substance alone. Rats exposed only to sulfur dioxide had no tumors at the end of the experimental period (Ref. 39).

Gunnison et al. reported an unexpected finding of mammary adenocarcinomas after 9 weeks of treatment in 4 of 149 female rats (2 pregnant, 2 nonpregnant) with low activity of sulfite oxidase induced by a low molybdenum diet containing tungstate. No tumors were found in rats with normal levels of sulfite oxidase activity. The difference was not statistically significant (Ref. 24).

Two Swedish studies examined the effects of sulfur dioxide on the peripheral blood cells of workers that were exposed to this substance. Nordenson et al. observed an increase in chromosomal aberrations (mostly gaps and chromatid-type breaks) in 7 of 19 workers who were exposed to other inhalants as well in a sulfite pulp factory (Ref. 40). However, Sorsa et al. observed that peripheral blood lymphocytes of eight workers whose individual mean daily exposure to sulfur dioxide in an aluminum foundry was estimated to be 1.0±0.85 ppm had no greater incidence of chromosomal aberrations or sister chromatid exchange than eight age-control subjects (Ref. 41). Average daily sulfur dioxide exposures in the aluminum foundry were estimated to range from 0.2 to 3.0 ppm., and mean employment time for the exposed workers was 19.5 years (Ref. 41).

The Panel noted that possible synergistic effects of sulfur dioxide and sulfites with other compounds have been examined in an effort to determine whether sulfiting agents might act as comutagens or cocarcinogens. Mallon and Rossman reported that mutation frequency was approximately doubled in ultraviolet-irradiated Chinese hamster cells exposed to 10 millimolar bisulfite either during or after irradiation exposure, and tryptophan revertants were increased by more than eightfold in ultraviolet-treated *E. coli* cells exposed to 75 millimolar bisulfite (Ref. 28). Hayatsu and Kitajo reported that treatment of bacteriophage-*lambda* with bisulfite-amine mixtures (1 molar bisulfite plus 1 molar semicarbazide, hydrazine, methoxyamine, or hydroxylamine) produced increases in clear mutation (plaque-forming activity) over treatment with bisulfite alone (Ref. 42). Khoudokormoff and Gist-Brocades reported that combination of bisulfite (150 ppm) with nitrite (100, 200, or 400 ppm) produced a weak mutagenic effect after 2 weeks in *B. subtilis* (Ref 29). Suwa et al. reported that mutagenic effects of coffee on *Samonella typhimurium* strains TA 100 and TA 98 without S9 mix were completely inhibited by addition of 300 ppm sulfiting agents (sulfite, bisulfite, or metabisulfite), and phage-inducing activity of coffee (prophage-*lambda* induction test) was suppresed by 300 ppm sulfite ion (Ref. 43). Sodium sulfite was also noted by Calle and Sullivan to be a weak inhibitor of mutagenic effects induced by benz(a)pyrene in *S. typhimurium* strain TA 98 (Ref. 44). Borek reported that bisulfite concentrations relevant to use in foods (0.5, 2.5, and 5.0 micrograms per milliliter), as well as a higher concentration of 100 milligrams per milliliter, inhibited transformation of $C_3H$ 10T 1/2 cells by x-rays and benz(a)pyrene. Pretreatment of hamster embryo cells with 100 ppm bisulfite inhibited transformation by x-rays (Refs. 45 and 46).

With respect to the mutagenicity or carcinogenicity potential of sulfites, the Panel concluded, upon consideration of the new studies, as well as the data available to the Select Committee in 1976, that sulfites are mutagenic to several microorganisms and may produce chromosome damage to mammalian cells in vitro. Sulfites, however, also inhibit mutagenic effects of some known mutagens and carcinogens. The Panel concluded that sulfites are not carcinogenic or mutagenic in vivo to rats and mice.

### *C. Conclusions and Recommendations of the Panel*

In summary, the Panel concluded that sulfiting agents are not teratogenic, mutagenic, or carcinogenic in laboratory animals. The Panel found no new metabolic or toxicological data in its review of sulfiting agents that suggest a need to change the no-observed-adverse-effect level for sulfites and stated that an examination of exposure and consumption data indicates that the level of consumption of sulfites from foods and beverages is about the same as that estimated by the Select Committee in 1976.

The Panel further compared the no-observed-adverse-effect level from chronic toxicity studies to the likely upper limit levels of human intake (found by the Panel to range from a mean of less than 0.17 milligram per kilogram of body weight per day to a 99th percentile value of less than 3 milligrams per kilogram of body weight per day). The Panel compared these intake levels to the no-observed-adverse-effect levels based on animal toxicity data (estimated to range from 30 milligrams to 100 milligrams sulfur dioxide equivalents per kilogram of body weight per day). The Panel determined that the margin between the amount of sulfur dioxide equivalents ingested by high intake consumers and the lowest estimated no-observed-adverse-effect level is about tenfold (30 milligrams per kilogram of body weight per day divided by 3 milligrams per kilogram of body weight per day). The Panel concluded that the margin between the mean per capita daily intake and the lowest no-observed-adverse-effect level is about 180-fold (30 milligrams per kilogram of body weight per day divided by 0.17 milligram per kilogram of body weight per day). The Panel noted that "consideration of the significance of this difference should recognize the difficulties in estimating with confidence the components which are the basis of the calculated safety margin." (Ref. 6.)

The Panel found that none of the five traditional conclusion statements (Ref. 3) considered by the Select Committee on GRAS Substances for its 1976 report is appropriate for sulfites. The Panel's conclusion statement for sulfites contains two parts. The Panel first concluded that:

> For the majority of the population, there is no evidence in the available information on potassium bisulfite, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, sodium sulfite, and sulfur dioxide that demonstrates or suggests reasonable grounds to suspect a hazard to the public when these substances are used at levels that are now current and in the manner now practices. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard.

Second, the Panel concluded that:

> For the fraction of the public that is sulfite sensitive, there is evidence in the available information on potassium bisulfite, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, sodium sulfite, and sulfur dioxide that demonstrates or suggests reasonable grounds to suspect a hazard of unpredictable severity to such individuals when they are exposed to sulfiting agents in some foods at levels that are now current and in the manner now practiced.

## IV. FDA's Evaluation of the Panel's Report

FDA has undertaken its own evaluation of the data that formed the basis for the Panel's report. The agency has evaluated the report's human exposure estimates, estimates of highest no-observed-adverse-effect level for sulfites, its estimates of safety margins (ratios of no-observed-adverse-effect levels to human exposure values) for the use of sulfites in human food, and the Panel's overall conclusions.

### *A. Exposure Estimates*

The Panel determined that the mean human intake of sulfites from food does not exceed 0.17 milligram per kilogram of body weight per day (sulfur dioxide equivalents), and that intake from a hypothetical meal high in sulfited foods, which includes consumption of wine and beer, does not exceed 3 milligrams per kilogram of body weight per day (sulfur dioxide equivalents). The agency has reviewed the data and the Panel's estimates and has estimated that the mean level of chronic intake of sulfiting agents does not exceed 0.3 milligram per kilogram of body weight per day (sulfur dioxide equivalents), a figure slightly higher than the Panel's estimate.

The agency also used data from the Panel's report and from the National Food Consumption Survey "Foods Commonly Eaten by Individuals" (Ref. 13), combined with typical sulfur dioxide equivalent residues, to compute an acute 99th percentile intake of sulfites based on a single eating occasion of highly sulfited foods. The agency did not include exposure to sulfites from their use on fresh fruits and vegetables in this computation (or in its computation of mean chronic intake). Based on its computation, FDA would not expect this 99th percentile intake of sulfites to exceed approximately 5 milligrams per kilogram body weight per day.

Even though the information bases available to the agency and to the Panel were virtually the same, the agency's estimates are somewhat different from the Panel's because the agency used some different assumptions in its calculations. The agency's estimates differed from those of the Panel in two ways: (1) use of market share factors, and (2) selection of typical sulfur dioxide equivalent residue levels.

Market share factors are estimated percentages of the foods in each of the dietary food categories listed in 21 CFR 170.3(n) that may contain the additive. Such market share factors are applied to adjust intake estimates to reflect actual usage of an ingredient based on economic and technological considerations. For example, current information indicates that sulfite-treated flour is useful in only certain types of products within the dietary food category "Baked Good," such as pie crusts, crackers, and cookies. Consequently, FDA adjusted its estimate of exposure to sulfites from this food category to reflect this fact. The agency found, however, that the Panel did not apply market share factors in reaching its exposure estimates.

The agency also selected a different typical sulfur dioxide equivalent residue level for certain food uses than did the Panel. In reviewing the available information, the agency determined that the Panel sometimes used a sulfur dioxide equivalent residue value that was derived from an opinion expressed by food industry representatives. The agency, however, gave the greatest weight to sulfur dioxide equivalent residue values that were derived from actual analyses of food and consideration of whether the analyzed samples were representative. Information gathered for the Panel's review aided the agency in refining its estimates of sulfite intake. However, the new result of these different procedures was different estimates of sulfur dioxide equivalent intake between the Panel and the agency.

The exposure estimates provided by the Panel and reevaluated by the agency, i.e., the mean intake levels and the intake level of the hypothetical high consumer of sulfited foods including the consumption of wine and beer, include within their range the 90th percentile intake level, the level that the agency has traditionally used in the safety evaluation of numerous food ingredients. In fact, the Panel, which examined 1977 data on sulfites from the National Academy of Sciences (NAS) (Ref. 5), estimated the 90th percentile intake, including the consumption of wine and beer, to be 43 milligrams per day (0.72 milligram per kilogram per day). The Panel estimated the mean intake level for a consumer, including the consumption of wine and beer, to be 19 milligrams per day (0.32 milligram per kilogram per day) (Ref. 6, p. 25). Therefore, the 90th percentile intake can be expected to exceed the mean intake by approximately a factor of 2.3 (0.72 as compared to 0.32 milligram per kilogram per day).

*B. Estimates of Highers No-Observed-Adverse-Effect Levels for Sulfites*

The Panel estimated that the no-observed-adverse-effect level for sulfites ranged from 30 milligrams per kilogram of body weight per day (sulfur dioxide equivalent) to 100 milligrams per kilogram of body weight per day (sulfur dioxide equivalent) and was probably closer to the value of 100 milligrams per kilogram of body weight per day (Ref. 6, pp. 42 and 58).

The agency has reviewed the available data and the Panel's conclusions on the toxicology of sulfiting agents. In its review, the agency found no data that would cause it to disagree with the Panel that the no-observed-adverse-effect level for sulfites is in the range of 30 to 100 milligrams per kilogram of body weight per day (sulfur dioxide equivalents).

*C. Safety Margin for Sulfites*

The agency normally establishes the safety of new food additives by applying a safety factor to the no-observed-adverse-effect level for the ingredient. Traditionally, the agency has determined the maximum acceptable daily human intake of the food additive (in units of milligrams per kilogram of body weight per day) by multiplying the no-observed-adverse-effect level from chronic animal experimentation data by the safety factor of 1/100 as provided in the agency's regulations for food additives in 21 CFR 170.22. For any food ingredient that is currently in use, one may compute the current safety margin by determining the ratio of the no-observed-adverse-effect level from chronic animal experimentation data (in milligrams per kilogram of body weight per day) to the chronic estimated daily human intake of the ingredient (in milligrams per kilogram of body weight per day).

Using the lowest (most conservative) of the no-observed-adverse-effect level values (30 milligrams per kilogram of body weight per day), the agency calculates that the safety margin is approximately 100 for the estimated chronic mean intake of sulfites (30 milligrams per kilogram of body weight per day) divided by (0.3 milligram per kilogram of body weight per day). This margin is consistent with the safety factor that the agency, in most circumstances, applies to new food additives.

The agency also notes that acute sulfite intake that results from infrequent ingestion of meals containing a number of highly sulfited foods is not representative of the food intake patterns that lead to the development of chronic conditions, and it is not valid to compare such intakes to the no-observed-adverse-effect level obtained from a chronic feeding study to derive a safety margin. The concerns presented by such extreme eating patterns are not related to chronic toxic effects but rather have a bearing on acute sulfite-sensitivity reactions. As noted above, the adverse health consequences of acute high intake of sulfites in humans have been characterized in clinical studies, and the agency has addressed the public health concerns arising from such acute intakes in separate rulemakings.

For a new food additive for which there is not yet an approval, the agency traditionally has used a 90th percentile chronic exposure estimate to calculate the safety margin. A 90th percentile exposure value was not calculated for sulfiting agents from the most recent data. For the purposes of this discussion, however, the agency has calculated a 90th percentile value. Using the National Academy of Sciences data discussed above, the agency has calculated the 90th percentile to be at least two times greater than the mean. Multiplying the mean by two yields as estimated value of 36 milligrams per day (0.6 milligram per kilogram per day) sulfites for the daily intake of sulfites at the 90th percentile.

The agency believes, based on its review of the toxicity data on sulfites, that the true no-observed-adverse-effect level is approximately 100 milligrams per kilogram per day, consistent with the findings of the Panel (Ref. 6, pp. 42 and 58). Based on these considerations, the agency calculates a safety factor of 170 (100 milligrams per kilogram per day divided by 0.6 milligram per kilogram per day) for the calculated 90th percentile intake value, and a safety factor of 340 for the chronic intake. Therefore, the agency believes that an adequate margin of safety does exist between the no-observed-adverse-effect level for sulfites and chronic mean intake and estimated 90th percentile intake of individuals.

*D. The Panel's Conclusion*

The agency had reviewed the Panel's two-part conclusion. The first part of the conclusion was directed at the GRAS status of most uses of sulfites and was concerned with exposure of the vast majority of consumers. The second part was directed at that subpopulation of consumers that are sensitive to sulfites, especially when the sulfites are used on certain categories of foods.

The agency has already responded to the latter conclusion in the final rule on the use of sulfiting agents on fresh fruits and vegetables and in the proposal on potatoes (Refs. 9 and 10). With respect to the GRAS status of the overall use of sulfites on food (the first element of the Panel's conclusion), the Panel concluded that, except for certain exposures of the subpopulation of individuals sensitive to sulfites, the use of these ingredients on food in GRAS.

On the basis of its review of all available information, the agency has not found any reasons to disagree with the Panel's conclusions.

**V. The Advisory Committee on Hypersensitivity to Food Constituents**

In the **Federal Register** of April 16, 1984 (49 FR 15021), FDA announced that the Secretary of the Department of Health and Human Services established an ad hoc Advisory Committee on Hypersensitivity to Sulfiting Agents in

Foods (later renamed the Advisory Committee on Hypersensitivity to Food Constituents) to function under FDA's Center for Food Safety and Applied Nutrition. The Committee reviewed and evaluated available information and data relevant to the allergic-type responses in humans that are associated with food ingredients, including sulfiting agents, for the purpose of making appropriate recommendations to the Commissioner of Food and Drugs.

The Committee met on December 12 and 13, 1985, to review specifically the available information on the use of sulfiting agents in food. The Committee generally supported FDA's proposal to rescind the GRAS status of the use of sulfites on fresh fruits and vegetables (Ref. 9a), and encouraged FDA to include "fresh potatoes" in this section (Ref. 47).

**VI. Comments**

Even though the extended comment period closed on December 7, 1982, the agency has continued to receive comments regarding sulfiting agents. The agency has received comments from consumers, consumer groups, Congressional representatives on behalf of consumers, health professionals and scientists, Federal, State, and local government officials, the food industry, and industry trade associations.

Many comments received since 1982 pertained to alleged adverse effects experienced by consumers who consumed foods, particularly fresh fruits and vegetables and potatoes or potato products, that were treated with sulfites. Among the comments received from consumers, approximatley 38 percent were reports of alleged adverse reactions to sulfiting agents in food. Other consumer comments recommended various courses of action: Roughly 27 percent urged the agency to ban sulfites from all use in foods. About 1.5 percent suggested a ban on certain uses of sulfites in certain foods, and a similar proportion (about 1.5 percent) requested that limits be placed on the use of sulfites in food. Over 15 percent of the comments received from consumers advocated the use of labeling on foods containing sulfiting agents, and a similar proportion (about 15 percent) expressed a general concern about the use of sulfites in food.

FDA has responded to comments that relate to adverse reactions by sulfite-sensitive persons, or to the use of sulfites on fresh fruits and vegetables and on potatoes or potato products, in previously published **Federal Register** documents (Refs. 9 and 10). In this document, the agency will respond only to those comments that pertain to the overall GRAS status of sulfites in food and to the GRAS status of those uses of sulfites that have not already been addressed by the agency.

On October 28, 1982, the agency received a citizen petition regarding sulfiting agents in food and drugs. (The petitioner supplemented the petition on March 15, 1983, August 17, 1983, and July 25, 1986.) The agency's response to those aspects of the citizen petition that relate to the use of sulfites on food is presented in section VI.B. below.

*A. General Comments*

Two comments from industry sources supported the 1982 proposal as written. The remaining comments from industry presented information in support of modifications in the proposal. Most industry comments requested GRAS affirmation for uses of sulfiting agents, including uses of sodium sulfite that were previously unreported and that were consequently not considered by the Select Committee. Many comments also requested modifications with regard to some of the reported uses, including higher or lower sulfite treatment levels in foods, additional technical effects, use of residual sulfur dioxide levels instead of treatment levels, or deletion of all use limitations. Some comments presented information that, according to the comments, demonstrated that any one of several sulfiting agents could be used to accomplish the same technical effect in a food product. These comments requested that the agency permit the interchangeable use of two or more of the sulfiting agents.

A number of comments reported information on the use levels or residual levels of various sulfiting agents in foods. Some provided data and information on sulfite sensitivity reactions. FDA gave a number of the comments to the Panel for consideration at the Panel's request.

1. Potassium Bisulfite and Sodium Sulfite

Numerous comments from industry and industry trade associations, in response to the July 9, 1982, proposal, requested that FDA not deny GRAS status to the use of potassium bisulfite and sodium sulfite. In the 1982 proposal, the agency said that it did not have any evidence of food use of potassium bisulfite, and that it did not have sufficient information relating to the food use of sodium sulfite to establish limitations on the use of this ingredient. FDA stated that as a result, it could not affirm these ingredients as GRAS. Instead, FDA proposed to remove these ingredients from the list of substances that are GRAS.

The comments described current uses of these two sulfiting agents in a variety of food products, demonstrating that they are, in fact, being used by industry. The agency considers that these comments have provided sufficient evidence of the use of sodium sulfite and potassium bisulfite to warrant affirming that the use of these ingredients is GRAS.

2. Interchangeable Use of Sulfiting Agents

A number of comments expressed the opinion that several sulfiting agents ought to be fully interchangeable. In particular, the comments noted the desirability of allowing food processors to substitute potassium salts of the sulfiting agents for sodium salts to reduce the sodium content of processed foods and thus to contribute to a reduction in the level of sodium consumption in the United States.

The agency has found no evidence that the six sulfiting agents that are the subject of this rulemaking are not fully interchangeable. In fact, interchangeability could offer manufacturers and food processors greater flexibility in formulating foods and could facilitate the substitution of potassium salts for sodium salts where feasible. Therefore, the agency is providing for the interchangeability of all sulfiting agents in this rulemaking by setting forth in the regulations maximum permitted residual levels of sulfites in food in terms of sulfur dioxide equivalents rather than in terms of any specific sulfiting agent.

As noted above, sulfur dioxide equivalents are a measure of the proportion of the sulfiting agent that can chemically dissociate into sulfur dioxide. Different sulfiting agents possess different percentages of sulfur dioxide per unit weight. The use of sulfur dioxide equivalents to measure the maximum permitted residual levels of sulfites in food correctly focuses on that portion of the sulfiting agent that is of biological significance, the sulfur dioxide, and not the parent chemical. As long as sulfur dioxide equivalents are used to measure the sulfite content of foods, sulfiting agents may be used interchangeably.

3. Claimed Inconsistencies in Proposal

One comment pointed out that the limitations on the use of sulfiting agents in the 1982 proposal were inconsistent. As an example, the comment cited the fact that the limitations on the use of two different sulfiting agents differed by a factor of 100 in the same food categories. The comment stated that such an inconsistency would present problems for industry because it creates ambiguity.

The agency believes that this concern has been eliminated because the agency is permitting the sulfiting agents to be used interchangeably. This approach was explained in the response to the previous comment.

4. Levels of Use

A number of comments from segments of the food industry addressed specific use levels or residual levels of sulfiting agents in specific food products. Some comments argued for different treatment levels from certain sulfiting agents than those that the agency had specified in the July 1982 proposal. Some comments requested that limitations on sulfites be stated in terms of residual levels on the finished food product rather than in terms of treatment levels.

The agency believes that the most reasonable way to define limitations on sulfite use in food is to use the levels of sulfites on finished food products measured as sulfur dioxide equivalents. (A "finished food" is the product as manufactured.) The amount of sulfite present on a particular food at the time that it is consumed may differ from the amount remaining on that food just after processing. The latter amount of sulfite may, in turn, differ from the amount actually used to treat the unprocessed food. Such differences reflect the fact that a significant amount of applied sulfites can be lost from foods during processing, storage, distribution, or home preparation. These losses can result from either physical processes, such as volatilization, or chemical processes, which involve chemical reactions with food constituents. Because levels of sulfites in finished foods may differ considerably (and unpredictably) from treatment levels, and because finished foods are those most readily available to the agency for determining compliance, FDA has tentatively concluded that it does not make sense to base the specific limitations on the level of sulfites in the food at the time it is treated or at the time it is consumed.

The agency concludes that setting specific limitations on the level of residual sulfur dioxide equivalents in the finished food will most effectively ensure the safety of treated foods and will also allow compliance with the limitations to be more accurately verified. This approach is also the approach used in the recent rulemaking concerning the labeling of food products that contain sulfiting agents (Refs. 7 and 8).

5. Home Use of Sulfites

One comment submitted that sulfiting agents are currently being sold directly to the general public for use in home drying, freezing, and canning of fruits and vegetables. The comment expressed concern about the potential effects of sulfite regulations on the selling of sodium metabisulfite as an accessory to the home food dehydration equipment manufactured by the company that submitted the comment.

The agency notes that the direct marketing of sulfiting agents for home use was not reviewed or evaluated by the Select Committee or by the Panel. Thus, the agency believes that there is currently no basis for affirming the GRAS status of the home use of sulfiting agents for drying, freezing, canning fruits and vegetables, or for other uses, such as home winemaking. In fact, such uses of sulfites may present hazards to consumers who are sulfite sensitive. Sulfiting agents sold for home use might lack adequate directions for use or may by misused by the consumer. Thus, the possibility exists that sulfite-sensitive individuals may be unwittingly exposed to excessive levels of sulfites on food produced at home. Therefore, the agency cannot affirm the GRAS status of these uses of sulfiting agents.

The ad hoc Advisory Committee on Hypersensitivity to Food Constituents considered the use of sulfiting agents in home drying of foods during its December 12, 1985, meeting (Ref. 47, p. 368). At that time, the Advisory Committee voted unanimously to recommend "the banning of the sale of sulfites and formulated sulfite products for use as fruit and vegetable fresheners and potato whiteners at the retail and consumer level" (Ref. 47, p. 363). Given this recommendation, and given that the use of sulfites in home dehydration equipment and other home uses was not reviewed by the Panel, the agency tentatively concludes that there is insufficient information to affirm these uses of sulfites as GRAS, and solicits further comments and information on such uses.

6. Identification of Sulfur Dioxide and Sodium Metabisulfite

One comment requested that the agency adopt the specifications for sulfur dioxide in the 3d edition of the Food Chemicals Codex. Another comment requested that the agency adopt the Chemical Abstracts Service (CAS) registry number that is used by the Environmental Protection Agency for sodium metabisulfite.

The agency agrees that the specifications for sulfur dioxide, as with almost all direct food additives, should be those stated in the 3d edition of the Food Chemicals Codex. The present rulemaking reflects that fact. In addition, the agency has verified the latest CAS registry numbers for all sulfiting agents that are the subject of this rulemaking and is incorporating those numbers in the proposed GRAS affirmation regulation.

Furthermore, the agency is also proposing to adopt the specifications listed in the Food Chemicals Codex, 3d Ed., for potassium metabisulfite, sodium bisulfite, sodium metabisulfite, and sodium sulfite. However, no food-grade specifications exist for potassium bisulfite. The agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for this ingredient. When acceptable specifications are developed, the agency will incorporate them into § 184.1861, should FDA decide to adopt this regulation. Until specifications are developed, FDA has determined that the public health will be adequately protected if potassium bisulfite complies with the description in the proposed regulation and is of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

7. Description of Sodium Bisulfite

One comment submitted data to establish that the chemical description provided in the July 9, 1982, proposal for sodium bisulfite does not adequately describe the ingredient of commerce. This comment noted that sodium bisulfite is not available commercially in a pure dry powder form and exists only as an aqueous solution.

FDA is aware that the articles of commerce called "anhydrous sodium bisulfite" and "anhydrous potassium bisulfite" are, in reality, mixtures of the salts sodium bisulfite and sodium metabisulfite and of the salts potassium bisulfite and potassium metabisulfite, respectively. When added to water, these mixtures produce aqueous solutions of sodium bisulfite and of potassium bisulfite, respectively. Therefore, FDA is revising the description of both sodium and potassium bisulfite in this rulemaking to reflect the fact that certain of the articles of commerce that are subject to this rulemaking are mixtures of bisulfite and metabisulfite salts.

8. Wine Institute Comment

BATF has forwarded to FDA a comment and data on sulfites that it received from the Wine Institute. The

Wine Institute had originally submitted these data to BATF in a December 23, 1985, comment to BATF Notice No. 566 (Ref. 48), which proposed mandatory sulfite labeling for alcoholic beverages that contain sulfites. The Wine Institute comment stated that the Monier-Williams method for measuring the sulfur dioxide content of sulfite-treated foods is inaccurate because it makes no distinction between "free" and "bound" sulfites. (The Monier-Williams method is the analytical method adopted, with modifications, by the agency for detecting sulfite levels in food (Ref. 8).) The comment asserted that "bound" sulfites are not the cause of any perceived adverse reactions to sulfites in individuals. Therefore, the comment argued that measurement of the sulfite content of a food by the Monier-Williams method may produce an inaccurate measure of the risk to individuals from sulfites in that food. The Wine Institute included with its comment the results of a study of sulfite-sensitive individuals challenged with wine to which known quantities of "bound" sulfites had been added. The purpose of the study was to determine the extent to which "bound" sulfites in wine may cause significant adverse reactions in sulfite-sensitive individuals.

FDA has reviewed this comment and the data submitted with it. These data do not present sufficient evidence to justify a change in the agency's belief that both types of sulfites may be potential sources of risk for sulfite-sensitive persons. As noted in the preamble to the final rule on labeling requirements for sulfiting agents (51 FR 25012), the agency has also received data indicating that bound sulfites may contribute to adverse reactions in humans. The agency believes that the available data do not resolve the question of whether "bound," as opposed to "free," sulfites in food can be responsible for adverse reactions in sulfite-sensitive individuals. Until more conclusive data become available, the agency cannot distinguish between "bound" and "free" sulfites in food and will continue to rely on the modified Monier-Williams analytical method for the quantitative detection of total sulfites.

FDA selected this method because it measures the free sulfite plus a reproducible portion of the bound sulfites, such as the carbonyl addition products, in the food. While it may be preferable to have a method that would measure, in absolute terms, the free sulfite and each of the other sulfite-derived substances in a food, FDA has determined that no such method exists, and that it is unlikely that one will be developed in the near future. Therefore, FDA has selected the Monier-Williams method, which for years has been the standard against which the accuracy of newer procedures has been judged, as the basic method that it will use for enforcement of the sulfite labeling rule.

The agency recognizes that the Monier-Williams method (Ref. 49) was not originally intended to measure sulfite levels as low as 10 ppm. However, FDA has made some procedural changes in the method that, without changing the method's chemical principles, improve its accuracy and reproducibility and thus make it suitable for use at 10 ppm. These changes, as well as other technical aspects of the analytical methodology, are discussed in detail in "A Report on the Monier-Williams Method for Sulfites in Food" (Monier-Williams Report), prepared by FDA (Ref. 50). A copy of this report is on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. The modified procedure is described in "Monier-Williams Procedure (with Modifications) for Sulfites in Food" (November 1985) and is also on file in the Dockets Management Branch (Ref. 51). The method is also cited as the official regulatory method for sulfite determination (Ref. 8).

*B. Citizen Petition*

On October 28, 1982, the agency received a citizen petition signed by three consumers, a physician, a scientist, and representatives of the Center for Science in the Public Interest (CSPI), Washington, DC. The petitioners requested that FDA "amend certain food standards and rescind certain food additive regulations, prior sanctions, and advisory opinions that permit the use of sulfiting agents above 350 micrograms per serving." The petitioners also requested that FDA "require warning labels on those products in which sulfiting agents must be used in greater amounts in order to perform essential public health functions."

The petitioners also requested that FDA ban the use of sulfiting agents in drugs designed for the treatment of asthma and either ban their use in over-the-counter and prescription drugs or require a warning label on those drugs in which sulfiting agents were used to perform essential public health functions.

In supplements to the citizen petition that were submitted on March 15, 1983, and August 17, 1983, the petitioners requested that FDA ban the use of sulfiting agents on salad bars, withdraw the prior sanction permitting the use of sodium bisulfite on potatoes, and institute appropriate enforcement action against certain misbranded products labeled for use on vegetable salads or dehydrated fruits and vegetables. The petitioners submitted data to support their claim that vegetable salads and potatoes are significant sources of thiamine, and that products instructing users to apply sulfiting agents to these foods are misbranded. The petitioners suggested that FDA issue an appropriate regulatory letter to all manufacturers of such products.

The petitioners stated that FDA had failed to present any evidence to justify the use of a fifteenfold margin of safety with regard to sulfiting agents. They asked that FDA ensure the existence of a hundredfold safety margin, citing in support of their request the fact that current usage levels posed a significant problem to many consumers, and that interspecies variations in in vivo sulfite oxidase levels have been documented.

The petitioners stated that FDA, in its July 9, 1982, proposal, had not reviewed all of the available scientific data on sulfiting agents. The petitioners submitted references to various published articles, abstracts, and letters concerning adverse reactions to sulfites. In addition, the petition contained information about, and references to, mutagenic in vitro tests and cocarcinogenicity studies of the sulfiting agents.

The petitioners contended that safe alternatives to sulfiting agents, such as ascorbic or citric acid, are available and should be used if necessary. They expressed their belief that proper handling and storage conditions could also, in some instances, obviate the need for sulfiting agents.

On July 25, 1986, the petitioners sent a supplementary comment to Department of Health and Human Services Secretary Bowen emphasizing that 60 percent of the reported sulfite reactions classified by FDA as "serious" involved foods other than fresh fruits and vegetables. The petitioners urged the agency to immediately decide the safety of all remaining uses of sulfites.

FDA has already responded to aspects of the petition in the rulemakings on sulfite labeling (Refs. 7 and 8) and on the use of sulfiting agents on fresh fruits and vegetables (Ref. 9), on potatoes (Ref. 10), and on drugs (51 FR 43900). Thus, for the purposes of this rulemaking, the agency believes that it need not respond to those aspects of the petition. Here, the agency is responding to the remaining parts of this petition and its supplements.

FDA has tentatively decided to deny the petitioners' request that the agency prohibit the use of sulfiting agents on foods at levels of more than 350 micrograms per serving. FDA agrees with the conclusions of the Panel and believes that the uses of sulfiting agents, except for those that have already been addressed because of concern for allergic-type responses in sulfite-sensitive individuals, are GRAS.

FDA reviewed all the scientific references and medical reports cited in the petition and also made them available to the Panel. Furthermore, the agency conducted its own update of the scientific literature on sulfiting agents from 1975 to the present and evaluated the pertinent references on sulfites that it found. The agency also forwarded these data to the Panel for use in its reexamination of sulfites. Thus, both the agency and the Panel have had access to all the relevant data available on sulfites. On the basis of these data, the Panel concluded, and the agency concurs, that certain uses of sulfiting agents on food can no longer be considered to be GRAS, while other uses can still be considered to be GRAS.

The agency has acted to protect sulfite-sensitive individuals in the population from the greatest sources of risk from inadvertent exposure to sulfites, namely, their use on fresh fruits and vegetables and on "fresh" potatoes. However, FDA believes that the totality of data reviewed by the Panel and by the agency confirms the GRAS status, with specific limitations, of most of the remaining uses of sulfites that are not limited by regulation. The agency believes that the petitioners have not provided any data that would justify a tentative conclusion different than the one the agency has reached—that these remaining uses of sulfiting agents are GRAS.

In response to the July 25, 1986, submission from the petitioners, the agency notes that the most recent data on allergic-type responses allegedly caused by sulfiting agents show that over 48 percent of the serious responses are attributable to the use of sulfites on fresh fruits and vegetables. Another 13 percent were allegedly caused by their use on potatoes, which FDA addressed in a recent proposal (52 FR 46968) (Ref. 10). The remaining 39 percent are allegedly attributable to sulfite use in a variety of other foods, most of which are now subject to sulfite labeling regulations (51 FR 25012) (Ref. 8). For these latter uses, the comments of the two groups of experts with whom FDA has consulted (Refs. 2 and 6) indicate that there continues to be a consensus that these uses are GRAS, so long as the sulfites are used in accordance with appropriate limitations, and their presence is properly declared on the label.

The agency believes that any remaining risks to sulfite-sensitive individuals are largely controlled by the sulfite labeling of food. The agency has traditionally relied on ingredient labeling of food as the best means of ensuring that a subpopulation of sensitive individuals will be able to avoid certain food ingredients that are of no safety concern to the general population. (See, for example, Refs. 52 a through c.) If sulfite-sensitive individuals pay attention to labeling, they will be aware when they are in settings in which foods are not ordinarily labeled, such as in restaurants, that certain foods are likely to contain sulfites.

The agency's policy on the labeling of foods that contain sulfites makes clear that when a sulfiting agent is present in a detectable amount in a finished food, regardless of whether the sulfiting agent has been directly added or indirectly added in one or more of the ingredients of the food, it is present in that food at a significant level and must be declared on the label. The July 9, 1986, labeling rule defines a detectable amount of sulfiting agent to be 10 ppm sulfur dioxide equivalents in the finished food product. Because of this rule, persons who know that they are sensitive to sulfites can be more selective in the types of packaged foods that they purchase. By reading the labels on foods, they will be able to avoid the potential hazard of an allergic-type response to sulfites in packaged foods.

Use of the 10 ppm level is a more practicable and enforceable way of determining the sulfite content of food for compliance purposes than is the petitioners' 350 micrograms per serving suggestion. The 10 ppm level does not depend on the weight of a "serving" of a particular food, a quantity that is known to vary greatly from person to person and from food to food. In addition, 10 ppm, as measured in the food, is the lowest level of sulfites in food that can be routinely measured using current analytical methodology (such as the improved Monier-Williams method) (Ref. 8).

The agency stresses that, for consumers who wish to avoid sulfites, existing regulations require that the labeling of most foods that contain these ingredients identify their presence by listing them in the list of ingredients. The agency notes that under existing regulations (21 CFR 101.100(a)(2)) even foods that are presented in unpackaged form in bulk to consumers, such as bulk dried fruit or sulfited bulk shrimp in food stores, must also be appropriately labeled for sulfite content. Such a requirement is consistent with 21 CFR 101.22(e), which requires that bulk foods offered for sale unpackaged must be appropriately labeled. The required information may be displayed to the purchaser on either: (1) the labeling of the bulk container plainly in view; or (2) a counter sign, card, or other appropriate device bearing information that the food being offered for sale contains sulfiting agents. Because it believes that this requirement is a central condition of GRAS status for the use of sulfiting agents, the agency is emphasizing the current requirements regarding labeling of bulk foods by incorporating language similar to that in §§ 101.22(e), 101.100(a)(2), and in paragraph (c)(2) of proposed § 184.1861 as a specific limitation on the use of sulfites. For the same reason, the agency is including language concerning the listing of sulfites on labels for packaged food in paragraph (c)(3) of proposed § 184.1861.

In relation to the petitioners' concerns about safety margins for sulfites, the agency has tentatively concluded that an adequate margin of safety exists between the highest no-observed-adverse-effect level for sulfites from toxicological tests and chronic intake levels of individuals. As discussed above, the Panel has demonstrated, and the agents has confirmed, that a safety margin of at least 100 for estimated chronic intake of sulfites is likely to exist. (This margin of 100 is the same as the traditional hundredfold safety factor chosen for the safe use of any new food additive based entirely on long-term animal test results with no previous experience of use in the food supply.)

The agency believes that it is not appropriate to calculate a safety margin for a food ingredient by comparing no-observed-adverse-effect levels from chronic animal feeding studies with highly exaggerated, acute levels of intake of the ingredient that may occur when a consumer ingests an occasional hypothetical meal containing large amounts of the ingredient. Such exaggerated exposures are not likely to be part of a chronic dietary pattern and are likely to be of concern only to certain sulfite-sensitive individuals. To protect such individual, FDA has, as noted above, undertaken separate rulemakings. These actions have served to reduce the unexpected exposures to sulfites via the foods that have caused the greatest concern for the public health.

Thus, the agency believes that the current safety margin, based on chronic exposure to sulfites in foods that are the subject of the present rulemaking, is adequate and is consistent with the continued GRAS status of those uses of sulfiting agents that the petitioner had requested that FDA ban.

## VII. Conclusions

### A. Specific Limitations on Residual Sulfite Levels

The agency has reviewed all of the available relevant data and information concerning the uses of sulfiting agents in food. It tentatively concludes that certain uses of sulfiting agents in food are GRAS with specific limitations.

The Panel's first conclusion about the safety of sulfiting agents, with which the agency concurs, states that "* * * it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard." This portion of the Panel's conclusions is analogous to the second of the five usual evaluation statements that the Select Committee has traditionally used in evaluating substances in the GRAS review (Refs. 2 and 3).

The agency's usual action in response to this type of conclusion is to affirm the substance as GRAS but to impose specific limitations on the conditions under which the substance may be added to foods. Thus, in the accompanying regulations, the agency is specifying the food categories on which sulfites may be used, the maximum levels of residual sulfites on finished food products in each category, and the condition that the use of sulfites be declared on the label of the finished food.

#### 1. Food Categories and Maximum Levels as Specific Limitations

In general, the food categories included in the table of limitations in proposed § 184.1861(c) derive from the agency's examination of reported uses of sulfites compiled from the following sources: the 1982 proposal and comments on it received by FDA; the 1977 NAS survey on the use of food additives; and the Panel's report (Refs. 1, 5, and 6, respectively). To determine the appropriate limitations, the agency examined available data on sulfite residue levels in each relevant finished food product. The agency then specified a level for each limitation that represents the maximum level of sulfites for each use consistent with: (1) current good manufacturing practice (CGMP) and (2) the range of levels that have been reported for given food products.

Establishing a specific limitation, of course, does not mean that food processors necessarily ought to use the maximum allowed amounts in their particular applications. Although most of the specific limitations set forth in proposed § 184.1861(c) encompass the range of reported use levels of sulfites under CGMP for each food category, food processors should use no more sulfite than is necessary to accomplish the intended technical effect. The agency solicits comments from all interested parties on the appropriateness of any of the specific limitations on sulfite residue levels set forth in the proposed regulation.

The following examples are representative of the agency's reasoning for establishing certain sulfur dioxide equivalent levels for the various food categories in proposed § 184.1861(c).

To establish limitations for sulfites in wine, the agency has relied primarily on BATF Notice Number 543 (49 FR 37527) (Ref. 53). In that notice, BATF proposed that all wines having a total sugar content of 5 or more grams per 100 milliliters may contain up to 275 ppm of sulfites expressed as sulfur dioxide equivalents.

For tea, the agency is aware from previously submitted data that some exceedingly high levels of sulfites (residue levels of over 1,000 ppm) have been reported in certain tea and tea products. Most comments regarding the use of sulfites in tea, however, reported considerably lower levels, not exceeding 90 ppm. The agency believes, based on the evidence available to it, that a limitation of 90 ppm on tea is appropriate.

For fried fruit, the agency is aware that levels of sulfite use vary greatly. The agency is aware of reports of levels of sulfites added to apricots ranging from 2,000 to 3,500 ppm and residual levels of sulfites in apricots ranging from 1,000 to 1,750 ppm (Ref. 6, p. 14). The agency believes, on the basis of information received from the industry, that an overall level of 2,000 ppm for dried fruits is adequate, even for uses such as in dried apricots, because this level reflects what the agency believes has traditionally been the highest use level of sulfites in dried fruit (Refs. 5 and 6). In fact, the United Nations Food and Agriculture Organization and the World Health Organization Joint FAO/WHO Food Standards Programme, under the Codex Alimentarius Commission, prescribed a level of 2,000 ppm for dried apricots (Ref. 54). Other uses of sulfiting agents in the production of dried fruit, for example in the production of raisins, require sulfite residues of less than 2,000 ppm (Refs. 5 and 6).

The agency is including dehydrated, canned, and frozen potatoes in § 184.1861(c) even though in the rulemaking on sulfites and potatoes, the agency is inquiring about the safety of these uses. These actions are not inconsistent because in § 184.1861(c), the agency is proposing to establish specific limitations that restrict the GRAS affirmation of these uses to those situations in which the sulfites are used at the appropriate levels, and in which the presence of the sulfites is declared on the label of the food. In the other rulemaking (52 FR 46968), FDA is inquiring about the use of sulfites in or on canned, dehydrated, or frozen potatoes when the food is intended to be served or sold unpackaged and unlabeled to consumers.

#### 2. Labeling as a Specific Limitation

Under section 409(c)(1) of the act (21 U.S.C. 348(c)(1)), FDA is authorized, in approving the use of a food additive, to list the conditions under which the additive may be safely used. These conditions may include any labeling requirements that the agency deems necessary to assure the safe use of the additive.

Similarly, under 21 CFR 184.1(b)(2), in affirming a substance as GRAS, FDA is authorized to set forth, by means of specific limitations, the particular conditions, including labeling, under which there is general recognition among qualified experts that use of the substance is safe. After careful review of the evidence on the use of sulfiting agents, FDA has tentatively concluded that the use of these ingredients is GRAS only (except in the restaurant-type setting) when the conditions of their use includes a declaration on the label or labeling of the presence of the sulfiting agents in the food.

The agency believes that package labeling, the banning of the use of sulfiting agents on fresh fruits and vegetables, and the action that FDA is proposing with regard to "fresh" potatoes (52 FR 46968) will remedy the conditions that have produced most of the allergic-type reactions to sulfites in restaurant settings. Thus, the agency believes that there is no basis to find that unlabeled use of products containing sulfites in restaurant settings is not GRAS. However, FDA invites comments on this issue.

The basis for FDA's tentative conclusion is provided by the data that have been discussed in this document. FDA has received numerous reports of sulfite-sensitive individuals who have suffered allergic-type reactions because they ate foods that they did not realize were sulfited. The best way to prevent reactions of this type is to advise the consumer of the presence of the sulfites. If such information is provided in the label or labeling, sulfite-sensitive individuals will be able to avoid foods that contain these ingredients.

In recognition of the importance of such information, FDA is proposing to establish as a specific limitation in § 184.1861(c) that for the use of sulfiting agents in foods in bulk containers or in packaged foods to be GRAS, the presence of these ingredients must be declared on the label or labeling of those foods. As noted earlier, the requirement concerning the ingredient labeling of bulk foods is not a new requirement. The inclusion of this requirement in § 184.1861(c) simply emphasizes an existing requirement (see 21 CFR 101.22(e) and 101.100(a)(2)).

If the agency adopts the specific limitations that it has proposed, sulfites must be used in accordance with these limitations, or their addition to food will be considered by FDA to constitute the use of an unapproved food additive (see 21 CFR 184.1(b)(2)).

*B. Claims of Prior Sanctions*

The agency has received several submissions claiming that sulfites were used in specific foods in accordance with a sanction or approval granted before September 6, 1958, and that those uses are "prior sanctioned." The submissions include the GMA report, the citizen petition for the recognition of a prior sanction for the use of sulfites in maraschino cherries and glacé fruits from the Maraschino Cherry and Glacé Fruit Processors Association, and the citizen petition for the recognition of a prior sanction for the use of sulfites in beer and other malt beverages from the Beer Institute.

The agency has reviewed these submissions and has the following responses:

1. Claims for Glacé Fruit and Maraschino Cherries

The petition for maraschino cherries and glacé fruit (FAP 6CP3941) presented arguments that these products are covered by both an explicit and a general prior sanction. The petition stated that sulfur dioxide has been used to produce maraschino cherries since 1923. In addition, the petition cited numerous actions that it claimed evidenced that this use had been sanctioned by the government. In 1934, USDA promulgated a grade standard for "sulfured cherries", which were defined as cherries prepared in a solution of sulfur dioxide. In 1938, an FDA letter acknowledged that sulfites could be used to prepare brine cherries. No specific limits were listed. In 1942, FDA issued a standard of identity for fruit cocktail that permitted the inclusion of maraschino cherries. In 1943, FDA expressly approved the use of sulfur dioxide and sulfurous acid in preserving citrus foods. In a number of other letters before 1958, FDA officials acknowledged that sulfites could be used in processing cherries and other fruits. No specific limitations were listed for any of these processes.

Because no specific limits were listed in any of the correspondence submitted in the petition, the agency concludes that this use of sulfiting agents was consistent with current good manufacturing practices. A 1941 document submitted with the petition stated that residual levels of sulfites in the finished product was usually in the range of 15 to 20 ppm, and that an absolute maximum would be 50 ppm in the finished cherry (FAP 6CP3941, p. 124). Additionally, a 1983 letter submitted with the petition described a survey in which analysis of 39 samples of maraschino cherries showed that 29 samples contained less than 10 ppm sulfur dioxide. Nine samples contained sulfur dioxide levels ranging from 61 to 141 ppm, and one sample contained 203 ppm sulfur dioxide (FAP 6CP3941, p. 93). Also, this letter stated that the State of Pennsylvania has a regulation prohibiting more than 150 ppm sulfur dioxide in maraschino cherries (FAP 6CP3941, p. 92).

FDA has reviewed this petition and tentatively accepts that the use of sulfiting agents on maraschino cherries and glacé fruit is covered by a prior sanction. However, consistent with its tentative determination that this use is GRAS, the agency will include this use in § 184.1861 with specific limitations.

The petitioners for maraschino cherries provided evidence that the typical residual level of sulfites in maraschino cherries is approximately 50 ppm in the finished product. This level is lower than the level of 150 ppm reported to NAS in the 1977 Survey of Industry on the Use of Food Additives (Ref. 5). The level reported to NAS reflects a plausible upper limit to a range of possible uses, depending upon the needs of the food processor. The agency is proposing that this level of 150 ppm sulfur dioxide equivalents in finished maraschino cherries be the maximum residual level allowed in that food because that level encompasses a range of food-processing practices that are consistent with current good manufacturing practice for sulfiting maraschino cherries and glacé fruits. Because the level of 150 ppm sulfur dioxide equivalent exceeds the typical level claimed as a prior-sanctioned use in the citizen petition, the agency believes that it would serve no useful purpose to amend 21 CFR Part 181 to document a prior-sanctioned use at a lower level. The agency therefore tentatively rejects the petitioner's request to amend 21 CFR Part 181 to include a prior sanction for the use of sulfites in maraschino cherries or glacé fruits.

2. Claims for Beer

The petition from the Beer Institute (FAP 6CP3960) contained copies of several letters and memoranda from FDA dated before 1958 that gave explicit approval for the use of sulfiting agents in beer. In several of these documents a residual maximum limit of 25 ppm was stated.

The agency has reviewed this submission and tentatively concludes that the use of sulfites in beer is covered by a prior sanction. The agency also finds that there is an appropriate basis to conclude that this use is GRAS. Moreover, the reviews by two expert groups (Refs. 2 and 6) indicate that a consensus continues to exist that the use of sulfites in beer is GRAS. Therefore, FDA has tentatively decided not to amend 21 CFR Part 181 to reflect a prior sanction for the use of sulfites in beer. Instead, FDA is listing this use in the proposed GRAS affirmation regulation.

Based on information obtained from the brewing industry and from BATF, FDA believes that a specific limitation of 25 ppm sulfur dioxide equivalents in beer adequately represents current good manufacturing practice for virtually all commercially brewed beers. It is true that some recent data from a BATF survey of beers indicate that most beers contain no more than 15 ppm sulfur dioxide equivalents (Ref. 55). However, in view of the apparent prior sanction for the use of sulfites in beer at 25 ppm sulfur dioxide equivalents, the agency has tentatively concluded that it would not be appropriate to adopt the 15 ppm level. The agency welcomes comments and data from interested parties concerning appropriate levels of sulfur dioxide equivalents in beer.

3. The GMA Report

The agency has also reviewed the report from GMA that provides documentation of specific claimed prior sanctions for the use of sulfites in food.

GMA's argument in support of a general prior sanction for the use of sulfites in foods is based essentially on the following:

(1) In 1908, FDA issued Food Inspection Decision (FID) 89, which authorized the use of sulfites in foods in ordinary quantities to achieve their functional effect.

(2) In 1940, in a letter to industry, FDA stated that it was still being guided by FID 89 with respect to food uses of sulfites.

(3) In correspondence before 1958, FDA sanctioned the use of sulfites in foods. In some of these letters, FDA expressed limitations on the use of sulfites in food. These limitations were generally that: (i) Sulfites could not be used in foods that were good sources of vitamin $B_1$; (ii) sulfites could not be used in standardized foods where the standard did not provide for the use of sulfites; and (iii) sulfites could not be used in meat, because they concealed damage or inferiority.

(4) In correspondence before 1958, FDA also explicitly sanctioned specific uses of sulfites in specific categories of food, including dehydrated potato products; precut peeled potatoes; bakery products; beer and malt beverage; "beverages" in general; cherries; citrus foods; coconut; corn products; dehydrated fruits and vegetables; fresh fruits and vegetables; gelatin; molasses; mushrooms; onion and garlic products; pickles and pickled vegetables; sauerkraut and horseradish; shrimp; soft drinks; syrups; and wine and wine vinegar, and as a dough conditioner.

The agency recognizes that the use of sulfites in many foods predates 1958, and that the use of one or more of the sulfiting agents in many food categories may be the subject of a prior sanction. The agency has become aware, however, that certain uses of sulfites in some foods (for example, in fresh fruits and vegetables) may render the food injurious to health and cause the food to be adulterated under section 402(a)(1) of the act (Refs. 9a and 9b). Because some uses have been found to be unsafe under section 402(a)(1) of the act, a general prior sanction, as might be implied from some FDA correspondence before 1958, is not consistent with the safe use of these ingredients (see 21 CFR 181.5(c)). Therefore, FDA is proposing herein to revoke any such general prior sanction.

Having tentatively concluded that any general prior sanction that may have existed should revoked, the agency turns to specific prior sanction claims made by GMA. The agency will address each claim on a case-by-case basis. Moreover, FDA requests that any other claims of prior sanctions for specific uses of sulfites in food be brought to its attention as comments on this proposal. The agency will consider these claimed prior sanctions based on the available evidence.

The agency compared the uses and limitations that it has tentatively concluded can be affirmed as GRAS to the uses and levels that GMA has claimed are prior-sanctioned. FDA is proposing to affirm as GRAS, at use levels equal to or greater than those in the GMA report, many of the uses of sulfites that are the subject of GMA's claims. These uses include the use of sulfites on bakery products, beer and malt beveages, certain cherries, citrus foods, coconut, corn products, most dehydrated fruits and vegetables, gelatin, molasses, onion and garlic products, shrimp, syrups, and wine vinegar and the use of sulfites as a dough conditioner. For these uses, the agency believes that there is no need to determine whether there is a prior sanction and no reason to promulgate separate, redundant regulations under 21 CFR Part 181.

GMA also presented evidence for the use before 1958 of sulfites in "beverages" and "soft drinks." In 1940, FDA issued a letter that stated that sulfur dioxide could be used in beverages at a level of up to a "few hundred parts per million." Additionally, in other publications and letters dated before 1958, FDA stated that sulfites may be used with no specific limits in carbonated beverages and beverages. In 1963, FDA proposed a standard of identity for soda water that permitted the use of sulfites as optional ingredients. This standard was codified in 1966 (21 CFR 31.1(b)(10)). This standard was revised in 1975 (40 FR 26267; June 23, 1975). Since that revision, the soda water standard (now 21 CFR 165.175) does not specifically list sulfites but provides for the optional use of any safe and suitable ingredient.

The agency has reviewed this evidence and acknowledges that a prior sanction exists for the use of sulfites in soft drinks. However, FDA has no information that U.S. soft drink manufacturers intentionally add sulfites to such beverages. Therefore, the agency is taking no action on this prior sanction at the present time. Instead, the agency solicits comments from interested parties concerning this use of sulfiting agents. The agency is particularly interested in the amounts of sulfites used. Based on the information that is submitted, the agency will decide if this use should be GRAS or codified in 21 CFR Part 181.

The GMA report lists as prior sanctioned the use of sulfites in maraschino cherries at 300 ppm. GMA has not presented evidence of explicit approval of such use by the agency (see 21 CFR 181.5(a)). Rather, it has inferred a sanction based on an industry-prepared memorandum of a meeting with an FDA official. The agency tentatively concludes that this evidence does not provide an adequate basis on which to establish a prior sanction.

The citizen petition from the Maraschino Cherry and Glace Fruit Processors Association provides more extensive and direct documentation of FDA's historical approach to industry practices regarding the production of maraschino cherries. That petition, as stated above, claims that the usual residual sulfite level in maraschino cherries is approximately 50 ppm in the finished product. The limitation for maraschino cherries that FDA is proposing in § 184.1861 is 150 ppm and encompasses the likely range of sulfite levels under current good manufacturing practice for such cherries.

Neither the Panel report nor the 1977 NAS survey reveals any use of sulfites in dairy products. Additionally, there appear to be no data to indicate that sulfites are currently being used on any dairy products. However, in its report, GMA claims that before 1958, the agency permitted use of sulfites in cheese and other dairy products. GMA cites a 1947 letter from FDA to a major producer of cheese products regarding the use of sulfur dioxide in food, an FDA file note in 1957 that stated "sodium metabisulfite entirely safe, cheese," and a letter to the Ohio State Department of Agriculture in which FDA stated that "sodium bisulfite is not considered to be directly harmful in such amounts as are generally used in foods."

The agency has reviewed this evidence. Nowhere in the two letters did the agency state that the use of sulfites is safe for use in dairy products. The agency is of the opinion that these letters were nothing more than responses to general letters of inquiry relating to sulfites. As such, these letters do not constitute a prior sanction.

With regards to the statement in the FDA file note, the agency does not believe that this file note can be construed as the type of "sanction or approval" that would provide the basis for the finding of a prior sanction because it does not represent an explicit statement of agency approval. Therefore, FDA tentatively concludes that there is no basis for finding a prior sanction for the use of sulfites in dairy products.

In support for its claim of a prior sanction for the use of sulfites in pickles and pickled vegetables, GMA cited a 1938 letter from FDA to industry that stated in part: "* * * relative to the use of sulphur dioxide as a preservative for pickles and similar products, our law enforcement activities have not included technological investigations along such lines." A 1953 letter from FDA to industry sanctioned the use of sulfites in pickled vegetables at no more "than 300 parts per million in the finished article" (Ref. 56). The vegetables to be pickled were not specified.

In a 1945 letter from FDA to industry, the use of sulfur dioxide in horseradish and sauerkraut was addressed. Also, in a 1953 letter from FDA, the agency stated: "We are not in a position to object to the use of sulphur dioxide in small quantities in sauerkraut, provided its presence is declared on the labeling as a preservative." In both of these letters the agency cautioned that FDA discourages the use of preservatives in the manufacture of any food product when current good manufacturing practices would eliminate the need for the use of such ingredients.

The agency acknowledges that a prior sanction exists for the use of sulfites in pickled vegetables on the basis of the 1953 letters and the 1945 letter cited above. However, the agency finds that the 1938 letter cited above does not constitute an appropriate basis for a prior sanction for the use of sulfites in pickled vegetables because the agency was not sanctioning this use in this letter, and because this letter was issued before the effective date of the act.

However, rather than promulgate a prior-sanctioned regulation for the use of sulfites in pickled vegetables, the agency is proposing to codify this use as GRAS in 21 CFR Part 184 in accordance with 21 CFR 184.1(b)(2). Also, the agency is proposing to affirm this use as GRAS at a level lower than the 300 ppm sanctioned in a 1953 letter from FDA because the agency finds that the 300 ppm level of sulfites no longer reflects current good manufacturing practice.

The Panel, using data from the 1977 NAS survey of industry on the use of food additives, reported levels of sulfite addition of 30 ppm to pickles and relishes. The 1977 NAS survey data are the only recent data available on the use of sulfites on such foods. When the agency sanctioned a level of no more than 300 ppm sulfites in the finished article, it was approving a level that reflected then-current good manufacturing practice. However, as manufacturing conditions have improved, the CGMP level for sulfites has decreased steadily. Because present day industry practices result in much lower residual levels of sulfites (30 ppm) than the claimed prior-sanctioned level of 300 ppm, the agency believes that in spite of the evidence supplied by GMA for a prior sanction, the level consistent with GRAS status for this use of sulfites should be set at 30 ppm. Although the agency is proposing to establish a specific limitation of 30 ppm for the use of sulfites on pickles and relishes (including horseradish and pickled vegetables such as sauerkraut), it will consider new data from industry on current good manufacturing practices and other data and information to determine on a case-by-case basis appropriate levels applicable to such uses of sulfiting agents if such data are submitted.

The GMA report cites levels of up to 350 ppm of sulfites in wine as a prior-sanctioned use. The agency tentatively concludes that the evidence supplied in the GMA report does not demonstrate that a prior sanction exists for this use. Three exhibits supplied by GMA contain references to the Alcohol Tax Unit regulations (27 CFR 4.22(b)(1)) of the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury. These references are insufficient to serve as a basis for a prior sanction because section 201(s)(4) of the act says that the use for which a prior sanction is claimed must be "in accordance with a sanction or approval * * * pursuant to this Act, the Poultry Products Inspection Act * * * or the Meat Inspection Act * * *." Treasury Department statutes are not included. The only reference to 350 ppm of sulfites in wine by FDA is contained in an agency document dated September 12, 1938, before the current act became effective on June 25, 1939. Thus, the agency document does not constitute a sanction under section 201(s)(4). Therefore, the agency is tentatively denying GMA's assertion that a valid prior sanction exists for the use of sulfites in wine at 350 ppm.

In the present rulemaking, as explained above, the agency is proposing to set a specific limitation of 275 ppm on sulfites in wine. This level is the same as that proposed by BATF in Notice 543 (49 FR 37527) (Ref. 53). BATF is currently receiving comments on its proposal and is compiling data on the actual levels of sulfites in many brands of commercially available wines. Most of the levels reported thus far are at or below the level of 275 ppm. Thus, the agency tentatively concludes that 275 ppm for sulfites in wine is the appropriate level. The agency will, however, consider industry data on current good manufacturing practices and other data and information to determine levels applicable to such use of sulfiting agents.

## VIII. Requests for Comments

Interested persons may, on or before February 17, 1989, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. In addition to requesting comments concerning the proposal in its entirety, the agency also solicits comments on the economic impact of the proposed action.

## IX. References

The following references have been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Sulfiting Agents; Proposed Affirmation of GRAS Status with Specific Limitations; Removal from GRAS Status as Direct Human Food Ingredient," 47 FR 29956, July 9, 1982.

2. Select Committee on GRAS Substances, "Evaluation of Health Aspects of Sulfiting Agents as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, prepared under FDA contract 223-75-2004, 1976.

3. Select Committee on GRAS Substances, "Insights on Food Safety Evaluation," Life Sciences Research Office, Federation of American Societies for Experimental Biology, prepared under FDA contract 223-81-2394, December 1982, and references cited therein.

4. The Franklin Institute Research Laboratories, Philadelphia, PA, "Monograph on Sulfiting Agents," submitted under Department of Health, Education, and Welfare contract number FDA 72-101, 1972.

5. National Academy of Sciences/National Research Council, "The 1977 Survey of Industry on the Use of Food Additives," prepared under FDA contract 223-77-2025, 1979.

6. Select Committee on GRAS Substances, "The Reexamination of the GRAS Status of Sulfiting Agents," Life Sciences Research Office, Federation of American Societies for Experimental Biology, prepared under FDA contract 223-83-2020, January 28, 1985.

7. "Food Labeling; Proposed Rule Concerning Sulfiting Agents," 50 FR 13306, April 3, 1985.

8. "Food Labeling; Declaration of Sulfiting Agents," 51 FR 25012, July 9, 1986.

9a. "Sulfiting Agents; Proposal to Revoke GRAS Status for Use on Fruits and Vegetables Intended to be Served or Sold Raw to Consumers," 50 FR 32830, August 14, 1985.

9b. "Sulfiting Agents; Revocation of GRAS Status for Use on Fruits and Vegetables

Intended to be Served or Sold Raw to Consumers," 51 FR 25021, July 9, 1986.

10. "Sulfiting Agents; Proposal to Revoke GRAS Status for Use on Potatoes Served or Sold Unpackaged and Unlabeled to Consumers," 52 FR 46968, December 10, 1987.

11. Taylor, S.L., and R.K. Bush, "Sulfites, A Technical and Scientific Review," prepared for International Food Additives Council, Atlanta, 75 pp., 1983.

12. Food Chemicals Codex (3d Ed.), National Academy of Sciences/National Research Council, Washington, DC, 1981. Also see the 1st and 2d Supplements, 1983 and 1986, respectively.

13. Pao, E.M., et al., "Foods Commonly Eaten by Individuals: Amount per Day and per Eating Occasion," Home Economics Research Report No. 44, 431 pp., 1982.

14. U.S. Department of Agriculture, "Food Consumption: Households in the United States, Seasons and Year 1977–78," Nationwide Food Consumption Survey 1977–78, Report No. H–6, 309 pp., 1983.

15. U.S. Department of Agriculture, "Food Intakes: Individuals in 48 States, Year 1977–78," Nationwide Food Consumption Survey 1977–78, Report No. I–1, 617 pp., 1983.

16. U.S. Department of Agriculture, "Agricultural Statistics," 1983.

17. U.S. Department of Agriculture, "Fruit," Economic Research Service, TFS–231, 1984.

18. U.S. Department of Agriculture, "Dairy Situation," Economic Research Service, ERS DS–394, 1984.

19. U.S. Department of Commerce, "U.S. Imports for Consumption and General Imports," FT246/Annual 1983, Bureau of Census, 1984.

20. Feron, V. J., and P. Wensvoort, "Gastric Lesions in Rats After the Feeding of Sulphite," *Pathologia Europaea (London)*, 7:103–111, 1972.

21. Til, H. P., V. J. Feron, and A. P. De Groot, "The Toxicity of Sulphite. I. Long-term Feeding and Multigeneration Studies in Rats," *Food and Cosmetics Toxicology*, 10:291–310, 1972.

22. Til, H. P., V. J. Feron, and A. P. De Groot, "The Toxicity of Sulphite. II. Short- and Long-term Feeding Studies in Pigs," *Food and Cosmetics Toxicology*, 10:463–473, 1972.

23. Beems, R. B., et al., "Nature and Histogenesis of Sulphite-induced Gastric Lesions in Rats," *Experimental and Molecular Pathology*, 36:316–325, 1982.

24. Gunnison, A. F., et al., "A Sulphite-Oxidase-Deficient Rat Model: Subchronic Toxicology," *Food and Cosmetics Toxicology*, 19:221–232, 1981.

25. Dulak, L., G. Chiang, and A. F. Gunnison, "A Sulphite-Oxidase-Deficient Rat Model: Reproductive Toxicology of Sulphite in the Female," *Food and Cosmetics Toxicology*, 22:599–607, 1984.

26. Murray, F. J., et al., "Embryotoxicity of Inhaled Sulfur Dioxide and Carbon Monoxide in Mice and Rabbits," *Journal of Environmental Sciences*, 13:233–250, 1979.

27. Shapiro, R., "Genetic Effects of Bisulfite: Implications for Environmental Protection," *Basic Life Sciences*, 23:3554, 1983.

28. Mallon, R. G., and T. G. Rossman, "Bisulfite (Sulfur Dioxide) is a Comutagen in *E. coli* and in Chinese Hamster Cells," *Mutation Research*, 88:125–133, 1981.

29. Khoudokormoff, B., and N. V. Gist-Brocades, "Potential Carcinogenicity of Some Food Preservatives in the Presence of Traces of Nitrite," *Mutation Research* 53:208–209, 1978.

30. Chang, H. W., K. C. Chung, and W. P. Choi, "Studies on the Reaction Between Sodium Bisulfite and Pyrimidine Nucleotides and Mutagenicity of the Reaction Products," *Yongnam Taekakkyo Chonyonmul Huahak Yonguso Yoaga*, 4:59–77, 1977.

31a. DiPaolo, J. A., A. J. DeMarinis, J. Doniger, "Transformation of Syrian Hamster Embryo Cells by Sodium Bisulfite," *Cancer Letter*, 12:203–208, 1981.

31b. Doniger, J., R. O'Neill, and J. A. DiPaolo, "Neoplastic Transformation of Syrian Hamster Embryo Cells by Bisulfite is Accompanied with a Decrease in the Number of Functioning Replicons," *Carcinogenesis*, 3:27–32, 1982.

32. MacRae, W. D., and H. F. Stich, "Induction of Sister Chromatid Exchanges in Chinese Hamster Cells by the Reducing Agents Bisulfite and Ascorbic Acid," *Toxicology*, 13:167–174, 1979.

33. Schneider, L. K., and C. A. Calkins, "Sulfur Dioxide-induced Lymphocyte Defects in Human Peripheral Blood Cultures," *Environmental Research*, 3:473–483, 1970.

34. Generoso, W. M., S. W. Huff, and K. T. Cain, "Tests on Induction of Chromosome Aberrations in Mouse Germ Cells with Sodium Bisulfite," *Mutation Research*, 56:363–365, 1978.

35. Jagiello, G. M., J. S. Lin, and M. B. Ducayen, "$SO_2$ and its Metabolite: Effects on Mammalian Egg Chromosomes," *Environmental Research*, 9:84–93, 1975.

36. Renner, H. W., and J. Wever, "Attempts to Induce Cytogenetic Effects with Sulphite in Sulphite Oxidase-Deficient Chinese Hamsters and Mice," *Food and Cosmetics Toxicology*, 21:123–127, 1983.

37. Tanaka, T., et al., "Carcinogenicity Test of Potassium Metabisulfite in Mice," *Ecotoxicology and Environmental Safety*, 3:451–453, 1979.

38. Peacock, P. R., and J. B. Spence, "Incidence of Lung Tumours in LX Mice Exposed to (1) Free Radicals; (2) $SO_2$," *British Journal of Cancer*, 21:606–618, 1967.

39. Laskin, S., et al., "Combined Carcinogen-irritant Animal Inhalation Studies," *in* "Air Pollution and the Lung," John Wiley & Sons, Inc., New York, pp. 190–213, 1976.

40. Nordenson, L., et al., "Is the Exposure to Sulphite Dioxide Clastogenic?" *Hereditas*, 93:161–164, 1980.

41. Sorsa, M., B. Kolmodin-Hedman, and H. Jarventaus, "No Effect of Sulphur Dioxide Exposure, in Aluminum Industry, on Chromosomal Aberrations or Sister Chromatid Exchanges," *Hereditas*, 97:159–161, 1982.

42. Hayatsu, H., and A. Kitajo, "Cooperations of Bisulfite and Nitrogenous Compounds in Mutagenesis," *Developmental Toxicology and Environmental Science*, 2:285–292, 1977.

43. Suwa, Y., et al., "Sulfite Suppresses the Mutagenic Property of Coffee," *Mutation Research*, 102:383–391, 1982.

44. Calle, L. M., and P. D. Sullivan, "Screening of Antioxidants and Other Compounds for Antimutagenic Properties Towards Beno[*alpha*]Pyrene-induced Mutagenicity in Strain TA98 of *Salmonella typhimurium*," *Mutation Research*, 101:99–114, 1982.

45. Borek, C., Columbia University, New York, Letter plus attachments, dated September 11, 1984, to S. A. Anderson, Federation of American Societies for Experimental Biology, Bethesda, MD.

46. Borek, C., Columbia University, New York, Letter, dated October 31, 1984, to S. A. Anderson, Federation of American Societies for Experimental Biology, Bethesda MD.

47. Transcripts of presentations and meeting minutes of the December 21 and 13, 1985, meetings of the Ad Hoc Advisory Committee on Hypersensitivity to Food Constitutents.

48. Labeling of Sulfites in Alcoholic Beverages; BATF Notice No. 566; 51 FR 34706, September 30, 1986.

49. "Total Sulfurous Acid," *in* "Official Methods of Analysis of the Association of Official Analytical Chemists," (14th Ed.), sections 20.123–20.125, 1984.

50. "A Report on the Monier-Williams Method for Sulfites in Food," FDA.

51. "Monier-Williams Procedure (with Modifications) for Sulfites in Food," November 1985.

52a. "FD&C Yellow No. 5; Labeling in Food and Drugs for Human Use and Restriction on Use in Certain Human Drugs," 42 FR 6835, February 4, 1977.

52b. "FD&C Yellow No. 5; Labeling in Food and Drugs for Human Use," 44 FR 37212, June 26, 1979.

52c. "FD&C Yellow No. 5; Removal of Stay," 50 FR 35774, September 4, 1985.

53. BATF Notice No. 543, 49 FR 37527, September 24, 1984.

54. "Codex Standards for Processed Fruits and Vegetables and Edible Fungi, Codex Standard 130–1981," Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Volume II, 1st Ed.

55. Beer data from BATF, letter plus attachments, M. J. Breen, BATF to S. Gukins, Rosemont, PA, October 17, 1986.

56. Report to the Grocery Manufacturers Association on "Documentation of Explicit Prior Sanctions for the Specific Use of Sulfites as Preservatives in Food and for Other Particular Food Uses," letter dated December 2, 1985, from Sherwin Gardner, Grocery Manufacturers Association to Dockets Management Branch.

## X. Economic Impact

FDA has examined the potential economic consequences of this GRAS affirmation regulation in accordance with the Regulatory Flexibility Act and has determined that this regulation will permit most current known uses of sulfiting agents at current use levels. (These uses do not include the use of sulfiting agents on fresh fruits and vegetables intended to be served raw or sold raw to consumers and on "fresh" potatoes served or sold unpackaged and unlabeled to consumers. FDA has considered the economic impact of not affirming these as GRAS in those rulemakings.]

There may arise a cost to some firms whose products do not meet the specific limitations for sulfites. FDA has received information that some products, especially certain dried fruits, may in some cases be produced with residual sulfite levels in excess of the levels proposed in this document. Although FDA does not have an estimate of the cost that may be associated with reducing these residual sulfite levels, it is aware that dried fruits and other affected products produced according to current good manufacturing practices consistently show residual sulfite levels, well within the ranges proposed in this document. In the absence of any data indicating otherwise, the agency concludes that all manufacturers are capable of producing these products with residual sulfite levels within the levels specified in this proposal, and that any additional costs will be minimal.

In addition, there are a few uses that the agency cannot affirm as GRAS because the agency was unaware of these uses until recently, and, consequently, they were not reviewed or evaluated by either the FASEB Select Committee or the FASEB Ad Hoc Review Panel. These uses include the use of sulfiting agents in home dehydrators and winemaking kits, certain beverages, soft drinks, and dairy products. Although the agency cannot affirm the GRAS status of the use of sulfites in these products based on available information, it is requesting further information regarding these uses. The economic consequences of the agency's decisions regarding the GRAS status of these uses will be evaluated in the final rule.

This proposed regulation will also make clear that as a condition for the GRAS status of the use of sulfites in foods that are presented in unpackaged form in bulk to consumers, the presence of sulfites in those foods must be declared in the labeling or by other appropriate device as required by existing regulations (21 CFR 101.22(e) and 101.100(a)(2)). The most recent U.S. Department of Agriculture estimate indicates that there are approximately 240,000 food stores in the United States. Only a portion of these retail food outlets sell sulfited, unpackaged, bulk food to consumers and would, therefore, be affected by this labeling requirement.

In addition, the labeling may be in the form of a counter sign or card which should pose minimal incremental cost to affected retail food outlets.

In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has considered the effect that this proposed rule, if promulgated, will have on small businesses and has concluded that the regulation will result in a minimal impact on any one firm. Therefore, the agency certifies that no significant impact on a substantial number of entities will be caused by this action.

Furthermore, in accordance with Executive Order 12291, the agency has analyzed the potential economic effects of this regulation and has determined that the rule, if promulgated, is not a major rule as defined by that Order.

The agency, however, solicits comments on the economic impact of the proposed action.

### XI. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects

*21 CFR Part 182*

Food ingredients, Food packaging, Spices and flavorings.

*21 CFR Part 184*

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Parts 182 and 184 be amended as follows:

## PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

**§§ 182.3616, 182.3637, 182.3739, 182.3766, 182.3798 and 182.3862 [Removed]**

2. Part 182 is amended by removing § 182.3616 *Potassium bisulfite,* § 182.3637 *Potassium metabisulfite,* § 182.3739 *Sodium bisulfite,* § 182.3766 *Sodium metabisulfite,* § 182.3798 *Sodium sulfite,* and § 182.3862 *Sulfur dioxide* from Subpart D.

## PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR Part 184 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

4. New § 184.1861 is added to Subpart B to read as follows:

**§ 184.1861 Sulfiting agents.**

(a) Sulfiting agents are sulfur dioxide ($SO_2$, CAS Reg. No. 7446–09–5), sodium sulfite ($Na_2SO_3$, CAS Reg. No. 7757–83–7), sodium metabisulfite ($Na_2S_2O_5$, CAS Reg. No. 7681–03–7), anhydrous sodium bisulfite (which is a mixture of sodium bisulfite ($NaHSO_3$ (CAS Reg. No. 7631–90–5)) and $Na_2S_2O_5$,), potassium metabisulfite ($K_2S_2O_5$, CAS Reg. No. 16731–55–8), and anhydrous potassium bisulfite (which is a mixture of potassium bisulfite ($KHSO_3$ (CAS Reg. No. 7773–03–7)) and $K_2S_2O_5$,).

(b) Sulfur dioxide, sodium sulfite, sodium metabisulfite, anhydrous sodium bisulfite, and anhydrous potassium metabisulfite meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 316, 303, 289, 279, and 247, respectively, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or are available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC. FDA is developing food-grade specifications for anhydrous potassium bisulfite in cooperation with the Food Chemicals Codex Committee of the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(2), the ingredients are used as antimicrobial agents, antioxidants, and bleaching agents to treat food only within the following specific limitations:

(1) The ingredients may be used only in the following food categories at the following maximum residual sulfur dioxide equivalent levels:

| Category of food | Maximum residual sulfur dioxide equivalent level [1] |
|---|---|
| Baked goods, § 170.3(n)(1) of this chapter. | 30 ppm. |
| Beer, § 170.3(n)(2) of this chapter. | 25 ppm. |
| Wine, § 170.3(n)(2) of this chapter. | 275 ppm. |
| Tea, § 170.3(n)(7) of this chapter. | 90 ppm. |
| Condiments and relishes, § 170.3(n)(8) of this chapter. | 30 ppm. |
| Vinegar, § 170.3(n)(8) and (26) of this chapter. | 75 ppm. |
| Dairy product analogs, § 170.3(n)(10) of this chapter. | 200 ppm. |
| Processed seafood products, other than dried or frozen, § 170.3(n)(13) of this chapter. | 25 ppm. |

| Category of food | Maximum residual sulfur dioxide equivalent level [1] |
|---|---|
| Dried fish, § 170.3(n)(13) of this chapter. | 200 ppm. |
| Shrimp, fresh and frozen, § 170.3(n)(15) of this chapter. | 100 ppm. |
| Lobster, frozen, § 170.3(n)(15) of this chapter. | 100 ppm. |
| Gelatin, § 170.3(n)(22) of this chapter. | 40 ppm. |
| Grain products, § 170.3(n)(23) of this chapter. | 200 ppm. |
| Gravies and sauces, § 170.3(n)(24) of this chapter. | 75 ppm. |
| Jams and jellies, § 170.3(n)(28) of this chapter. | 30 ppm. |
| Nut products, § 170.3(n)(32) of this chapter. | 25 ppm. |
| Plant protein isolates, § 170.3(n)(33) of this chapter. | 110 ppm. |
| Dried fruit, § 170.3(n)(35) of this chapter. | 2,000 ppm. |
| Fruit juices, § 170.3(n)(35) of this chapter. | 1,000 ppm in concentrates. 300 ppm in regular strength juices. |
| Glacé fruit, § 170.3(n)(35) of this chapter. | 150 ppm. |
| Maraschino cherries, § 170.3(n)(35) of this chapter. | 150 ppm. |
| Dehydrated vegetables § 170.3(n)(36) of this chapter. | 200 ppm. |
| Dehydrated potatoes, § 170.3(n)(36) of this chapter. | 500 ppm. |
| Vegetables, canned, § 170.3(n)(36) of this chapter. | 30 ppm. |
| Frozen potatoes, § 170.3(n)(36) of this chapter. | 50 ppm. |
| Vegetable juice, § 170.3(n)(36) of this chapter. | 100 ppm. |
| Filled crackers, § 170.3(n)(37) of this chapter. | 75 ppm. |
| Soup mixes, § 170.3(n)(40) of this chapter. | 20 ppm in dry mix. |
| Sugar, § 170.3(n)(41) of this chapter. | 20 ppm. |
| Sweet sauces and syrups, § 170.3(n)(43) of this chapter. | 60 ppm. |
| Molasses, § 170.3(n)(43) of this chapter. | 300 ppm. |

[1] Residues in the finished food products are to be determined by sections 20.123 through 20.125, "Total Sulfurous Acid," in the "Association of Official Analytical Chemists," 14th Ed. (1984), which is incorporated by reference in accordance with 5 U.S.C. 552(a), and the refinements of the "Total Sulfurous Acid" procedure in "Monier-Williams Procedure (with Modifications) for Sulfites in Food," November 1985. This procedure is Appendix A to Part 101 of this chapter.

(2) For sulfited foods that are received in bulk containers and not in package form, including all foods for which a definition and standard of identity have been prescribed by regulation, the use of sulfite in such foods shall be declared to the purchaser either (i) in the labeling of the bulk container plainly in view or (ii) in a counter sign, card, or other appropriate device bearing the information that the product has been treated with sulfites.

(3) For sulfited foods in packaged form, including all foods for which a definition and standard of identity have been prescribed by regulation, the use of sulfite in such food shall be declared on the label.

(d) The ingredients are not generally recognized as safe for use: (1) in meats; (2) in food recognized as a source of vitamin $B_1$; and (3) on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

Dated: August 22, 1988.

[FR Doc. 88-29033 Filed 12-16-88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Monday
December 19, 1988

# Part V

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 36**

**Standards Governing the Noise Certification of Aircraft; Final Rule**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 36

[Docket No. 23340; Amdt. 36-15]

### Standards Governing the Noise Certification of Aircraft; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** In the May 6, 1988, issue of the **Federal Register** (53 FR 16359), the FAA published a final rule which revised certain provisions of the regulations prescribing requirements for aircraft noise certification. The final rule omitted part of the technical specifications to be adopted in the amendment to Part 36.

**EFFECTIVE DATE:** May 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven R. Albersheim (202) 267-3560.

**SUPPLEMENTARY INFORMATION:**

### Background

Since its adoption in November 1969, FAR, Part 36, serves as the basis for certificating aircraft to prescribed noise standards and it includes precise instructions concerning the acquisition, processing, and documentation of noise data from aircraft. Part 36 has been amended several times to reflect changes in aircraft design and technology and the ability to measure aircraft noise levels more precisely. The most recent amendment to Part 36 published in the **Federal Register** (53 FR 16359) revised the definition of acoustical change for turbojets, weight limits for certification, and technical specifications noise measurement equipment. As stated in the final rule (53 FR 16363), the FAA agreed to adopt the International Civil Aviation Organization (ICAO) standard for microphone specifications to avoid any disparity between U.S. and ICAO specifications. In issuing the amendment to Part 36, part of the revised microphone technical specification was inadvertently omitted and must now be included in Part 36 to make it consistent with ICAO. The omission is corrected by this notice.

Dated: December 14, 1988.

**Donald P. Byrne,**

*Deputy Assistant Chief Counsel, Regulations and Enforcement Division, Office of the Chief Counsel.*

The following correction is made in Amendment No. 36-15, Standards Governing the Noise Certification of Aircraft; Appendix A—Aircraft Noise Measurement Under § 36.101, Section A36.3—Measurement of aircraft noise received on the ground, published in the **Federal Register** on May 6, 1988 (53 FR 16359).

1. In Appendix A, paragraph (c)(2) of section A36.3 on page 16367, column 2, is correctly amended by revising paragraphs (i) and (ii), by redesignating paragraphs (iii) and (iv) as (iv) and (v), and by adding a new paragraph (iii) to read as follows:

* * * * *

(c) * * *

(2) The microphone must be a pressure sensitive capacitive type, or its approved equivalent, such as free field type with incidence corrector.

(i) After an adequate "warm-up" period, at least as long as that specified by the equipment manufacturer, the system output for constant acoustical input shall change by not more than 0.3 dB within any one hour nor by more than 0.4 dB within 5 hours.

(ii) The variation of microphone and preamplifier system sensitivity within an angle of ±30 degrees of grazing (60-120 degrees from the normal to the diaphragm) must not exceed the following values:

| Frequency (HZ) | Change in sensitivity (dB) |
|---|---|
| 45 to 1,120 | 1.0 |
| 1,120 to 2,240 | 1.5 |
| 2,240 to 4,500 | 2.5 |
| 4,500 to 7,100 | 4.0 |
| 7,100 to 11,200 | 5.0 |

With the wind screen in place, the variation in sensitivity in the plane of the diaphragm of the microphone system shall not exceed 1.0 dB over the frequency range 45 to 11,200 Hz.

(iii) The free-field frequency response of the microphone system at the reference incidence direction shall lie within an envelope having the following values:

| Frequency (HZ) | Change in Tolerance (dB) |
|---|---|
| 45 to 4,500 | ±1.0 |
| 4,500 to 5,600 | ±1.5 |
| 5,600 to 7,100 | +1.5 to −2.0 |
| 7,100 to 9,000 | +1.5 to −3.0 |
| 9,000 to 11,200 | +2.0 to −4.0 |

Note: The requirements of this paragraph may be determined by a pressure response calibration (which may be obtained from an electrostatic calibrator in combination with manufacturer provided corrections) or an anechoic free-field facility.

(iv) * * *

(v) * * *

2. **Note:** Paragraphs (d)(2), (d)(5), (d)(6), and (e)(7) are revised as described on page 16367.

[FR Doc. 88-29067 Filed 12-16-88; 8:45 am]

BILLING CODE 4910-13-M

# Reader Aids

Federal Register

Vol. 53, No. 243

Monday, December 19, 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, DECEMBER

| | |
|---|---|
| 48505-48628 | 1 |
| 48629-48894 | 2 |
| 48895-49110 | 5 |
| 49111-49286 | 6 |
| 49287-49544 | 7 |
| 49545-49648 | 8 |
| 49649-49842 | 9 |
| 49843-49968 | 12 |
| 49969-50200 | 13 |
| 50201-50372 | 14 |
| 50373-50506 | 15 |
| 50507-50910 | 16 |
| 50911-51088 | 19 |

## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

**Proclamations:**

5918.....49287
5919.....49289
5920.....49291
5921.....49969
5922.....49971
5923.....50638

**Executive Orders:**

12659.....50911

**Administrative Orders:**

Memorandums:

Dec. 12, 1988.....50373

Presidential Determinations:

No. 89-7 of Nov. 18, 1988.....49111

### 4 CFR

81.....50913

### 5 CFR

536.....49545
737.....48756
831.....48629, 48895, 49638
841.....48629, 48895, 49638
1201.....48505, 49824
1205.....49649

### 7 CFR

1d.....50375
6.....49545
13.....50201
15.....48505
16.....48896
51.....48630
68.....50914
210.....48631
220.....48631
226.....48631
301.....49973
319.....50507, 50508
330.....49974
354.....50509
905.....49293
906.....49843, 50914
907.....49649, 50510
910.....48632, 49651, 50511
920.....48511
932.....48513
944.....48513
945.....48633
947.....49113
971.....50202
989.....49294, 50203
1002.....48515, 49966
1004.....50916
1007.....48516
1098.....48516
1106.....48518
1135.....50917
1408.....50204
3400.....49640

**Proposed Rules:**

26.....49637
Ch. III.....50972
301.....49885
919.....50229
971.....49885
979.....49153
1124.....49154
1125.....49154
1785.....48651, 51029
1951.....50972

### 8 CFR

217.....50160

**Proposed Rules:**

103.....50230
214.....48914

### 9 CFR

94.....48519, 49974
301.....49844
304.....49844
305.....49844
313.....49844
317.....49848
318.....49844, 49848, 50205
327.....49844

**Proposed Rules:**

92.....49185, 50539
113.....49669

### 10 CFR

**Proposed Rules:**

Ch. 1.....49886
50.....49997
100.....50232
430.....48798
785.....49675

### 11 CFR

**Proposed Rules:**

113.....49193
114.....49193
116.....49193

### 12 CFR

8.....48624
204.....49115
611.....50381
612.....50381
618.....50381
620.....50381
701.....50918
741.....50918

**Proposed Rules:**

205.....48914
225.....48915
226.....48925

### 13 CFR

302.....50206

## LIST OF PUBLIC LAWS

**Note:** The list of public laws enacted during the second session of the 100th Congress has been completed.

**Last List November 30, 1988**

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.I15New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

| Title | Price | Revision Date |
|---|---|---|
| **1, 2 (2 Reserved)** | $10.00 | Jan. 1, 1988 |
| **3 (1987 Compilation and Parts 100 and 101)** | 11.00 | [1] Jan. 1, 1988 |
| **4** | 14.00 | Jan. 1, 1988 |
| **5 Parts:** | | |
| 1-699 | 14.00 | Jan. 1, 1988 |
| 700-1199 | 15.00 | Jan. 1, 1988 |
| 1200-End, 6 (6 Reserved) | 11.00 | Jan. 1, 1988 |
| **7 Parts:** | | |
| 0-26 | 15.00 | Jan. 1, 1988 |
| 27-45 | 11.00 | Jan. 1, 1988 |
| 46-51 | 16.00 | Jan. 1, 1988 |
| 52 | 23.00 | Jan. 1, 1988 |
| 53-209 | 18.00 | Jan. 1, 1988 |
| 210-299 | 22.00 | Jan. 1, 1988 |
| 300-399 | 11.00 | Jan. 1, 1988 |
| 400-699 | 17.00 | Jan. 1, 1988 |
| 700-899 | 22.00 | Jan. 1, 1988 |
| 900-999 | 26.00 | Jan. 1, 1988 |
| 1000-1059 | 15.00 | Jan. 1, 1988 |
| 1060-1119 | 12.00 | Jan. 1, 1988 |
| 1120-1199 | 11.00 | Jan. 1, 1988 |
| 1200-1499 | 17.00 | Jan. 1, 1988 |
| 1500-1899 | 9.50 | Jan. 1, 1988 |
| 1900-1939 | 11.00 | Jan. 1, 1988 |
| 1940-1949 | 21.00 | Jan. 1, 1988 |
| 1950-1999 | 18.00 | Jan. 1, 1988 |
| 2000-End | 6.50 | Jan. 1, 1988 |
| **8** | 11.00 | Jan. 1, 1988 |
| **9 Parts:** | | |
| 1-199 | 19.00 | Jan. 1, 1988 |
| 200-End | 17.00 | Jan. 1, 1988 |
| **10 Parts:** | | |
| 0-50 | 18.00 | Jan. 1, 1988 |
| 51-199 | 14.00 | Jan. 1, 1988 |
| 200-399 | 13.00 | [2] Jan. 1, 1987 |
| 400-499 | 13.00 | Jan. 1, 1988 |
| 500-End | 24.00 | Jan. 1, 1988 |
| **11** | 10.00 | July 1, 1988 |
| **12 Parts:** | | |
| 1-199 | 11.00 | Jan. 1, 1988 |
| 200-219 | 10.00 | Jan. 1, 1988 |
| 220-299 | 14.00 | Jan. 1, 1988 |
| 300-499 | 13.00 | Jan. 1, 1988 |
| 500-599 | 18.00 | Jan. 1, 1988 |
| 600-End | 12.00 | Jan. 1, 1988 |
| **13** | 20.00 | Jan. 1, 1988 |
| **14 Parts:** | | |
| 1-59 | 21.00 | Jan. 1, 1988 |
| 60-139 | 19.00 | Jan. 1, 1988 |
| 140-199 | 9.50 | Jan. 1, 1988 |
| 200-1199 | 20.00 | Jan. 1, 1988 |
| 1200-End | 12.00 | Jan. 1, 1988 |
| **15 Parts:** | | |
| 0-299 | 10.00 | Jan. 1, 1988 |
| 300-399 | 20.00 | Jan. 1, 1988 |
| 400-End | 14.00 | Jan. 1, 1988 |
| **16 Parts:** | | |
| 0-149 | 12.00 | Jan. 1, 1988 |
| 150-999 | 13.00 | Jan. 1, 1988 |
| 1000-End | 19.00 | Jan. 1, 1988 |
| **17 Parts:** | | |
| 1-199 | 14.00 | Apr. 1, 1988 |
| 200-239 | 14.00 | Apr. 1, 1988 |
| 240-End | 21.00 | Apr. 1, 1988 |
| **18 Parts:** | | |
| 1-149 | 15.00 | Apr. 1, 1988 |
| 150-279 | 12.00 | Apr. 1, 1988 |
| 280-399 | 13.00 | Apr. 1, 1988 |
| 400-End | 9.00 | Apr. 1, 1988 |
| **19 Parts:** | | |
| 1-199 | 27.00 | Apr. 1, 1988 |
| 200-End | 5.50 | Apr. 1, 1988 |
| **20 Parts:** | | |
| 1-399 | 12.00 | Apr. 1, 1988 |
| 400-499 | 23.00 | Apr. 1, 1988 |
| 500-End | 25.00 | Apr. 1, 1988 |
| **21 Parts:** | | |
| 1-99 | 12.00 | Apr. 1, 1988 |
| 100-169 | 14.00 | Apr. 1, 1988 |
| 170-199 | 16.00 | Apr. 1, 1988 |
| 200-299 | 5.00 | Apr. 1, 1988 |
| 300-499 | 26.00 | Apr. 1, 1988 |
| 500-599 | 20.00 | Apr. 1, 1988 |
| 600-799 | 7.50 | Apr. 1, 1988 |
| 800-1299 | 16.00 | Apr. 1, 1988 |
| 1300-End | 6.00 | Apr. 1, 1988 |
| **22 Parts:** | | |
| 1-299 | 20.00 | Apr. 1, 1988 |
| 300-End | 13.00 | Apr. 1, 1988 |
| **23** | 16.00 | Apr. 1, 1988 |
| **24 Parts:** | | |
| 0-199 | 15.00 | Apr. 1, 1988 |
| 200-499 | 26.00 | Apr. 1, 1988 |
| 500-699 | 9.50 | Apr. 1, 1988 |
| 700-1699 | 19.00 | Apr. 1, 1988 |
| 1700-End | 15.00 | Apr. 1, 1988 |
| **25** | 24.00 | Apr. 1, 1988 |
| **26 Parts:** | | |
| §§ 1.0-1-1.60 | 13.00 | Apr. 1, 1988 |
| §§ 1.61-1.169 | 23.00 | Apr. 1, 1988 |
| §§ 1.170-1.300 | 17.00 | Apr. 1, 1988 |
| §§ 1.301-1.400 | 14.00 | Apr. 1, 1988 |
| §§ 1.401-1.500 | 24.00 | Apr. 1, 1988 |
| §§ 1.501-1.640 | 15.00 | Apr. 1, 1988 |
| §§ 1.641-1.850 | 17.00 | Apr. 1, 1988 |
| §§ 1.851-1.1000 | 28.00 | Apr. 1, 1988 |
| §§ 1.1001-1.1400 | 16.00 | Apr. 1, 1988 |
| §§ 1.1401-End | 21.00 | Apr. 1, 1988 |
| 2-29 | 19.00 | Apr. 1, 1988 |
| 30-39 | 14.00 | Apr. 1, 1988 |
| 40-49 | 13.00 | Apr. 1, 1988 |
| 50-299 | 15.00 | Apr. 1, 1988 |
| 300-499 | 15.00 | Apr. 1, 1988 |
| 500-599 | 8.00 | [3] Apr. 1, 1980 |
| 600-End | 6.00 | Apr. 1, 1988 |
| **27 Parts:** | | |
| 1-199 | 23.00 | Apr. 1, 1988 |
| 200-End | 13.00 | Apr. 1, 1988 |
| **28** | 25.00 | July 1, 1988 |
| **29 Parts:** | | |
| 0-99 | 17.00 | July 1, 1988 |
| 100-499 | 6.50 | July 1, 1988 |

| Title | Price | Revision Date |
|---|---|---|
| 500-899 | 24.00 | July 1, 1987 |
| 900-1899 | 11.00 | July 1, 1988 |
| 1900-1910 | 29.00 | July 1, 1988 |
| 1911-1925 | 8.50 | July 1, 1988 |
| 1926 | 10.00 | July 1, 1988 |
| 1927-End | 23.00 | July 1, 1987 |
| **30 Parts:** | | |
| 0-199 | 20.00 | July 1, 1988 |
| 200-699 | 8.50 | July 1, 1987 |
| 700-End | 18.00 | July 1, 1988 |
| **31 Parts:** | | |
| 0-199 | 13.00 | July 1, 1988 |
| 200-End | 16.00 | July 1, 1987 |
| **32 Parts:** | | |
| 1-39, Vol. I | 15.00 | [4] July 1, 1984 |
| 1-39, Vol. II | 19.00 | [4] July 1, 1984 |
| 1-39, Vol. III | 18.00 | [4] July 1, 1984 |
| 1-189 | 20.00 | July 1, 1987 |
| 190-399 | 23.00 | July 1, 1987 |
| 400-629 | 21.00 | July 1, 1987 |
| 630-699 | 13.00 | [5] July 1, 1986 |
| 700-799 | 15.00 | July 1, 1988 |
| 800-End | 16.00 | July 1, 1987 |
| **33 Parts:** | | |
| 1-199 | 27.00 | July 1, 1988 |
| 200-End | 19.00 | July 1, 1987 |
| **34 Parts:** | | |
| 1-299 | 20.00 | July 1, 1987 |
| 300-399 | 11.00 | July 1, 1987 |
| 400-End | 23.00 | July 1, 1987 |
| 35 | 9.50 | July 1, 1988 |
| **36 Parts:** | | |
| 1-199 | 12.00 | July 1, 1988 |
| 200-End | 20.00 | July 1, 1988 |
| 37 | 13.00 | July 1, 1988 |
| **38 Parts:** | | |
| 0-17 | 21.00 | July 1, 1987 |
| 18-End | 19.00 | July 1, 1988 |
| 39 | 13.00 | July 1, 1988 |
| **40 Parts:** | | |
| 1-51 | 21.00 | July 1, 1987 |
| 52 | 26.00 | July 1, 1987 |
| 53-60 | 24.00 | July 1, 1987 |
| 61-80 | 12.00 | July 1, 1988 |
| 81-99 | 25.00 | July 1, 1987 |
| 100-149 | 23.00 | July 1, 1987 |
| 150-189 | 18.00 | July 1, 1987 |
| 190-299 | 24.00 | July 1, 1988 |
| *300-399 | 8.50 | July 1, 1988 |
| 400-424 | 22.00 | July 1, 1987 |
| 425-699 | 21.00 | July 1, 1987 |
| 700-End | 27.00 | July 1, 1987 |
| **41 Chapters:** | | |
| 1, 1-1 to 1-10 | 13.00 | [6] July 1, 1984 |
| 1, 1-11 to Appendix, 2 (2 Reserved) | 13.00 | [6] July 1, 1984 |
| 3-6 | 14.00 | [6] July 1, 1984 |
| 7 | 6.00 | [6] July 1, 1984 |
| 8 | 4.50 | [6] July 1, 1984 |
| 9 | 13.00 | [6] July 1, 1984 |
| 10-17 | 9.50 | [6] July 1, 1984 |
| 18, Vol. I, Parts 1-5 | 13.00 | [6] July 1, 1984 |
| 18, Vol. II, Parts 6-19 | 13.00 | [6] July 1, 1984 |
| 18, Vol. III, Parts 20-52 | 13.00 | [6] July 1, 1984 |
| 19-100 | 13.00 | [6] July 1, 1984 |
| 1-100 | 10.00 | July 1, 1988 |
| 101 | 23.00 | July 1, 1987 |
| 102-200 | 12.00 | July 1, 1988 |
| 201-End | 8.50 | July 1, 1987 |
| **42 Parts:** | | |
| 1-60 | 15.00 | Oct. 1, 1987 |
| 61-399 | 5.50 | Oct. 1, 1987 |
| 400-429 | 21.00 | Oct. 1, 1987 |
| 430-End | 14.00 | Oct. 1, 1987 |
| **43 Parts:** | | |
| 1-999 | 15.00 | Oct. 1, 1987 |
| 1000-3999 | 24.00 | Oct. 1, 1987 |
| 4000-End | 11.00 | Oct. 1, 1987 |
| 44 | 18.00 | Oct. 1, 1987 |
| **45 Parts:** | | |
| 1-199 | 14.00 | Oct. 1, 1987 |
| 200-499 | 9.00 | Oct. 1, 1987 |
| 500-1199 | 18.00 | Oct. 1, 1987 |
| 1200-End | 14.00 | Oct. 1, 1987 |
| **46 Parts:** | | |
| 1-40 | 13.00 | Oct. 1, 1987 |
| 41-69 | 13.00 | Oct. 1, 1987 |
| 70-89 | 7.00 | Oct. 1, 1987 |
| 90-139 | 12.00 | Oct. 1, 1987 |
| 140-155 | 12.00 | Oct. 1, 1987 |
| 156-165 | 14.00 | Oct. 1, 1987 |
| 166-199 | 13.00 | Oct. 1, 1987 |
| 200-499 | 19.00 | Oct. 1, 1987 |
| 500-End | 10.00 | Oct. 1, 1987 |
| **47 Parts:** | | |
| 0-19 | 17.00 | Oct. 1, 1987 |
| 20-39 | 21.00 | Oct. 1, 1987 |
| 40-69 | 10.00 | Oct. 1, 1987 |
| 70-79 | 17.00 | Oct. 1, 1987 |
| 80-End | 20.00 | Oct. 1, 1987 |
| **48 Chapters:** | | |
| 1 (Parts 1-51) | 26.00 | Oct. 1, 1987 |
| 1 (Parts 52-99) | 16.00 | Oct. 1, 1987 |
| 2 (Parts 201-251) | 17.00 | Oct. 1, 1987 |
| 2 (Parts 252-299) | 15.00 | Oct. 1, 1987 |
| 3-6 | 17.00 | Oct. 1, 1987 |
| 7-14 | 24.00 | Oct. 1, 1987 |
| 15-End | 23.00 | Oct. 1, 1987 |
| **49 Parts:** | | |
| 1-99 | 10.00 | Oct. 1, 1987 |
| 100-177 | 25.00 | Oct. 1, 1987 |
| 178-199 | 19.00 | Oct. 1, 1987 |
| 200-399 | 17.00 | Oct. 1, 1987 |
| 400-999 | 22.00 | Oct. 1, 1987 |
| 1000-1199 | 17.00 | Oct. 1, 1987 |
| 1200-End | 18.00 | Oct. 1, 1987 |
| **50 Parts:** | | |
| 1-199 | 16.00 | Oct. 1, 1987 |
| 200-599 | 12.00 | Oct. 1, 1987 |
| 600-End | 14.00 | Oct. 1, 1987 |
| CFR Index and Findings Aids | 28.00 | Jan. 1, 1988 |
| Complete 1988 CFR set | 595.00 | 1988 |
| Microfiche CFR Edition: | | |
| Complete set (one-time mailing) | 125.00 | 1984 |
| Complete set (one-time mailing) | 115.00 | 1985 |
| Subscription (mailed as issued) | 185.00 | 1987 |
| Subscription (mailed as issued) | 185.00 | 1988 |
| Individual copies | 3.75 | 1988 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.