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Presidential Documents

Title 3—

The President

Proclamation 6004 of July 31, 1989

United States Customs Service 200th Anniversary Year, 1989

By the President of the United States of America

A Proclamation

July 31, 1989, marks the 200th anniversary of the United States Customs Service. On that day, 200 years ago, President George Washington signed legislation establishing the Customs Service as part of the Department of the Treasury.

The story of the U.S. Customs Service is, in part, the story of America itself. Throughout much of our Nation's history, customs duties accounted for the largest portion of the revenues needed to sustain and operate our national government. Customs revenues paid the Revolutionary War debt and played an important role in U.S. growth from 13 States along the Atlantic Coast to a Nation spanning the North American continent. The settling of the West, the building of the Transcontinental Railroad, the purchase of the Louisiana Territories and Alaska, the building of our military academies, and the creation of our national capital in Washington, D.C., were all financed by customs revenues.

For nearly 125 years, until passage of the Federal Income Tax Act of 1913, the Customs Service was virtually the only source of revenue for the U.S. Government. Today, despite greatly reduced rates of duty on imported goods, Customs contributes more than $16 billion per year to the national Treasury.

Beyond its contributions of revenue, the United States Customs Service has performed other important functions as well. During the past 200 years, it constructed more than 300 lighthouses, provided for the relief of sick and disabled seamen, patrolled America's shores with armed revenue cutters, and helped protect the interests of American manufacturing.

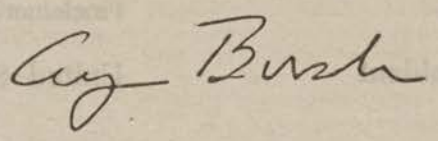
The list of prominent persons who have held key Customs posts reflects the proud history of this invaluable Federal agency: President Ulysses S. Grant; Herman Melville, author of *Moby Dick;* Pat Garrett, the sheriff who apprehended Billy the Kid; Matthew Henson, who accompanied Admiral Peary on his Arctic expedition in 1909; the poet Edwin Arlington Robinson; and the novelist Nathaniel Hawthorne. Each of these outstanding Americans was once an officer of the Customs Service.

Today, Customs continues to render vital service to our Nation by collecting revenue, protecting American companies and citizens from predatory trade practices and violation of intellectual property rights, and by detecting and preventing the entry into the United States of illegal drugs.

In recognition of the contributions of the Customs Service to our Nation, the Congress, by House Joint Resolution 363, has authorized and requested the President to issue a proclamation designating 1989 as "United States Customs Service 200th Anniversary Year."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the year 1989 as United States Customs Service 200th Anniversary Year. I call upon Government officials and the people of the United States to observe this year with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-18301
Filed 8-1-89; 2:16 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 33

[Docket No. 89-8]

Disposition of Unclaimed Property Recovered From National Banks

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Remove and reserve.

SUMMARY: On June 29, 1983, a final rule was published in the Federal Register (48 FR 30006) adding 12 CFR Part 33 to govern the disposition of unclaimed property in the possession or custody of the OCC that was recovered from insolvent national banks and banks in the District of Columbia closed before and during the 1930's. This rule was enacted pursuant to section 408 of the Garn—St Germain Depository Institutions Act of 1982, 12 U.S.C. 216. Since all property has been distributed under the terms of section 408, 12 CFR Part 33 is no longer needed.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roger S. Williams, Management Analyst, Human Resources, (202) 447-1723, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 33

National banks, Unclaimed property.

Authority and Issuance

Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for removal of 12 CFR Part 33 is 12 U.S.C. 93a.

PART 33—[REMOVED AND RESERVED]

2. Part 33 is removed and reserved.

Dated: July 28, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-18094 Filed 8-2-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-33, Amdt. 39-6251]

Airworthiness Directives; California Department of Forestry Model UH-1F; Garlick Helicopters Model UH-1B; Hawkins and Powers Aviation, Inc. Model UH-1B; Hercules Model UH-1E, UH-1L, TH-1L; International Helicopters, Inc. Model UH-1B; Oregon Helicopters Model UH-1E, UH-1L, TH-1L; Pilot Personnel International, Inc. Model UH-1B; Smith Helicopters Model UH-1E; Southern Aero Corporation Model UH-1A, UH-1B; and West Coast Fabrications Model UH-1E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a mandatory fatigue retirement life limit on main rotor masts and trunnions used on certain UH-1 type helicopters. The AD is needed to prevent main rotor mast and trunnion fatigue failures which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter.

DATES: Effective September 5, 1989.

Compliance: As indicated in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Rotorcraft Certification Office, 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 which establishes a mandatory fatigue retirement life limit on main rotor masts and trunnions used on California Department of Forestry Model UH-1F; Garlick Helicopters Model UH-1B; Hawkins and Powers Aviation, Inc. Model UH-1B; Hercules Model UH-1E, UH-1L, TH-1L; International Helicopters, Inc. Model UH-1B; Oregon Helicopters Model UH-1E, UH-1L, and TH-1L; Pilot Personnel International, Inc. Model UH-1B; Smith Helicopters Model UH-1E; Southern Aero Corporation Model UH-1A, UH-1B; and West Coast Fabrications Model UH-1E helicopters was published in the Federal Register (53 FR 45911; November 15, 1988).

The proposal was prompted by results of the manufacturer's fatigue stress tests and fatigue analysis of the main rotor mast and trunnion under ground-air-ground (GAG) and repeated heavy lift (RHL) loading conditions. The FAA concluded from the tests and analysis that these components can no longer be operated with an unlimited service life and must be removed after a specified time in service.

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 effects 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 involves 146 aircraft. It is anticipated that approximately 10 aircraft per year over the next 15 years will require replacement of the main rotor mast and trunnion at an annual cost of $102,500 for 10 aircraft. 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 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.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR Part 39 of the Federal Aviation Regulations as follows:

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. Section 39.13 is amended by adding the following new AD:

California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc; Hercules; International Helicopters, Inc.; Oregon Helicopters; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation, and West Coast Fabrications (these helicopters were manufactured by Bell Helicopter Textron, Inc., under military contract): Applies to Model UH-1A, UH-1B, UH-1E, UH-1F, UH-1L, and TH-1L helicopters certificated in any category. (Airworthiness Docket No. 88-ASW-33)

Compliance required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor masts, part number (P/N) 204-011-450-001, -005, -007, -101, -105, -109, and -113, and main rotor trunnion, (P/N) 204-011-105-001, which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter, accomplish the following:

(a) Within 10 days after the effective date of this AD, create a historical service record for the main rotor mast, (P/N) 204-011-450-001, -005, -007, -101, -105, -109, and -113, and main rotor trunnion, (P/N) 204-011-105-001, and record the hours' time in service accumulated on the main rotor mast and trunnion. If the time in service cannot be determined, enter 900 hours for each year from the date the mast and trunnion were installed.

(b) For masts and trunnions with more than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service within the next 100 hours' time in service.

(c) For masts and trunnions with less than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service at 15,000 hours' time in service.

(d) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

This amendment becomes effective September 5, 1989.

Issued in Fort Worth, Texas, on June 14, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 89-18121 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-6]

Alteration of VOR Federal Airway V-162; WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-162, located in the vicinity of Clarksburg, WV, by revoking that section of the airway between Clarksburg and the Derin, WV, intersection. This action removes an unnecessary segment from the system.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., 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) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-162 located between Clarksburg, WV, and the Derin, WV, intersection (54 FR 23671). This segment of the airway has not been used by Washington Air Route Traffic Control Center (ARTCC) in over 5 years. Therefore, this segment of V-162 is being revoked. 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 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-162 located between Clarksburg, WV, and the Derin, WV, intersection. This segment of V-162 has not been used in over 5 years by Washington ARTCC. Therefore, the segment is being revoked

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 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 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, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, 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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-162 [Amended]

By removing the words "From INT Clarksburg, WV, 135° and Elkins, WV, 098° radials; Clarksburg."

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18122 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-14]

Alteration of VOR Federal Airways and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of all Federal Airways located in the vicinity of Georgia and Florida that have been affected by the name changes of Toccoa, GA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan, GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual site of the VORTAC is not being changed. Also, some Compulsory Reporting Points have been affected.

EFFECTIVE DATE: 0901 u.t.c. September 21, 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 May 18, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of all VOR Federal Airways and Compulsory Reporting Points that have been affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan, GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, FL, VORTAC (54 FR 21432). 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. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of all VOR Federal Airways located in the vicinity of Georgia and Florida that have been affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC; Albany, GA, VORTAC to Pecan GA, VORTAC; and Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual VORTAC sites are not being changed. Also, this action changes some Compulsory Reporting Points to correspond to the name changes.

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 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 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, VOR federal airways, Compulsory reporting points.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, 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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-222, V-325, V-415, V-463 [Amended]

Wherever the word "Toccoa" appears, substitute the word "Foothills". Wherever the words "Toccoa, GA" appear, substitute the words "Foothills, SC".

V-5, V-35, V-97, V-159, V-321, V-578 [Amended]

Wherever the word "Albany" appears, substitute the word "Pecan".

V-1, V-37, V-51, V-193, V-243, V-267 [Amended]

Wherever the word "Jacksonville" appears, substitute the word "Craig".

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Albany, GA [Removed]

Jacksonville, FL [Removed]

GRANT [Amended]

By removing the word "Albany" and substituting the word "Pecan".

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18123 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 89-ASO-15]

Alteration of Jet Routes and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of all jet routes located in the vicinity of Georgia and Florida that have been affected by the name change of Toccoa, GA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Foothills, SC, and by the name change of Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is physically located in South Carolina. The actual site for the VORTAC has not being changed. Also, some Compulsory Reporting Points have been affected.

EFFECTIVE DATE: 0901 u.t.c. September 21, 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 May 18, 1989, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of several jet routes and compulsory reporting points that will be affected by the name changes of Toccoa, GA, VORTAC to Foothills, SC, VORTAC and by changing the name of Jacksonville, FL, VORTAC to Craig, FL, VORTAC (54 FR 21434). Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. One comment was received. The commenter stated that the name changes to the Toccoa and Jacksonville VORTAC's will confuse all pilots. FAA does not agree with that comment. The VORTAC's have not been moved and the name changes reflect the actual location of the VORTAC's. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.207, 71.209 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of several jet routes that have been affected by the name change of Toccoa, GA, VORTAC to Foothills, SC, VORTAC and by changing the name of Jacksonville, FL, VORTAC to Craig, FL, VORTAC. The Toccoa VORTAC is actually located in South Carolina. The actual VORTAC site is not being changed. Further, this action changes some Compulsory Reporting Points to correspond to the name changes.

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 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 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 Parts 71 and 75

Aviation safety, Jet routes, Compulsory reporting points.

Adoption of the amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, 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.

§ 71.207 [Amended]

2. Section 71.207 is amended as follows:

Jacksonville, FL [Removed]

Craig, FL [New]

§ 71.209 [Amended]

3. Section 71.209 is amended as follows:

CARPS [Amended]

By removing the word "Jacksonville" and substituting the word "Craig"

QUID [Amended]

By removing the word "Jacksonville" and substituting the word "Craig"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

4. 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]

5. Section 75.100 is amended as follows:

J-48, J-145, J-186 [Amended]

Wherever the words "Toccoa, GA" appear, substitute the words "Foothills, SC"

J-45, J-51, J-53, J-55, J-121, J-174 [Amended]

Wherever the word "Jacksonville" appears, substitute the word "Craig".

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-18124 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of August, September, October, 1989. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix (202) 357-8666.

SUPPLEMENTARY INFORMATION:

Issued July 28, 1989.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September, October, 1989 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August, 1989 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September, October, 1989 in Tables I and II.

TABLE I—NATURAL GAS CEILING PRICES

[Other Than NGPA §§ 104 and 106(a)]

Subpart of Part 271	NGPA Section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			August 1989	September 1989	October 1989
B	102	New Natural Gas, Certain OCS Gas [1]	$5.381	$5.420	$5.459
C	103(b)(1)	New Onshore Production Wells [2]	3.460	3.474	3.488
E	105(b)(3)	Intrastate Existing Contracts	5.154	5.188	5.222
F	106(b) 1(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [3]	1.980	1.988	1.996
G	107(c)(5)	Gas Produced from Tight Formations	6.920	6.948	6.976
H	108	Stripper Gas	5.762	5.804	5.846
I	109	Not Otherwise Covered [4]	2.864	2.876	2.888

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See Part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(a)

[Subpart D, Part 271]

Category of Natural Gas and Type of Sale or Contract	Maximum lawful price per MMBtu for deliveries made in—		
	Aug 1989	Sept 1989	Oct 1989
Post-1974 gas [2]: All producers	$2.864	$2.876	$2.888
1973–1974 Biennium gas:			
Small producer	$2.418	$2.428	$2.438
Large producer	$1.851	$1.859	$1.867
Interstate rollover gas: All producers	$1.064	$1.068	$1.072
Replacement contract gas or recompletion gas:			
Small producer	$1.360	$1.366	$1.372
Large producer	$1.040	$1.044	$1.048
Flowing gas:			
Small producer	$0.686	$0.689	$0.692
Large producer	$0.579	$0.581	$0.583
Certain Permian Basin gas:			
Small producer	$0.811	$0.814	$0.817
Large producer	$0.715	$0.718	$0.721
Certain Rocky Mountain gas:			
Small producer	$0.811	$0.814	$0.817
Large producer	$0.686	$0.689	$0.692
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	$0.652	$0.655	$0.658
Other contracts	$0.603	$0.606	$0.609
Minimum rate gas [1]: All producers	$0.356	$0.357	$0.358

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see § 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the month of August, September, October, 1989 in Table III.

Table III—*Inflation adjustment*

	Factor[1]
Month of Delivery, 1989—	
August	1.00415
September	1.00415
October	1.00415

[1] Facts by which price in preceding month is multiplied.

[FR Doc. 89-18078 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 219

RIN 3220-AA14

Evidence Required for Payment

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises Part 219 of its regulations. Part 219 concerns the types of evidence that a claimant may provide in support of his or her application for benefits under the Railroad Retirement Act. The revised regulation contains provisions implementing legislation enacted in 1981 which added several new categories of beneficiaries to the Railroad Retirement Act. It adds references to these new categories of beneficiaries and also reflects recent changes in procedures whereby many applicants may use self-administered application forms and submit them by mail. Finally, this revision changes the rules on evidence to make them easier to use and understand.

EFFECTIVE DATE: August 3, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 386-4929).

SUPPLEMENTARY INFORMATION: The Board's regulations concerning evidence required for payment of benefits, as set forth in Part 219, were issued in February 1982 and do not cover certain categories of beneficiaries, namely divorced spouses, surviving divorced spouses, remarried widows and widowers, added to the railroad retirement program by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, Title XI, Subtitle D. The revised regulation adds references to these beneficiaries (See, for example, § 219.3(a)).

The revised regulation removes family relationship definitions from Part 219 (§§ 219.15(a) - 219.18(a), 219.23(a), 219.24(a), and 219.30 of the regulations); these definitions will be transferred to a proposed Part 222. The sections in Part 219, Subpart A, General Evidence Requirements, have been reorganized and new §§ 219.6(b) and 219.9 have been added.

The revision transfers sections on marriage from Part 219 Subpart B to Part 219 Subpart C, changes the title of Subpart C to "Evidence of Relationship", transfers the section on "Evidence of relationship of a person other than a parent or child" from Subpart D to Subpart C, and transfers sections on school attendance from Subpart C to Subpart D. For easier reading and understanding, the Board divides a number of sections in Subparts

C and D into "When evidence * * * is required" and "Evidence to prove * * *" sections (in the revised regulations, see §§ 219.22 and 219.23, 219.30 and 219.31, 219.34 – 219.37, 219.42 and 219.43, 219.50 and 219.51, 219.52 and 219.53, 219.54 and 219.55, 219.56 and 219.57, 219.58 and 219.59, 219.60 and 219.61, 219.62 and 219.63, and 219.64 and 219.65). Section 219.64 and 219.65 are being added.

The Board changes the items listed in the "Types of evidence to prove age" section (§ 219.11 of the current regulation and § 219.21 of proposed Part 219) regarding the following evidence:

Hospital birth record or certificate;
Selective service registration record;
Census record; and
Marriage record.

The revision adds hospital birth record or certificate, World War II selective service registration record, and marriage record to the list and would give a census record a lower evidentiary value than the World War II selective service registration record. The types of evidence that are added to the list were previously considered when submitted, but the Board is giving them a higher value than they received when they were not listed in this section.

The Board published this part as a proposed rule on February 16, 1989 (54 FR 7045–7056), and invited comments by March 20, 1989. No comments were received.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy, and reasoning behind these proposed revisions to the regulations, Derivation and Distribution Tables follows:

Derivation Table

New section and name	Current section and name
Part 219—Evidence Required for Payment.	Part 219—Evidence Required for Payment.
Subpart A—General Evidence Requirements	
219.1 Introduction	219.1 Introduction.
219.2 Definitions	219.2 Definitions.
219.3 When evidence is required	219.5 Failure to furnish requested evidence.
(a) To prove initial eligibility	(a) Evidence to prove initial eligibility.
(b) To prove continued entitlement	(b) Evidence to prove continued entitlement.

Derivation Table—Continued

New section and name	Current section and name
219.4 Who is responsible for furnishing evidence	219.3 Who is responsible for furnishing evidence. First sentence, 219.3.
(a) Applicant or representative responsible	219.5(c) Failure to furnish requested evidence—What to do when required evidence will be delayed.
(b) What to do when required evidence will be delayed	
219.5 Where and how to provide evidence	219.4 When and where to furnish evidence.
(a) When Board office is accessible	219.4, second paragraph, third sentence and 219.3, second sentence.
(b) When Board office is not accessible	219.4, second paragraph, fourth and fifth sentences.
219.6 Original records or copies as evidence	219.6 Original records or copies as evidence.
(a) General	(a) General.
(b) Foreign language documents	219.3 Who is responsible for furnishing evidence.—third sentence.
(c) Certified copies of original records	219.6(b) Certified copies of original records.
219.7 How the Board decides what is convincing evidence	219.7 How the Board decides what is convincing evidence.
(a)	(a)
(b)	(b)
(c)	(c)
(d)	(d)
(e)	(e)
(f)	(f)
219.8 Preferred evidence and other evidence	219.8 Preferred evidence and other evidence. First two sentences. Next four sentences. Last sentence.
(a) Preferred evidence	
(b) Other evidence	
(c) Board decision	
219.9 Evidence, information, and records filed with the Board	219.3 Who is responsible for furnishing evidence.—fourth and fifth sentences only.
Subpart B—Evidence of Age and Death	
219.20 When evidence of age is required	219.10 When evidence of age is required.
219.21 Types of evidence to prove age	219.11 Types of evidence to prove age.
(a) Preferred evidence	(a) Preferred evidence.
(b) Other evidence of age.	(b) Other evidence of age—four items changed:
219.22 When evidence of death is required	219.12 Evidence to prove death.
(a) When evidence of employee's death is required	(a) When evidence of the employee's death is required.—first sentence.
(b) When evidence to prove death of other persons is required	(b) When evidence to prove death of other persons is required.
219.23 Evidence to prove death	219.12 Evidence to prove death.
(a) Preferred evidence	(a)(1) Preferred evidence of death.
(b) Other evidence of death	(a)(2) Other evidence of death.
219.24 Evidence of presumed death	219.13 Evidence of presumed death.
(a)	(a)
(b)	(b)

Derivation Table—Continued

New section and name	Current section and name
(c)	(c)
Subpart C—Evidence of Relationship	
219.30 When evidence of marriage is required	219.14 When evidence of marriage is required. First two sentences.
(a) When application filed for benefits	
(b) State law	Third sentence.
(c) Types of evidence	Fourth sentence.
219.31 Evidence of a valid ceremonial marriage	219.15 Evidence of valid ceremonial marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a ceremonial marriage	(c) Other evidence of a ceremonial marriage.
219.32 Evidence of a common-law marriage	219.16 Evidence of a common-law marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a common-law marriage	(c) Other evidence of a common-law marriage.
219.33 Evidence of a deemed valid marriage	219.17 Evidence of a deemed valid marriage.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of a deemed valid marriage	(c) Other evidence of a deemed valid marriage.
219.34 When evidence that a marriage has ended is required	219.18(a) Evidence that a marriage has ended.—When evidence is required.
219.35 Evidence that a marriage has ended	219.18 Evidence that a marriage has ended.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence that a marriage has ended	(c) Other evidence that a marriage has ended.
219.36 When evidence of a parent or child relationship is required	219.20 When evidence of a parent or child relationship is required. First sentence.
(a) When parent or child applies	
(b) When spouse with child in care applies	Second sentence.
(c) Evidence required depends on relationship	Third sentence.
219.37 Evidence of natural parent or child relationship	219.21 Evidence of natural parent or child relationship.
(a) Preferred evidence	(a) Preferred evidence.
(b) Other evidence of parent or child relationship	(b) Other evidence of parent or child relationship.
219.38 Evidence of stepparent or stepchild relationship	219.22 Evidence of stepparent or stepchild relationship.
219.39 Evidence of relationship by legal adoption—parent or child	219.23 Evidence of relationship by legal adoption—parent or child.
(a) Preferred evidence	(b) Preferred evidence.
(b) Other evidence of legal adoption	(c) Other evidence of legal adoption.
219.40 Evidence of relationship by equitable adoption—child	219.24 Evidence of relationship by equitable adoption.
(a) Preferred evidence	
(b) Other evidence	(b) Preferred evidence.
	(c) Other evidence.
219.41 Evidence of relationship of grandchild or stepgrandchild	219.25 Evidence of relationship of grandchild or stepgrandchild.

DERIVATION TABLE—Continued

New section and name	Current section and name
219.42 When evidence of child's dependency is required	219.26 Evidence of a child's dependency.—(a) When evidence of a child's dependency is required.
219.43 Evidence of child's dependency	219.26 Evidence of a child's dependency.
(a) When the dependency requirement must be met	(b) When the dependency requirement must be met.
(b) Natural or adopted	(c) Natural or adopted.
(c) Stepchild	(d) Stepchild.
(d) Grandchild or stepgrandchild	(e) Grandchild or stepgrandchild.
219.44 Evidence of relationship of a person other than a parent or child	219.35 Evidence of relationship of a person other than a parent or child.
(a) Claimants are relatives other than child or parent	First stentence.
(b) Evidence required depends on benefit and relationship	Second sentence.
(c) More than one eligible and claimants agree on relationship	Third sentence with added explanation.

SUBPART D—OTHER EVIDENCE REQUIREMENTS

219.50 When evidence of "living with" is required—New	
219.51 Evidence to prove "living with"	219.30 Evidence of "living with".
(a) (new)	
(b) (new)	
(c) (new)	
(d)	Second paragraph.
219.52 When evidence of having a child in care is required	219.33 Evidence of having a child in care.—(b) When evidence of having a child in care is required.
219.53 Evidence of having a child in care	219.33 Evidence of having a child in care.
(a) Preferred evidence of having a child in care	(c) Preferred evidence of having a child in care.
(b) Other evidence	(d) Other evidence.
219.54 When evidence of school attendance is required	219.27 Evidence of school attendance for child age 18 or older—first paragraph.
219.55 Evidence of school attendance for child age 18	219.27 Evidence of school attendance for child age 18 or older.
(a)	(a)
(b)	(b)
219.56 When evidence of parent's support is required	219.31 Evidence of a parent's support.
(a)	First sentence.
(b) New	
219.57 Evidence of a parent's support	219.31 Evidence of a parent's support.
(a)	(a)
(b)	(b)
(c)	(c)
219.58 When evidence regarding payment of burial expenses is required	219.34 Evidence of responsibility for or payment of burial expenses.—(a) When evidence of burial expenses is required.

DERIVATION TABLE—Continued

New section and name	Current section and name
219.59 Evidence of responsibility for or payment of burial expenses	219.34 Evidence of responsibility for or payment of burial expenses.—(b) Type of evidence required.
(a)	(1)
(b)	(2)
219.60 When evidence of the employee's permanent home is required	219.36 Evidence of where the employee had a permanent home.—(a) When evidence of the employee's permanent home is required.
(a)	(1)
(b)	(2)
219.61 Evidence of where the employee had a permanent home	219.36 Evidence of where the employee had a permanent home.—(b) What evidence is required.
(a)	(1)
(b)	(2)
219.62 When evidence of "good cause" is required	219.37 Evidence of "good cause".
(a)	First paragraph.
(b)	(a) When evidence of "good cause" is required.
219.63 What evidence is required to establish "good cause"	219.37 Evidence of "good cause".—(b) What evidence is required to establish "good cause".
(a)	(1)
(b)	(2)
219.64 When evidence may be required for other reasons.—New	
219.65 Other types of evidence that may be required.—New	

DISTRIBUTION TABLE

Current section and name	New section and name
219.1 Introduction—except "under Title XVIII of the Social Security Act".	219.1 Introduction.
219.2 Definitions—except in "Benefits", "benefits", and in "Eligible", "If an annuity, a lump sum or a benefit under Section 202 of the Social Security Act".	219.2 Definitions.
219.3 Who is responsible for furnishing evidence.	219.4 Who is responsible for furnishing evidence.
● First sentence	(a) Applicant or representative responsible.
● Second sentence	219.5 Where and how to provide evidence. (a) When Board office is accessible.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
● Third sentence	219.6 Original records or copies as evidence. (b) Foreign—language documents.
● Fourth and fifth sentences, except "Section 13 of".	219.9 Evidence, information, and records filed with the Board.
219.4 When and where to furnish evidence.	219.3 When evidence is required.
First paragraph	(a) To prove initial eligibility.
Second paragraph, first sentence.	(b) To prove continued entitlement.
Second pararaph, second sentence.	Delete.
Second paragraph, third sentence, except "person".	219.5 Where and how to provide evidence. (a) When Board office is accessible.
Second paragraph, fourth sentence, except "Persons".	(b) When Board office is not accessible.
219.5 Failure to furnish requested evidence.	219.3 When evidence is required.
(a) Evidence to prove initial eligibility—except "benefits".	(a) To prove initial eligibility.
(b) Evidence to prove continued entitlement.	(b) To prove continued entitlement.
(c) What to do when required evidence will be delayed.	219.4 Who is responsible for furnishing evidence. (b) What to do when required evidence will be delayed.
219.6 Original records or copies as evidence.	219.6 Original records or copies as evidence.
(c) Uncertified copies or original records.	Deleted.
219.7 How the Board decides what is convincing evidence.	219.7 How the Board decides what is convincing evidence.
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(a) Definition.....	222.17 "Child in care" when child is living with the spouse or widow or widower.
(b) When evidence of having a child in care is required.	219.52 When evidence of having a child in care is required.
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(1).....	(a)
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List of Subjects in 20 CFR Part 219

Railroad employees, Railroad retirement, Railroads.

1. Part 219 of Title 20 of the Code of Federal Regulations is revised to read as follows:

PART 219—EVIDENCE REQUIRED FOR PAYMENT

Subpart A—General Evidence Requirements

Sec.

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219.64 When evidence may be required for other reasons.
219.65 Other types of evidence that may be required.

Authority: 45 U.S.C 231f.

Subpart A—General Evidence Requirements

§ 219.1 Introduction.

As described in Parts 216 (Eligibility for an Annuity), 234 (Lump-Sum Payments), and 222 (Family Relationships), certain requirements must be met before benefits may be paid under the Railroad Retirement Act. This part contains the basic rules for evidence that is required to support a claimant's claim for monthly or lump-sum benefit payments under the Railroad Retirement Act. Part 219 describes when evidence is required and what types of documents can be used as evidence. Part 222 defines and explains family relationships for which evidence requirements are stated in Part 219. Special evidence requirements for disability annuities are found in Part 220 of this chapter.

§ 219.2 Definitions.

As used in this subpart—

"Annuity" means a recurring payment due an entitled person for a calendar month and made to him or her on the first day of the following month.

"Apply" means to sign a form or statement that the Board accepts as an application.

"Claimant" means the person who files an application for an annuity or lump-sum payment for himself, herself, or some other person.

"Benefit" means any employee annuity, spouse annuity, survivor annuity, or lump-sum payment under the Railroad Retirement Act.

"Convincing evidence" means one or more pieces of evidence that proves to the satisfaction of the Board that an individual meets a requirement for eligibility for benefits. See § 219.7 for guides the Board uses in deciding whether evidence is convincing.

"Eligible" means that a person meets all of the requirements for payment of benefits but has not yet applied therefor.

"Entitled" means that a person has applied for and has proved his or her right to payment of benefits.

"Evidence" means any record or document or testimony that helps to show whether a person is eligible for benefits. It may also be used to establish whether the person is still entitled to benefits.

"Representative" means a person who acts on behalf of a claimant in regard to his or her claim for benefits from the Board and in the presentation of evidence to support the claim.

§ 219.3 When evidence is required.

(a) *To prove initial eligibility.* The Board will ask for evidence to prove a claimant is eligible for benefits when he or she applies for benefits. Usually the Board will ask the claimant to furnish specific kinds of evidence or information by a certain date to prove initial eligibility for benefits. If evidence or information is not received by that date, the Board may decide that the claimant is not eligible for benefits and will deny his or her application.

(b) *To prove continued entitlement.* After a claimant establishes entitlement to an annuity, the Board may ask that annuitant to produce by a certain date information or evidence needed to decide whether he or she may continue to receive an annuity or whether the annuity should be reduced or stopped. If the information is not received by the date specified, the Board may decide that the person is no longer entitled to benefits or that his or her annuity should be stopped or reduced.

§ 219.4 Who is responsible for furnishing evidence.

(a) *Claimant or representative responsible.* When evidence is required to prove a person's eligibility for or right to continue to receive annuity or lump-sum payments, that claimant or his or her representative is responsible for obtaining and submitting the evidence to the Board.

(b) *What to do when required evidence will be delayed.* When the required evidence cannot be furnished within the specified time, the claimant or representative who was asked to furnish the evidence or information should notify the Board and explain why there will be a delay. If the delay is caused by illness, failure to receive the information from another source, or a similar situation, the claimant will be allowed a reasonable time to secure the evidence or information. If the information is not received within a reasonable time as determined by the Board, the claimant or representative who was asked to furnish the evidence or information will be notified of the effect that his or her failure to furnish the evidence or information will have on the claimant's eligibility to receive or continue to receive payments.

§ 219.5 Where and how to provide evidence.

(a) *When Board office is accessible.* A claimant or representative should give his or her evidence to an employee of the Railroad Retirement Board office where he or she files the application. An employee of the Board will tell the claimant or representative what is needed and how to get it.

(b) *When Board office is not accessible.* A claimant who lives in an area where there is no Board office or who is unable to travel to a Board office may send evidence to the Board office nearest to where the claimant lives. A claimant who lives outside the United States may take evidence to the American embassy or consulate or other

Foreign Service Office nearest to where he or she lives or send it to the headquarters of the Board.

§ 219.6 Original records or copies as evidence.

(a) *General.* A claimant or an annuitant may be asked to show an original document or record as evidence to prove eligibility for or continued entitlement to payments. Where possible, a Board employee will make a photocopy or transcript of these original documents or records and return the original documents to the person who furnished them. A person may also submit certified copies of original records and, in some cases, uncertified birth notifications. These types of records are described below in this section.

(b) *Foreign-language documents.* If the evidence submitted is a foreign-language record or document, the Board may require that the record be translated. An acceptable translation includes, but is not limited to, a translation certified by a United States consular official or employee of the Department of State authorized to certify evidence or by an employee of the Social Security Administration.

(c) *Certified copies of original records.* The Board will accept copies of original records or extracts from records if they are certified as true and exact copies of the original by—

(1) The official custodian of the record;

(2) A Veterans Administration employee, if the evidence was given to that agency to obtain veterans benefits;

(3) A Social Security Administration employee, if the evidence was given to that agency to obtain social security benefits;

(4) A United States Consular Officer, an employee of the Department of State, or an employee of the Immigration and Naturalization Service authorized to certify evidence received outside the United States; or

(5) An employee of a state agency or state welfare office authorized to certify copies of original records in the agency's or office's files.

§ 219.7 How the Board decides what is convincing evidence.

When the Board receives evidence, a Board representative examines it to see if it is convincing evidence. If it is, no other evidence is needed. In deciding whether the evidence is convincing, the Board representative decides whether—

(a) The information contained in the evidence was given by a person in a position to know the facts;

(b) There was any reason to give false information when the evidence was created;

(c) The information contained in the evidence was given under oath, or in the presence of witnesses, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time the event took place or shortly after;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence, including existing Board records.

§ 219.8 Preferred evidence and other evidence.

(a) *Preferred evidence.* When a claimant submits the type of evidence shown as preferred in Subparts B and C of this part, the Board will generally find it is convincing evidence. This means that unless there is information in the Board's records that raises a doubt about the evidence, other evidence to prove the same fact will not be needed.

(b) *Other evidence.* If preferred evidence is not available, the Board will consider any other evidence a claimant furnishes. If the other evidence consists of several different records or documents which all show the same information, the Board may determine that it is convincing evidence even though it is not preferred evidence. If the other evidence is not convincing by itself, the claimant will be asked to submit additional evidence. If the additional evidence shows the same information all the evidence considered together may be convincing evidence.

(c) *Board decision.* When the Board has convincing evidence of the facts that must be proven, or when it is clear that the evidence provided does not prove the necessary facts, the Board will make a formal decision about the applicant's rights to benefits.

§ 219.9 Evidence, information, and records filed with the Board.

The Railroad Retirement Act provides criminal penalties for any persons who misrepresent the facts or make false statements to obtain payments for themselves or someone else. All evidence and documents given to the Board are kept confidential and are not disclosed to anyone but the person who submitted them, except under the rules described in Part 200 of this chapter.

Subpart B—Evidence of Age and Death

§ 219.20 When evidence of age is required.

(a) Evidence of age is required when an employee applies for an annuity under the Railroad Retirement Act or for Medicare coverage under Title XVIII of the Social Security Act.

(b) Evidence of age is also required from a person who applies for a spouse's or divorced spouse's, widow's, widower's, surviving divorced spouse's, parent's, or child's annuity under the Railroad Retirement Act, or for Medicare coverage under Title XVIII of the Social Security Act.

§ 219.21 Types of evidence to prove age.

(a) *Preferred evidence.* The best type of evidence to prove a claimant's age is—

(1) A birth certificate recorded before age 5;

(2) A church record of birth or baptism recorded before age 5; or

(3) Notification of registration of birth made before age 5.

(b) *Other evidence of age.* If an individual cannot obtain preferred evidence of age, he or she will be asked to submit other convincing evidence to prove age. The other evidence may be one or more of the following records, with the records of highest value listed first:

(1) Hospital birth record or certificate.

(2) Physician's or midwife's birth record.

(3) Bible or other family record.

(4) Naturalization record.

(5) Military record.

(6) Immigration record.

(7) Passport.

(8) Selective service registration record.

(9) Census record.

(10) School record.

(11) Vaccination record.

(12) Insurance record.

(13) Labor union or fraternal record.

(14) Employer's record.

(15) Marriage record.

(16) A statement signed by the individual giving the reason why he or she cannot obtain other convincing evidence of age and the sworn statements of two other persons who have personal knowledge of the age that the individual is trying to prove.

(Approved by the Office of Management and Budget under Control No. 3220–0106)

§ 219.22 When evidence of death is required.

(a) *When evidence of the employee's death is required.* Evidence to prove the employee's death is always required for

payment of any type of survivor annuity or lump-sum payment based on the deceased employee's record. See Parts 216 and 234 for types of survivor payments.

(b) *When evidence to prove death of other persons is required.* Evidence to prove the death of persons other than the empoyee is required when—

(1) A claimant, who is eligible for survivor benefits, dies after the employee;

(2) A residual lump sum (see Part 234 of this chapter) is payable and a person whom the employee named to receive all or part of this payment dies before the employee, or such person dies after the employee but before receiving his or her share of the benefit; or

(3) There is reasonable doubt of the death of—

(i) Any person who, if alive, has priority over the applicant;

(ii) Any spouse whose death is alleged to have ended a previous marriage, if a later marriage in question cannot be presumed valid under state law; or

(iii) Any person the termination of whose entitlement would increase payments to other entitled persons.

§ 219.23 Evidence to prove death.

(a) *Preferred evidence of death.* The best evidence of a person's death is—

(1) A certified copy of or extract from the public record of death, or verdict of the coroner's jury of the state or community where death occurred; or a certificate or statement of death issued by a local registrar or public health official;

(2) A signed statement of the funeral director, attending physician, or official of an institution where death occurred;

(3) A certified copy of, or extract from, an official report or finding of death made by an agency or department of the United States or of a state; or

(4) If death occurred outside the United States, an official report of death by a United States Consul or other authorized employee of the State Department, or a certified copy of the public record of death in a foreign country.

(b) *Other evidence of death.* If the preferred evidence of death cannot be obtained, the individual who must furnish evidence of death will be asked to explain the reason therefor and to submit other convincing evidence, such as sworn statements of at least two persons who have personal knowledge of the death. These persons must be able to swear to the date, time, place, and cause of death.

(Approved by the Office of Management and Budget under Control No. 3220–0077)

§ 219.24 Evidence of presumed death.

When a person cannot be proven dead but evidence of death is needed, the Board may presume he or she died at a certain time if the Board receives the following evidence:

(a) A certified copy of, or extract from, an official report or finding by an agency or department of the United States that a missing person is presumed to be dead as stated in Federal law (5 U.S.C. 5565). Unless other evidence is submitted showing an actual date of death, the Board will use the date on which the person was reported missing as the date of death.

(b) Signed statements by those in a position to know that facts and other records which show that the person has been absent from his or her residence for no apparent reason and has not been heard from for at least 7 years. If there is no evidence available that that person continued in life after the date of disappearance, the Board will use as the date of death the date the person disappeared.

(c) When a person has been missing for less than 7 years but may be presumed dead due to drowning or common disaster (fire, accident, etc.), signed statements from the applicant and individuals who know the circumstances surrounding the occurrence leading to the person's disapperance. The best evidence is statements from individuals who witnessed the occurrence or saw the missing person at the scene of the occurrence shortly before it happened.

Subpart C—Evidence of Relationship

§ 219.30 When evidence of marriage is required.

(a) *When an application is filed for benefits.* Documentary evidence of marriage is required when an individual files for a monthly annuity, lump-sum death payment, residual lump sum, or Medicare coverage, as the wife, husband, widow, widower, divorced spouse or surviving divorced spouse, or stepparent of the employee. A claimant may also be required to submit evidence of another person's marriage when that person's marriage is necessary to determine the applicant's entitlement to benefits under the Railroad Retirement Act.

(b) *State law.* In deciding whether the marriage to the employee is valid or not, in a case where the employee is living, the Board will follow the law of the state where the employee had a permanent home when the applicant filed an application; in a case where the employee is dead, the Board will follow the law of the state where the employee had a permanent home when he or she died.

(c) *Types of evidence.* What evidence will be required depends on whether the employee's marriage was a ceremonial marriage, a common-law marriage, or a marriage that can be deemed to be valid.

§ 219.31 Evidence of a valid ceremonial marriage.

(a) *Preferred evidence.* Perferred evidence of a ceremonial marriage is—

(1) A copy of the public record of the marriage, certified by the custodian of the record or by a Board employee;

(2) A copy of a church record of the marriage certified by the custodian of the record or by a Board employee; or

(3) The original certificate of marriage.

(b) *Other vidence of a ceremonial marriage.* If preferred evidence of a ceremonial marriage cannot be obtained, the applicant must state the reason therefor in writing and submit either—

(1) A sworn statement of the clergyman or official who performed the marriage ceremony; or

(2) Other convincing evidence, such as the sworn statements of at least two persons who have direct knowledge of the marriage, preferably eyewitnesses to the marriage ceremony.

(Approved by the Office of Management and Budget under Control No. 3220–0140)

§ 219.32 Evidence of a common-law marriage.

(a) *Preferred evidence.* Evidence of a common-law marriage must give the reasons why the informant believes that a marriage exists. If the information described in this paragraph is not furnished on a form provided by the Board, it must be submitted in the form of a sworn statement. Preferred evidence of a common-law marriage is one of the following:

(1) If both the husband and wife are alive, each shall sign a statement and get signed statements from one blood relative of each. The statement of another individual may be submitted for each statement the husband or wide is unable to get from a relative. Each signed statement should show—

(i) That the husband and wife believed they were married;

(ii) The basis for this belief; and

(iii) That the husband and wife have presented themselves to the public as husband and wife.

(2) If either the husband or wife is dead, the surviving spouse shall furnish a signed statement and signed statements from two blood relatives of the dead spouse. The surviving spouse's

statement should show that he or she and the dead spouse believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife. The statements from relatives of the dead spouse should support the surviving spouse's statement.

(3) If both husband and wife are dead, the applicant shall get a signed statement from one blood relative of each dead spouse. Each statement should show that the husband and wife believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife.

(4) Statements by relatives and other individuals described in paragraphs (a) (1), (2) and (3) of this section are not required when—

(i) The husband and wife entered into a ceremonial marriage which was void because of a legal impediment to the marriage;

(ii) After the impediment was removed, the husband and wife continued to live together as man and wife until the employee filed an application or one of them died; and

(iii) A valid common-law marriage was established, under the law of the State in which they lived, by their continuing to live together as man and wife.

(b) *Other evidence of common-law marriage.* When preferred evidence of a common-law marriage cannot be obtained, the claimant will be asked to explain the reason therefor and to furnish other convincing evidence of the marriage.

(Approved by the Office of Management and Budget under Control No. 3220–0021)

§ 219.33 Evidence of a deemed valid marriage.

(a) *Preferred evidence.* Preferred evidence of a deemed valid marriage is—

(1) Evidence of a ceremonial marriage as described in § 219.31;

(2) If both the employee and spouse are alive, the spouse's signed statement that he or she went through the ceremony in good faith and his or her reasons for believing the marriage was valid; or if the employee is dead, the widow or widower's signed statement to that effect;

(3) If required to remove a reasonable doubt, the signed statements of other persons who have information about what the parties knew about any previous marriage or other facts showing whether the parties went through the marriage ceremony in good faith; and

(4) Evidence that the parties were living in the same household when the employee applied for payments; or, if the employee is dead, when he or she died. See § 219.51 for the evidence required to demonstrate living in the same household.

(b) *Other evidence of a deemed valid marriage.* If preferred evidence of a deemed valid marriage cannot be obtained, the claimant must explain the reason therefor and submit other convincing evidence of the marriage.

(Approved by the Office of Management and Budget under Control No. 3220–0140)

§ 219.34 When evidence that a marriage has ended is required.

Evidence of how a previous marriage ended may be required to determine whether a later marriage is valid. If a widow or widower remarried after the employee's death and that marriage was annulled, evidence of the annulment is required. If the claimant is a divorced spouse or surviving divorced spouse, evidence to prove a final or absolute divorce from the employee may be required.

§ 219.35 Evidence that a marriage has ended.

(a) *Preferred evidence.* Preferred evidence that a marriage has ended is—

(1) A certified copy of the decree of divorce or annulment; or

(2) Evidence of the death (See § 219.23) of a party to the marriage.

(b) *Other evidence that a marriage has ended.* If preferred evidence that the marriage has ended cannot be obtained, the claimant must explain the reason therefor and submit other convincing evidence that the marriage has ended.

(Approved by the Office of Management and Budget under Control Nos. 3220–0021 and 3220–0140)

§ 219.36 When evidence of a parent or child relationship is required.

(a) *When parent or child applies.* A person who applies for a parent's or child's annuity or for Medicare coverage is required to submit evidence of his or her relationship to the deceased employee.

(b) *When individual with child in care applies.* An individual who applies for an annuity because he or she has a child of the employee in care is required to submit evidence of the child's relationship to the employee.

(c) *Evidence required depends on relationship.* The evidence the Board will require depends on whether the person is the employee's natural child, adopted child, stepchild, grandchild, or stepgrandchild; or whether the person is the employee's natural parent or adopting parent.

§ 219.37 Evidence of natural parent or child relationship.

(a) *Preferred evidence.* If the claimant is the natural parent of the employee, preferred evidence of the ralationship is a copy of the employee's public or religious birth record. If the claimant is the natural child of the employee, preferred evidence of the relationship is a copy of the child's public or religious birth record.

(b) *Other evidence of parent or child relationship.* (1) When preferred evidence of a parent or child relationship cannot be obtained, the Board may ask the applicant for evidence of the employee's marriage or of the marriage of the employee's parents if that is needed to remove any reasonable doubt of the relationship.

(2) To show that a person is the child of the employee, the person may be asked for evidence that he or she would be able to inherit the employee's personal property under the law of the state where the employee died or had a permanent home.

(3) In some instances the Board may ask for a signed statement from the employee that a person is his or her natural child, or for a copy of a court order showing that the person has been declared to be the child of the employee, or for a copy of a court order requiring the employee to contribute to the person's support because the person is his or her child, or for any other supporting evidence which may be required in order to establish that the person is the child of the employee.

§ 219.38 Evidence of stepparent or stepchild relationship.

If the claimant is a stepparent or stepchild of the employee, the Board will ask for the evidence described in § 219.37 or § 219.39 which shows the person's natural or adoptive relationship to the employee's husband, wife, widow, or widower. The Board will also ask for evidence of the husband's, wife's, widow's or widower's marriage to the employee.

(See §§ 219.30–219.33)

§ 219.39 Evidence of relationship by legal adoption—parent or child.

(a) *Preferred evidence.* Preferred evidence of legal adoption is—

(1) A copy of the decree or order of adoption, certified by the custodian of the record;

(2) A photocopy of the decree or order of adoption; or

(3) If the widow or widower adopted the child after the employee's death, the evidence described in paragraph (a) (1) or (2) of this section; the widow's or widower's statement as to whether the child was living in the same household with the employee when the employee died (see §§ 219.50 and 219.51); what support, if any, the child was getting from another person or organization; and if the widow or widower had a deemed valid marriage with the employee, evidence of that marriage (see § 219.33).

(b) *Other evidence of legal adoption.* In some states the record of adoption proceedings is sealed and cannot be obtained without a court order. In this event, the Board will accept as proof of adoption an official notice received by the adopting parents at the time of adoption that the adoption has been completed or a birth certificate issued as a result of the adoption proceeding.

§ 219.40 Evidence of relationship by equitable adoption—child.

(a) *Preferred evidence.* If the claimant is a person who claims to be the equitably adopted child of the employee (or of the employee's wife, widow, widower, or husband), as defined in Part 222 of this chapter, the Board will ask for evidence of the agreement to adopt if it is in writing. The Board will also ask for written statements from the child's natural parents as well as adopting parents concerning the child's relationship to the adopting parents.

(b) *Other evidence.* If the agreement to adopt was not in writing, the Board will require other convincing evidence about the child's relationship to the adopting parents.

(Approved by the Office of Management and Budget under Control No. 3220–0040)

§ 219.41 Evidence of relationship of grandchild or stepgrandchild.

If the child is the grandchild or stepgrandchild of the employee, the Board will require the kind of evidence described in §§ 219.36–219.38 that shows that child's relationship to his or her parents and his or her parents' relationship to the employee.

§ 219.42 When evidence of child's dependency is required.

Evidence of a child's dependency on the employee is required when—

(a) The employee is receiving an annuity that can be increased under the social security overall minimum (see Part 229 of this chapter) by including a child, grandchild or a spouse who has a child in his or her care;

(b) A wife under age 65 applies for a full spouse annuity because she has a child or a grandchild of the employee in her care; or

(c) A child or someone in behalf of a child applies for a child's annuity based on the deceased employee's record.

§ 219.43 Evidence of child's dependency.

(a) *When the dependency requirement must be met.* Usually the dependency requirement must be met at one of the times shown in Part 222 of this chapter.

(b) *Natural or adopted.* If the child is the employee's natural or adopted child, the Board may ask for the following evidence:

(1) A signed statement by someone who knows the facts that confirms that the child is the natural or adopted child.

(2) If the child was adopted by someone else while the employee was alive but the adoption was annulled, the Board may require a certified copy of the annulment decree or other convincing evidence of the annulment.

(3) A signed statement by someone having personal knowledge of the circumstances showing when and where the child lived with the employee and when and why they may have lived apart; and showing what contributions the employee made to the child's support and how the contributions were made.

(c) *Stepchild.* If the child is the employee's stepchild, the Board may ask for the following evidence;

(1) A signed statement by someone having personal knowledge of the circumstances showing when and where the child lived with the employee and when and why they may have lived apart.

(2) A signed statement by someone having personal knowledge of the circumstances showing what contributions the employee made to the child's support, the child's ordinary living costs and the income and support the child received from any other source during the relevant time as required by § 222.55 of this chapter.

(d) *Grandchild or stepgrandchild.* If the child is the employee's grandchild or stepgrandchild, the Board will require the evidence described in paragraph (c) of this section. The Board will also require evidence of the employee's death or disability.

(Approved by the Office of Management and Budget under Control No. 3220–0099)

§ 219.44 Evidence of relationship of a person other than a parent or child.

(a) *Claimants other than child or parent.* When any person other than a child or parent applies for benefits due because of the employee's death or because of the death of a beneficiary, the Board may ask the claimant for evidence of relationship.

(b) *Evidence required.* The type of evidence required is dependent upon the amount payable and the claimant's relationship to the deceased employee or beneficiary.

(c) *More than one eligible and claimants agree on relationship.* If there is more than one person eligible for benefits, and all eligible persons agree on the relationship of each other eligible person, only one of the persons will be asked to furnish proof of relationship. For example, if brothers and sisters of a deceased employee file applications for the residual lump sum or annuity payments due but unpaid at death, only one of them need file proof of relationship if their applications indicate that there is no dispute as to who are the brothers and sisters of the employee.

Subpart D—Other Evidence Requirements

§ 219.50 When evidence of "living with" is required.

Evidence of "living with" (see Part 222 of this chapter on Family Relationships) is required when—

(a) The employee's spouse applies for a spouse's annuity as a deemed spouse; or

(b) The employee's legal widow or widower applies for a lump-sum death payment, annuity payments due the employee but unpaid at death, or a residual lump-sum death payment on the basis of that relationship, or the employee's deemed widow or widower applies for a widow's or widower's annuity.

§ 219.51 Evidence to prove "living with".

The following evidence may be required:

(a) If the employee is alive, both the employee and his or her spouse must sign a statement that they are living together in the same household when the spouse applies for a spouse's annuity as a deemed spouse.

(b) If the employee is dead, the widow or widower must sign a statement showing whether he or she was living together in the same household with the employee when the employee died.

(c) If the employee and spouse, widow or widower were temporarily living apart, a signed statement is required explaining where each was living, how long the separation lasted, and the reason for separation. If more evidence is required to remove any reasonable doubt about the temporary nature of the separation, the Board may ask for sworn statements of other persons having

personal knowledge of the facts or for other convincing evidence.

(d) If the employee and spouse, widow, or widower were not living in the same household, the Board may ask for evidence that the employee was contributing to or under court order to contribute to the support of his or her spouse, widow, or widower. Evidence of contributions or a certified copy of the order for support may be requested. The court order for support must be in effect on the day the spouse applies for a spouse's annuity or, if the employee is dead, the day of the employee's death. This type of evidence does not apply for purposes of establishing a deemed valid marriage. (See Part 222 of this chapter.) A deemed spouse, widow, or widower must furnish evidence as described in paragraphs (a) and (b) of this section.

(Approved by the Office of Management and Budget under Control No. 3220–0030)

§ 219.52 When evidence of having a child in care is required.

A person who applies for a spouse's, widow's or widower's, or surviving divorced spouse's annuity on the basis of caring for a child, or for an increase under the social security overall minimum guaranty provision based on caring for a child, is required to furnish evidence that he or she has in care an eligible child of the employee as described in Part 222 of this chapter. What evidence the Board will require depends upon whether the child is living with the applicant or with someone else.

§ 219.53 Evidence of having a child in care.

(a) *Preferred evidence of having a child in care.* Preferred evidence of having a child in care is—

(1) If the child is living with the applicant, the claimant's signed statement showing that the child is living with him or her.

(2) If the child is living with someone else—

(i) The claimant's signed statement showing with whom the child is living and why. The claimant must also show when the child last lived with him or her, how long the separation will last, and what care and contributions he or she provides for the child; and

(ii) The signed statement of the person with whom the child is living showing what care the claimant provides and the sources and amounts of support received by the child. If the child is in an institution, an official thereof should sign the statement. A copy of any court order or written agreement showing who has custody of the child should be provided to the Board.

(b) *Other evidence.* If the preferred evidence described in paragraph (a) of this section cannot be obtained, the Board will require other convincing evidence that the applicant has the child in care.

(Approved by the Office of Management and Budget under Control Nos. 3220–0030 and 3220–0042)

§ 219.54 When evidence of school attendance is required.

If a child age 18 applies for payments as a student, the Board will require evidence that the child is attending elementary or secondary school. After the child has started his or her school attendance, the Board may also ask for evidence that he or she is continuing to attend school full time. To be acceptable to the Board, the child must submit the evidence of school attendance within 90 days of the date the evidence is requested by the Board.

§ 219.55 Evidence of school attendance for child age 18.

The child will be asked to submit (on a form furnished by the Board or other form acceptable to the Board) the following evidence:

(a) A signed statement that he or she is attending school full-time and is not being paid by an employer to attend school; and

(b) A statement from an official of the school verifying that the child is attending school full-time. The Board may also accept as evidence a letter of acceptance from the school, receipted bill, or other evidence showing that the child has enrolled or been accepted at that school or is continuing in full-time attendance.

(Approved by the Office of Management and Budget under Control Nos. 3220–0030, 3220–0083, and 3220–0123)

§ 219.56 When evidence of a parent's support is required.

If a person applies for a parent's annuity, the Board will require evidence to show that the parent received at least one-half of his or her support from the employee in the one-year period before—

(a) The employee died; or

(b) The beginning of a period of disability if the employee had a period of disability which did not end before his or her death.

§ 219.57 Evidence of a parent's support.

(a) The Board will require the parent's signed statement showing his or her income, any other sources of support, the amount from each source and his or her expenses during the one-year period.

(b) The Board may also ask the parent for signed statements from other people who know the facts about his or her sources of support.

(c) If the statements described in paragraphs (a) and (b) of this section cannot be obtained, the Board will require other convincing evidence that the parent is receiving one-half of his or her support from the employee.

(Approved by the Office of Management and Budget under Control No. 3220–0099)

§ 219.58 When evidence regarding payment of burial expenses is required.

If a person applies for the lump-sum death payment because he or she is responsible for paying the funeral home or burial expenses of the employee or because he or she has paid some or all of these expenses, the Board will require evidence of such payment.

§ 219.59 Evidence of responsibility for or payment of burial expenses.

The Board will ask for the following evidence:

(a) The claimant's signed statement showing—

(1) That he or she accepted responsibility for the funeral home expenses or paid some or all of these expenses or other burial expenses; or the name and address of the person who accepted responsibility for or paid these expenses;

(2) Total funeral home expenses and, if necessary, the total of other burial expenses; and if someone else paid part of the expenses, that person's name, address, and the amount he or she paid;

(3) The amount of cash or property the applicant expects to receive as repayment for any burial expenses he or she paid; and whether anyone has applied for any burial allowance from the Veterans Administration or other governmental agency for these expenses; and

(4) If the claimant is an owner or official of a funeral home, a signed statement from anyone, other than employee of the home, who helped make the burial arrangements showing whether he or she accepted responsibility for paying the burial expenses.

(b) Unless the claimant is an owner or official of a funeral home, a signed statement from the owner or official of the funeral home which handled the deceased employee's funeral and, if necessary, from those who supplied other burial goods or services which shows—

(1) The name and address of everyone who accepted responsibility for or paid any part of the burial expenses; and

(2) Information which the owner or official of the funeral home and, if

necessary, any other supplier has about the expenses and payments described in paragraphs (a)(2) and (a)(3) of this section.

(Approved by the Office of Management and Budget under Control No. 3220–0031)

§ 219.60 When evidence of the employee's permanent home is required.

The Board may ask for evidence to prove where the employee had a permanent home at the time of filing an application or, if earlier, at the time the employee died if—

(a) The claimant is applying for payments as the employee's wife, husband, widow, widower, parent, or child; and

(b) The claimant's relationship to the employee depends upon the laws of the state where the employee had his or her permanent home when his or her wife or husband applied for an annuity or when the employee died.

§ 219.61 Evidence of where the employee had a permanent home.

The Board will ask for the following evidence to establish the employee's permanent home:

(a) The claimant's signed statement showing what the employee considered to be his or her permanent home.

(b) If the statement in paragraph (a) of this section or other evidence raises a reasonable doubt in establishing the employee's permanent home, evidence of where the employee paid personal property taxes, real estate taxes, or income taxes; or evidence where the employee voted; or other convincing evidence.

§ 219.62 When evidence of "good cause" is required.

The principle of "good cause", as defined in Part 217 of this chapter, is applied by the Board in determining whether to allow an application which is submitted more than two years after the employee's death as acceptable for the lump-sum death payment or for an annuity unpaid at death, or to accept the proof of support required for entitlement to a parent's annuity if such proof is filed more than two years after the employee's death.

§ 219.63 What evidence is required to establish "good cause".

The Board will ask for the following evidence of "good cause":

(a) The claimant's signed statement explaining why he or she did not file the application for lump-sum death payment or annuity unpaid at death or the parent's proof of support within the specified two-year period.

(b) If the statement in paragraph (a) of this section or other evidence raises a reasonable doubt as to whether there was good cause, other convincing evidence to establish "good cause".

§ 219.64 When evidence may be required for other reasons.

(a) The Board will require evidence of the appointment of a legal representative when—

(1) The employee's estate is entitled to a lump-sum death payment, annuity unpaid at death, or residual lump sum, and an executor or administrator has been appointed for the estate; or

(2) A minor child or incompetent is entitled to an annuity or lump-sum payment and a guardian, trustee, committee, or conservator has been appointed to act in his or her behalf.

(b) The Board will require evidence of an annuitant's earnings when the information that he or she furnished the Board does not agree with the earnings data furnished by the Social Security Administration or secured from other sources, and the annuitant maintains that the earnings data from the Social Security Administration or from other sources is not correct.

(c) The Board will require evidence to establish the amounts paid as a public service pension, public disability benefit, or worker's compensation to an employee, spouse, widow, or widower when the pension, public disability benefit, or worker's compensation affects the amount of his or her annuity.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0136, and 3220–0154)

(d) The Board will require evidence to reconcile discrepancies between the information furnished by the claimant and information already in the records of the Board, the Social Security Administration, or other public agencies. Such discrepancies may be differences in name, date or place of birth, periods of employment, or other identifying data.

§ 219.65 Other types of evidence that may be required.

(a) The Board may ask for a statement from an employer listing the annuitant's earnings by months and explaining any payments made to the annuitant when he or she was not working.

(b) The Board may ask for copies of award notices from a public agency showing the amounts of periodic payments and the period covered by each payment.

(c) The Board may ask for a statement from the applicant explaining discrepancies and may ask for sworn statements from persons who have personal knowledge of the facts or for any other convincing evidence.

(d) The Board may ask for proof of the court appointment of a legal representative, such as:

(1) Certified copy of letters of appointment;

(2) "Short" certificate;

(3) Certified copy of order of appointment; or

(4) Any official document issued by the clerk or other proper official of the appointing court.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–18150 Filed 8–2–89; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Zeranol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pitman-Moore, Inc. The supplement provides for the following actions concerning use in cattle of the growth promotant zeranol: (1) Removal of the 65-day preslaughter withholding period; and (2) removal of the requirement for a method to monitor for drug residues in cattle tissues.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Condon, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Mundelein, IL 60060, is the sponsor of NADA 38–233 (53 FR 20842 at 20843; June 7, 1988), which provides for subcutaneous implantation of zeranol pellets in the ears of beef cattle as a growth promotant. The firm has submitted a supplemental NADA containing sufficient safety data to support removing the existing 65-day withholding period and granting a zero withholding period for use of the product in beef cattle at the currently approved dosage level of 36 milligrams per animal. Accordingly, the supplement is approved and 21 CFR 522.2680 is amended to reflect the approval.

Granting a zero withholding period eliminates the requirement for an analytical method to monitor for zeranol residues in cattle tissue. Therefore, the agency is also amending 21 CFR 556.760 to remove the aforementioned requirement.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) 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 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

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

§ 522.2680 [Amended]

2. Section 522.2680 Zeranol is amended in paragraph (f)(1)(iii) by removing "; do not implant animals within 65 days of slaughter", and by removing paragraph (f)(3)(iii).

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

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

4. Section 556.760 is amended by removing the introductory text and by adding paragraphs (a) and (b) introductory text to read as follows:

§ 556.760 Zeranol.

(a) *Cattle.* A tolerance for total zeranol residues in uncooked edible tissues of cattle is not needed. The safe concentration for total zeranol residues in uncooked edible tissues of cattle is 150 parts per billion (ppb) in muscle, 300 ppb in liver, 450 ppb in kidney, and 600 ppb in fat. A tolerance refers to the concentration of marker residues in the target tissue used to monitor for total drug residues in the target animal. A safe concentration refers to the total residue concentration considered safe in edible tissues.

(b) *Sheep.* No residues of zeranol may be found in the uncooked edible tissues of sheep as determined by the following method of analysis:

* * * * *

Dated: July 26, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-18118 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3 and Part 21

RIN 2900-AE05

Veterans Education; Disabling Effects of Chronic Alcoholism

AGENCY: Department of Veterans Affairs.

ACTION: Interim Regulations with Request for Comments.

SUMMARY: The Veterans Benefits and Programs Improvement Act of 1988 provides among other things that for the purposes of any provision relating to the extension of a delimiting period under any education benefit or rehabilitation program administered by the Department of Veterans Affairs, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct. These interim regulations will inform the public of the way in which the Department of Veterans Affairs will implement this provision of law with respect to the Post-Korean Conflict GI Bill.

DATES: Comments must be received on or before September 5, 1989. Comments will be available for public inspection until September 12, 1989. The effective date of these regulations, like the effective date of the provision of law they interpret is November 18, 1988. They will be effective until January 1, 1990.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 12, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: In order to track the language of section 109 of Pub. L. 100-689, the Veterans Benefits and Programs Improvement Act of 1988, an amendment is made to § 21.1043 to state that for the purposes of extending the eligibility period for educational assistance under Chapter 34, Title 38, United States Code, based upon a period of disability, the Department of Veterans Affairs will no longer consider the disabling effects of chronic alcoholism to be the result of willful misconduct. It also defines what the Department of Veterans Affairs considers the disabling effects of alcoholism to be for this purpose. This amendment will have no effect on provisions of the regulations relating to the compensation and pension programs. Several minor amendments are made to other regulations which appear in 38 CFR Part 3 to bring them into agreement with the amended § 21.1043.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs certifies that these amended regulations 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), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. This certification can be made because the regulations effect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs is publishing the amended regulations as interim, immediately effective regulations without obtaining prior public comment. The Department of Veterans Affairs finds that good cause exists for dispensing with prior publication for public comment. As a result of the publicity surrounding the enactment of this law the Department of Veterans Affairs has already received many claims from potentially eligible Post-Korean Conflict veterans for an extension of the period of eligibility due to the alleged disabling effects of chronic alcoholism. Yet the law prohibits paying benefits to veterans eligible under the Post-Korean Conflict GI Bill for education or training completed after December 31, 1989. The usual procedure of first obtaining public comment would mean that it would be difficult to have final regulations before the 1989 deadline. This might have the effect of denying benefits to veterans who might otherwise be entitled to them. Consequently, a delay for prior public comment would be contrary to the public interest.

Moreover, these regulations constitute an interpretive rule defining the statutory term, "disabling effects of chronic alcoholism" for the purpose of an extension of the period of eligibility. This is necessary so that the Department of Veterans Affairs may act on the pending claims, since this new statutory term is not defined elsewhere.

However, because the Department of Veterans Affairs recognizes that reasonable persons may differ as to the interpretation of this term, we are inviting and will consider carefully comments on these interim regulations. Meanwhile, pending claims will be adjudicated on the basis of the interim regulation, so as not to delay an extension to those veterans who are clearly entitled to one.

Furthermore, the Secretary of Veterans Affairs has determined that good cause exists for making the effective date of these regulations retroactively effective on November 18, 1988. As noted above, to achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement this provision of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans

List of Subjects in 38 CFR Part 21

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

Approved: July 7, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is amended as follows:

PART 3—[AMENDED]

1. In § 3.301, paragraph (b), the introductory text of paragraph (c), paragraph (c)(2), and the cross reference at the end of the section are revised to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(b) *Willful misconduct.* Disability pension is not payable for any condition due to the veteran's own willful misconduct.

(Authority: 38 U.S.C. 521)

(c) *Specific applications.* For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§ 3.1(m) and (n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of § 3.302 of this part where applicable.

(Authority: 38 U.S.C. 210(c))

* * * * *

(2) The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin. (See §§ 21.1043, 21.5041, and 21.7051 of this title regarding the disabling effects of chronic alcoholism for the purpose of extending delimiting periods under education or rehabilitation programs.)

(Authority: 38 U.S.C. 210(c))

* * * * *

Cross References: In line of duty. See § 3.1(m). Willful misconduct. See § 3.1(n). Extended period of eligibility. See §§ 21.1043 and 21.7051. Periods of entitlement. See § 21.5041.

§ 3.302 [Amended]

2. Section 3.302 is amended as follows:

a. In § 3.302(a)(2) remove the words "of willful misconduct" and add, in their place, the words "or willful misconduct".

b. In § 3.302(b)(1) remove the word "he" and add, in its place, the words "he or she".

c. In § 3.302(b)(1) remove the word "his" and add, in its place, the words "his or her".

d. In § 3.302(b)(3) remove the word "man" and add, in its place, the word "person".

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

3. In § 21.1043, paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e) respectively; paragraph (a)(2) is revised, new paragraph (b) is added; new paragraphs (c)(2) and (c)(3) are redesignated as paragraphs (c)(3) and (c)(4) and new paragraph (c)(2) is added, so the revised and added text reads as follows:

§ 21.1043 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. It must be clearly established by medical evidence that such a program of education was medically infeasible. A veteran who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or

reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(i) For the purposes of the extension of the period of eligibility described in this section, the Department of Veterans Affairs will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(ii) The provisions of paragraph (a)(2)(i) of the section will apply only when the last date of the time limit for filing a claim for the extension determined under § 21.1032(d) of this part occurs after November 17, 1988.

(Autority: 38 U.S.C. 1662; Pub. L. 100-689)

(b) *Disabling effects of chronic alcoholism.* (1) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1662; Pub. L. 100-689)

(c) * * *

(2) Must be after November 17, 1988, if the veteran qualifies for the extended period of eligibility solely based on the disabling effects of chronic alcoholism, and

* * * * *

[FR Doc. 89-17975 Filed 8-2-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AD87

Veterans Education; Eligibility for Dependents' Educational Assistance

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations.

SUMMARY: Occasionally, a veteran's child will become eligible for dependents' educational assistance after the child's eighteenth birthday. The pertinent provision of the Code of Federal Regulations which addresses this situation incompletely states the applicable statutory requirement for determining the child's effective date of eligiblity. This final regulation will bring the Code of Federal Regulations into agreement with the law.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Alan Zoeckler (225), Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, D.C. 20420 (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 5945 and 5946 of the **Federal Register** of February 7, 1989, there was published a notice of intent to amend Part 21 to state more completely the method of determining a dependent child's effective date of eligibility for dependents' educational assistance. Interested people were given 30 days in which to submit comments, suggestions or objections. The Department of Veterans Affairs (VA) received no comments, suggestions or objections. Accordingly, VA is making the proposal final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation 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), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.117.

List of Subjects in 38 CFR Part 21

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

Approved: July 5, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21 VOCATIONAL REHABILITATION AND EDUCATION is amended as set forth below:

§ 21.3041 [Amended]

1. In § 21.3041, paragraph (b)(2) is amended by removing the word "shall," and inserting in its place the word "may".

2. In § 21.3041, paragraphs (b)(2)(ii) and (b)(2)(iii) are redesignated as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

3. In § 21.3041, paragraph (b)(2)(i) is revised, and paragraph (b)(2)(ii) is added, to read as follows:

§ 21.3041 Periods of eligibility; child.

* * * * *

(b) * * *

(2) * * *

(i) If the effective date of the permanent and total disability rating is before the child has reached 18 but the date of notification to the veteran from whom the child derives eligibility occurs after the child has reached 18, the beginning date of eligibility shall be the basic beginning date as determined in paragraph (a) of this section, or the date of notification to the veteran, whichever is more advantageous to the eligible child.

(ii) If the effective date of the permanent and total disability rating occurs after the child has reached 18 but before he or she has reached 26, the beginning date of eligibility will be the effective date of the rating or the date of notification to the veteran from whom the child derives eligibility, whichever is more advantageous to the eligible child.

(Authority: 38 U.S.C. 1712(a)(3), 1712(d))

* * * * *

[FR Doc. 89-17977 Filed 8-2-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-047; FRL-3623-7]

Approval and Promulgation of Implementation Plans; Tennessee: Revisions to the Knox County Portion of the SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 7, 1986, October 7, 1986 and February 17, 1987, the State of Tennessee submitted the Knox County regulations (Board Orders 17–86, 27–86, and 2–87)) as revisions to the State Implementation Plan (SIP). The regulations for Knox County were originally approved by EPA in 1972 as an appendix to the SIP. Since that time the regulations have been revised several times and today EPA is approving the regulations that are approvable and disapproving the remainder.

DATES: This action will be effective on October 2, 1989 unless notice is received by September 5, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House 4th Floor, 701 Broadway, Nashville, TN 37219

Knox County Air Pollution Control Department, City/County Building, 400 Main Avenue, Suite L222, Knoxville, TN 37902.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10842 at 10894), EPA approved the State Implementation Plan (SIP) for Tennessee, which recognized the Knox County Air Pollution Control Department (KCAPCD) as the local agency and included a control strategy demonstration based on the KCAPCD's activity. Since that time, the KCAPCD has revised its regulations to reflect the changes that have occurred at the national and state level.

The new regulations were submitted to EPA by the State of Tennessee as a SIP revision (Board Orders 17–86, 27–86, and 2–87) on July 7, 1986, October 7, 1986, and February 17, 1987. This SIP revision was not processed earlier because it was unclear which Knox County regulations had already been approved as part of the Tennessee SIP. Also, EPA had to determine if the previous control strategy demonstrations were adequate in protecting the National Ambient Air Quality Standards (NAAQS). Once the federally approved Knox portion of the Tennessee SIP was compiled and the previous control strategy demonstrations were deemed adequate, EPA decided to approve the Knox County regulations as a transfer of enforcement authority from the state to the local. The following conditions and conclusions were used to arrive at this decision:

1. The local regulations must be equal to the corresponding federally approved State regulation.

2. The local regulations cannot be treated as separable from the SIP, which the State submits and implements, but must be considered part of it.

3. Tennessee State law requires that the local regulations be equivalent to or not less stringent than the corresponding State regulations; therefore, Tennessee must certify to EPA that each regulation has been reviewed by the State and found to meet this requirement.

4. Tennessee must retain overall authority and responsibility for developing and implementing, including enforcing, the SIP.

For the most part, the Knox County regulations are the same today as they were in 1972. The following sections were approved in 1972:

Sec.
12.0 Introduction.
13.0 Definitions.
14.0 Ambient Air Quality Standards.
15.0 Prohibitions of Air Pollution.
16.0 Open Burning.
17.0 Regulation of Visible Emissions.
18.0 Regulation of Non-Process Emissions.
19.0 Regulation of Process Emissions.
20.0 Regulation of Incinerators.
22.0 Regulation of Fugitive Dust and Materials.
23.0 Regulation of Hydrocarbon Emissions.
24.0 Regulation of Airborne and Windborne Materials.
25.0 Permits.
26.0 Monitoring, Recording and Reporting.
27.0 Sampling and Testing Methods.
28.0 Variances.
29.0 Appeals.
30.0 Violations.
31.0 Right of Entry.
32.0 Use of Evidence.
33.0 Confidentiality and Accessibility of Records.
34.0 Malfunction of Equipment.
35.0 Regulation of Hazardous Air Contaminants.
36.0 Emergency Regulations.
37.0 Separation of Emissions.
38.0 Combination of Emissions.
39.0 Severability.

Since 1972, several sections have been added and/or revised. Sections 12.0, 22.0, 24.0–34.0, and 36.0–39.0 have not been revised since 1972; therefore, all portions of these above sections are reapprovable except for 25.2.B, which allows waivers for construction permits to be granted based on undue hardships. (This was inadvertently approved in 1972 and now EPA is correcting the error.) Section 21.0 was also part of the 1972 SIP, but this section regulates odor pollution. Since EPA does not regulate odors, no action will be taken on Section 21.0.

The revisions to Sections 13.0–20.0, 35.0 and 36.0 are equivalent to or more stringent than the federally approved State regulations and are approvable.

Section 40.0, Regulation for the Performance of New Stationary Sources, has been added to the Knox County regulations. It deals with the New Source Performance Standards which have been delegated to Knox County by EPA. This section is not part of the SIP and no action will be taken on it.

Sections 41.0, Regulation for the Review of New Sources, 42.0, Regulation of Bulk Gasoline Terminals, 43.0, Regulation of Standards for New VOC Sources, 44.0, Regulation of Cutback Asphalt, 46.0, Regulation of Volatile Organic Compounds, and 47.0, Good Engineering Practice Stack Height Regulation, are additions to the Knox County SIP. Sections 42.0, 43.0 and 44.0 were added as part of the rural ozone nonattainment plan (45 FR 8004). Later, those sections were combined into Section 46.0 and Sections 42.0, 43.0 and 44.0 were deleted.

Section 45.0, Regulation for the prevention of Significant Deterioration (PSD) is reserved. The State of Tennessee handled PSD review for Knox County.

Final Action: Since the Knox County regulations (Board Orders 17–86, 27–86, 27–86 and 2–87) are consistent with EPA policy and requirements, they are hereby approved except for 25.2.B which is disapproved.

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 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another 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 [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Regulatory Process: Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. These rules are equivalent to the federally approved State regulations and maintain the status quo. Sources have not been adversely affected by the State regulations; therefore the conclusion can be drawn that small sources in Knox County will not be adversely affected by this decision.

The Office of Management and Budget (OMB) has waived review of this action, normally required under Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 24, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

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

Subpart RR—Tennessee

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(92) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(92) Revised Knox County regulations: Tennessee Air Pollution Control Board Order 17–86, submitted on July 7, 1986; Board Order 27–86, submitted on October 7, 1986; and Board Order 2–87, submitted on February 17, 1987.

(i) *Incorporation by reference.* (A) Tennessee Air Pollution Control Board Orders 17–86, and Knox County regulations 12.0–20.0, 22.0, 24.0, 25.0, except 25.2.B, 26.0–41.0, and 46.0, which became State effective June 18, 1986; 27–86, and Knox County regulation 35.3 and amendments to 41.1, which became State effective September 17, 1986; and 2–87 and Knox County regulation 47.0, which became State effective January 21, 1987.

(ii) *Additional material.* (A) Letters of July 7, 1986, October 7, 1986, and February 17, 1987, from the Tennessee Department of Health and Environment, submitting the Knox County SIP revisions.

3. Section 52.2229 is amended by adding paragraph (b) to read as follows:

§ 52.2229 Rules and regulations.

* * * * *

(b) Knox County Regulation 25.2.B, submitted July 7, 1986, is disapproved because it is inconsistent with EPA policy and requirements.

[FR Doc. 89–18074 Filed 8–2–89; 8:45 am]

BILLING CODE 6560–50–M

LEGAL SERVICES CORPORATION

45 CFR Part 1632

Redistricting

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("LSC" or "Corporation") has as its principal national goal the provision of basic day-to-day legal services to eligible poor individuals. As part of the implementation of this goal, this final rule prohibits any recipient involvement in redistricting activities, as defined in the rule, because basic day-to-day legal services to the poor are not advanced by redistricting activities and redistricting is intertwined with impermissible political activity. The rule is intended to ensure that recipients refrain from becoming involved in any redistricting activity, including anything intended to influence the timing or manner of the taking of a census, since such activity is not consistent with the Corporation's principal national goal for the provision of legal assistance.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1839.

SUPPLEMENTARY INFORMATION: On March 14, 1989, LSC published a proposed new rule prohibiting any redistricting activity by the Corporation or any LSC recipient with a deadline for comments of April 13, 1989. In response, a total of 75 comments were received. After considering written comments and hearing public comment on the proposed regulation at its meeting in Alexandria, Virginia, on April 13, 1989, the LSC Board of Directors' Committee on Operations and Regulations voted to recommend the proposed rule with clarifying amendments to the full Board. On April 14, 1989, the LSC Board adopted the Committee recommendations with clarifying amendments.

Briefly, the rule prohibits Corporation, recipient, or subrecipient involvement in any redistricting activities. "Involvement" means the use or contribution of LSC or private funds, personnel, or equipment in redistricting activities, and "redistricting" means any direct or indirect effort to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including the timing or manner of the taking of a census. Amendments to the proposed rule adopted by the Board clarify that: (1) Voting Rights Act litigation is permissible as long as it does not involve redistricting; (2) the restrictions in the rule do not prevent recipients from using public or tribal funds for the purposes for which they were provided; (3) employees of recipients may be involved in redistricting activities as long as such involvement does not make use of program resources or time, does not involve identification with the program, and is outside the context of advice and representation; and (4) the rule does not prohibit activities permitted by 45 CFR Part 1604, LSC's regulation on outside practice of law.

The rule is intended to ensure that recipients refrain from becoming involved in rendering any legal services affecting redistricting, since such services are not consistent with the Corporation's principal national goal of the provision of basic day-to-day legal services to eligible poor individuals. Redistricting matters are not peculiar to the interests of the poor, nor have they been identified as a priority by LSC recipients. In addition, recipient funds can be better used elsewhere, since

alternative organizations are available to handle redistricting matters. Further, recipients would likely be competing with members of the private bar who handle matters such as these, since redistricting cases usually generate attorneys' fees. Finally, redistricting risks entanglement with political activities, which LSC recipients should assiduously avoid.

Generally, commenters opposed the new rule on the grounds that LSC lacks authority to restrict redistricting activities by its grantees, especially with regard to the use of private funds; that the proposed rule conflicts with other statutory authority that permits legal representation in such cases; that the definition of "redistricting" is too broad; that the Corporation's justifications for the need to restrict redistricting activities are faulty; and that the effect of the rule will be to deny poor persons access to legal assistance necessary to protect some of their most fundamental legal rights.

Authority to establish goals. Section 1007(a)(2)(C) of the Legal Services Corporation Act, Pub. L. 93–355, as amended, 42 U.S.C. 2996, *et seq.*, gives the Corporation authority not only to establish national goals, but also to determine that a specific activity may not be undertaken by LSC recipients where the activity does not advance Corporation goals. Under section 1007(a)(2)(C), 42 U.S.C. 2996f(a)(2)(C), the Corporation must ensure that recipients, "consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such [legal] assistance." This statutory language gives the Corporation authority to establish goals that constrain the freedom of local programs to set service priorities, because it requires that recipients' priorities be in accord with the Corporation's goals. The fact that this rule is cast as a prohibition, therefore, does not detract from its effect of advancing a Corporation goal.

Certainly, this prohibition can hardly be called unduly intrusive, since it otherwise leaves programs free to determine which cases they will take. This new rule is simply a modest step in the direction of establishing the primacy of basic day-to-day service, and as such it advances the overall effective use of recipients' resources.

The legislative history supports the proposition that, while recipients may establish substantive law priorities, such priorities must comport with any goals established by the Corporation. When recipients were given the role of establishing local priorities by the 1977 amendments to the LSC Act, the House and Senate committee reports discussed the recipients' obligation in the context that such priorities must be consistent with LSC national goals. H. Rep. 310, 95th Cong., 1st Sess. 10–11 (1977); S. Rep. 172, 95th Cong., 1st Sess. 13 (1977). Thus, contrary to the tenor of certain comments, nothing in the legislative history undercuts the Act's clear grant of authority to the Corporation to determine that certain activities so marginally contribute to effective use of program resources that they fall outside the Corporation's goals. The restriction on redistricting activity sets out one perimeter limiting the provision of legal assistance on the grounds that such activity falls outside the goals of the Corporation.

Authority to promulgate legislative rules. To the extent this part constitutes a legislative rule,[1] the Corporation has ample authority to promulgate it. Review of the LSC Act as an integrated whole and consideration of its language, logic, and legislative history confirm that Congress delegated broad general legislative rulemaking authority to the Corporation. A legislative rule creates new law, rights, or duties, while an interpretive rule simply states what an agency thinks the statute means and reminds affected parties of existing duties, *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979); *General Motors Corp.* v. *Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984). Because the legislative power of the United States is vested in Congress, the exercise of quasi-legislative power by governmental entities must be rooted in a grant of such power by Congress, *Chrysler Corp.*, 441 U.S. at 302; *American Postal Workers Union, AFL–CIO* v. *United States Postal Service*, 707 F.2d 548, 558 (D.C. Cir. 1983); *Joseph* v. *United States Civil Service Commission*, 554 F.2d 1140, 1153 & n. 24 (D.C. Cir. 1977). In order to decide whether legislative rulemaking authority has been delegated by Congress, the language, logic, and legislative history of the enabling act should be probed, *Chrysler Corp.* 441 U.S. at 308, and the act should be read as an integrated whole, *National Petroleum Refiners Association* v. *F.T.C.*, 482 F.2d 672, 677–78 (D.C. Cir. 1973). Finally, the fact that Congress includes specific grants of legislative rulemaking authority does not eviscerate a grant of general legislative rulemaking authority. *In re Permanent Surface Mining Regulation Litigation* v. *Peabody Coal Company*, 653 F.2d 514, 523 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 822 (1981).

LSC's general authority to promulgate legislative rules and its specific authority to legislate in regard to redistricting activities are rooted in sections 1006(a), 1006(b)(1)(A), and 1007(a)(2)(C) of the LSC Act. Section 1006(a) delegates to the Corporation to the extent consistent with the provisions of the Act all "the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act" except the power to dissolve itself. 42 U.S.C. 2996e(a). The Act intended the Corporation to be structured and financed in a way that would assure its substantial independence and freedom from both executive and legislative political interference. S. Rep. 495, 93d Cong., 1st Sess. 2–7 (1973). As a nonprofit corporation, LSC has broad discretion to make substantive, interpretive, and procedural policy and legal decisions that are legislative in nature, as long as they are reasonably related to the purposes of the enabling act. *See, e.g., National Clearinghouse* v. *Legal Services Corporation*, 674 F.Supp. 37, 41 (D.D.C. 1987); *aff'd*, 861 F.2d 303 (D.C. Cir. 1988) (one of the LSC Board's principal functions is to set funding policy).

The Act gives ample authority to the Corporation to express and implement its legislative decisions through the regulatory process. In conjunction with the authority delegated to LSC in section 1006(a), section 1006(b)(1)(A) gives the Corporation broad general oversight and rulemaking authority.[2] The legislative history of this provision evidences grant of legislative authority to the Corporation. When explaining the independent structure of the Corporation as envisioned in Senate bill, S. 2686, Senator Javits explained that the

[1] Comments have not identified those portions of the rule that are legislative. Generally, LSC considers the rule to be interpretive as it simply states LSC's interpretation of what the LSC Act means. LSC's goal is based on its policy to give primacy to the provision of basic day-to-day legal assistance to eligible poor persons. Section 1007(a)(2)(C) requires the Corporation to establish goals to ensure that recipients' priorities are in accordance with its policy goals. Although extension of this rule to private funds may arguably be legislative in nature, the Corporation reads section 1007(a)(2)(C), which mandates establishment of priorities by recipients, as extending priorities to private resources as well as LSC funds. See discussion *infra*.

[2] Section 1006(b)(1)(A) provides that:

The Corporation shall have the authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title, and to terminate, after a hearing . . . financial support to a recipient which fails to comply.

42 U.S.C. 2996e(b)(1)(A).

Corporation was given "very strong authority" to enforce the provisions of the Act by promulgating regulations and ensuring the maintenance of the highest quality of service and professional standards. 119 Cong. Rec. S22413 (Dec. 10, 1973). He considered that Congress should not watch over or interfere with decisions made by the Corporation except in extreme cases. *Id.* at S22413–22414. A logical reading of the scope of authority and discretion envisioned in sections 1006(a) and 1006(b)(1)(A) requires the conclusion that LSC was intended to be more than an entity with only interpretive authority; it was expected to make substantive legal and policy decisions that would then be implemented through legislative rules.

One type of substantive decisionmaking authority given to LSC is the authority in section 1007(a)(2)(C) to establish national goals. If the Corporation has authority to establish such goals, then it necessarily must have authority to issue rules to implement these goals and to ensure that recipients' priorities are in accord with them, as contemplated by section 1006(b)(1)(A).

In summary, Congress clearly intended to create an independent organization with broad authority to make and implement legislative policy and legal decisions.

Relevant provisions in the LSC Act. There are no provisions in the LSC Act that expressly give LSC recipients authority to engage in redistricting activities. Contrary to assertions made by some commenters, the fact that Congress contemplated that some litigation could be brought under the Voting Rights Act pursuant to section 1007(a)(6) of the LSC Act does not support the contention that redistricting litigation was necessarily contemplated. Likewise, exceptions to prohibitions on types of legal assistance activities in the Act do not provide authority, as asserted by comments, for recipients to engage in certain types of redistricting activities.

A. Authority pursuant to section 1007(a)(6). LSC's authority to prohibit all redistricting activities does not conflict with activities allowed under exceptions to the prohibitions on political activity in section 1007(a)(6) of the LSC Act.[3] Rather than granting recipients affirmative authority to engage in redistricting activities, the exceptions merely allow a narrow area of activity, *i.e.*, legal advice and representation for individuals seeking information on and access to the polls and to voter registration.

Commenters asserted that this provision, supported by its legislative history, contemplates legal assistance for eligible clients brought under the Voting Rights Act, 42 U.S.C. 1973, including redistricting litigation. This contention is not supported by the plain language of the statute or its legislative history.

The plain language of the section makes no reference to redistricting. Section 1007(a)(6) first establishes in clause (A) a blanket prohibition on involvement in political activities. In clauses (B) and (C), however, two narrow exceptions permit legal advice and representation for complaints relating to access to polls (*e.g.*, transportation to the polls or a similar activity) or any voter registration activity. Nothing in this language expressly contemplates involvement in redistricting litigation.

Nor is there any reference to redistricting in the legislative history of this provision. The extent of permissible and impermissible activities contemplated by section 1007(a)(6) was addressed in a colloquy on the Senate floor during consideration of amendments to delete the exceptions permitting legal advice and representation for voter access or registration activities. 120 Cong. Rec. S918–921 (January 31, 1974). Activities described as prohibited by the section included soliciting individuals or clients for a particular political cause and organizing carpools to take voters to the polls. *Id.* The types of activities intended to be permitted under the exceptions were legal advice and representation for eligible clients seeking access to the polls and voter registration and information on their right to participate in the electoral process. *Id.* at S918–S921. While Senator Taft made one reference to the fact that individuals should be able to get legal advice as to their rights under the Voting Rights Act, he made no mention of redistricting activities. *Id.*

This rule will not prevent advice and representation with respect to the types of voter access issues contemplated in the language of section 1007(a)(6), including most cases brought under the Voting Rights Act. However, although redistricting cases are often brought under the Voting Rights Act, the rule identifies redistricting as being so entangled with political considerations that it is more akin to the matters outside the scope of the exceptions than to issues of simple access.

B. Exceptions to prohibitions. The LSC enabling and appropriations acts provide ample authority for a blanket prohibition of all redistricting activities, even though certain exceptions in the acts would allow certain types of legal assistance activities that are prohibited in this part. For example, the LSC enabling and funding acts contain general prohibitions on lobbying activities but provide certain exceptions, such as one for legislative lobbying when such lobbying is carried out on behalf of an eligible client or upon the request of a legislator. *See* 42 U.S.C. 2996f(a)(5); and Pub. L. 100–459, 102 Stat. 2223–2224 (1988). Commenters assert that these exceptions provide authority to lobby on redistricting matters when the lobbying activity is done on behalf of an eligible client.

First, these provisions are cast as exceptions to prohibitions. Such exceptions, by their terms, do not constitute affirmative mandates to engage in the excepted activities; rather, they merely define those activities that are not prohibited as lobbying per se. Thus, these exceptions do not give affirmative authority for recipients to lobby in any substantive area, such as redistricting matters, when the lobbying is done on behalf of an eligible client.

Second, the LSC Act clearly differentiates between prohibitions on program involvement in certain substantive areas of law, such as criminal law, desertion from the military, and procurement of non-therapeutic abortions, and prohibitions on the types of legal assistance activities that can be carried out, *i.e.*, lobbying, training, community education, and organizing. As a general rule, if the LSC Act contains a prohibition against involvement in an area of law, then *all* types of legal assistance in that area are prohibited.[4] For example, the prohibition on representation in criminal cases precludes a recipient from using LSC funds to train attorneys in this area of law or to conduct community education. Accordingly, prohibitions on involvement in substantive areas of the law apply even where the eligible client

[3] Section 1007(a)(6) obligates the Corporation to insure that all recipient attorneys engaged in legal assistance activities refrain from:

(A) Any political activity, or (B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice or representation), or (C) any voter registration activity (other than legal advice and representation).

42 U.S.C. 2996f(a)(6).

[4] "Legal assistance" refers to all legal services provided by recipients under the Act, including training, community education, direct representation, and research.

exceptions might otherwise permit representation.

Finally, however, 45 CFR 1612.1(h) includes activity intended to influence the structure of government itself, such as reapportionment, within the meaning of legislative lobbying. Such lobbying is prohibited, and no exception is provided for eligible clients or requests of legislators. See 45 CFR 1612.4(b).

Thus, the determination to prohibit any redistricting even with an eligible client or a request of a legislator is well within existing precedent.

Private Funds. The Corporation has ample authority to apply this rule's prohibition to private funds. First, LSC's authority to restrict redistricting activities is rooted in a statutory mandate that is not dependent on what funds are used, or even whether or not any funds are used for the activity. The statutory requirement in section 1007(a)(2)(C) that the Corporation ensure that recipients establish priorities in accord with the Corporation's goals is not tied to the use of LSC funds. Rather, it is an affirmative requirement that attaches to the program regardless of whether LSC or private funds are used. For this reason, Part 1620, LSC's regulation implementing section 1007(a)(2) of the Act, applies to all of a recipient's resources. *See* 45 CFR 1620.2(a) and (b)(3) and 1620.5(b).

Likewise, the prohibitions on political activities in section 1007(a)(6) apply to the activities and are not limited by consideration of what funds are used. Of course, section 1007(a)(6) activities are already listed as being within the scope of section 1010(c) of the LSC Act, which prohibits the use of private funds for such activities. *See* 45 CFR Part 1610. However, a violation of this provision could occur regardless of whether any specific funds are used, since the prohibition is directed against the activity, not against the use of funds for such activity.

In summary, the prohibition of any redistricting activity regardless of the source of funds used is consistent with other prohibitions in the Act.

Policy Considerations Bearing on the Regulation of Redistricting. Substantial policy considerations warranted LSC's determination that redistricting activities are not consistent with the Corporation's principal national goal of providing basic day-to-day legal services to eligible poor individuals. Basic services include those that provide an immediate and discrete benefit to eligible clients with specific complaints such as child support, adoption, child abuse, and other family law matters; consumer complaints; and landlord tenant disputes, rather than services aimed at broad social and legal reform. The more esoteric cases, aimed at changing political and social structures with the hope that such changes will eventually benefit the poor, have evoked much public and Congressional criticism, because the benefits to the poor are often attenuated and entangled with social or political issues. Redistricting activity falls outside day-to-day legal services for the reasons set out below.

First, redistricting cases are not peculiar to the interests of the poor, since the relief sought would affect entire communities, which are composed of poor and non-poor individuals. Since the poor represent a minority, approximately 10 to 15 percent of the United States population, the group of eligible poor in most communities is relatively small. While it is possible to find localities in which a majority of citizens are eligible clients, as pointed out in some comments, in most localities less than 15 percent of the population is denominated as poor. In addition, since most redistricting cases are class actions and certainly affect large blocks of residents, the putative plaintiff class often may consist of a majority of non-eligible individuals. Similarly, the relief sought in redistricting cases often would go to the non-poor. Even in redistricting cases involving discrimination issues, the relief sought would not always go primarily to eligible poor individuals, as only part of the protected minority may be eligible. Consequently, the expenditure of recipients' funds on redistricting activities commonly would result in an allocation of resources for the benefit of non-eligible persons.

Second, redistricting cases generally have not been identified as a priority by LSC recipients. A compilation of the types of cases handled by LSC recipients in 1987 reveals that approximately 27 percent of the cases involved family matters, 21 percent involved housing matters, 16 percent involved income maintenance issues, and 12 percent were consumer-related cases. *See* Legal Services Corporation 1987/1988 Fact Book at 65. However, the need for this rule is supported by the fact that, regardless of redistricting's non-priority status in the past, LSC recipients have committed substantial resources to redistricting issues. Specifically, the Corporation estimates that at least 28,000 hours were devoted to handling redistricting cases from 1978 to 1984, years surrounding the 1980 census. Suggestions that redistricting might be included in a recipient's "other issues" category of priorities simply underlines this area as one lacking special concern to clients. Of the 73 comments submitted on the proposed rule, only two stated that their programs are presently involved in redistricting cases and only 10 cited previous involvement in such cases. Three recipients—Legal Aid Society of Central Texas, California Rural Legal Assistance, and Mississippi Legal Services Coalition—said that voting rights or redistricting cases are a priority for their programs.

Third, LSC has determined that recipient funds can be better used elsewhere, since alternative organizations and private attorneys are available to handle redistricting matters. Redistricting cases usually offer incentives to members of the private bar, since under the Voting Rights Act, 42 U.S.C. 1973, and the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. 1981 and 1988, the right to recover attorneys' fees is specifically given to prevailing parties. Redistricting matters are also undertaken by numerous organizations, including the Mexican American Legal Defense Fund, the Southwest Voters Registration Project, Common Cause, the American Civil Liberties Union, the Native American Rights Fund, the NAACP, the Lawyers Committee for Civil Rights, the League of Women Voters, the Democratic National Committee, and the Republican National Committee. In comments to LSC's proposed rule, several of these organizations conceded that they are heavily involved in redistricting issues, but they claim, without evidence, that there is still a substantial unmet need for which alternative representation is unavailable. Referring to the upcoming 1990 census, one such commenter stated that massive efforts will be required to scrutinize "all of the plans" resulting from redistricting in thousands of jurisdictions nationwide. While it may be true that representation may be unavailable for all cases or in some geographic areas, such comments confirm LSC's assertion that many civil rights organizations already handle redistricting matters both on a national and local level. Comments that massive efforts will be required in the next decade for redistricting activities, including litigation that requires inordinate amounts of resources and time, reinforce the need to regulate in this area, since these activities would most certainly draw resources away from the provision of basic day-to-day legal services. It is simply not effective and economical to channel legal services funds into a massive effort that does not primarily affect the poor and that is already the object of

considerable attention from private attorneys and interest groups.

Fourth, in the past, involvement in redistricting activities by legal services recipients has been subject to abuse, because legal services recipients have linked redistricting activities to obtaining favorable Congressional support for their own parochial objectives. One LSC recipient's grant proposal addressed the need to become involved in State and local redistricting matters in order to develop powerful allies for its clients in what the recipient viewed as a battle over the direction of legal services programs. Influencing redistricting in State and local legislative bodies clearly affects the political character of those legislative bodies.

In response to requests made on April 11 and May 10, 1984, by the Senate Committee on Labor and Human Resources, LSC conducted a study of its grantees to determine their involvement in legislative redistricting activities arising out of the 1980 census. As a result of 2 separate monitorings and 34 responses to an LSC questionnaire that was mailed to all LSC programs, LSC estimates that at least 28,182 hours were spent handling legislative redistricting cases. Specifically, the LSC study found that LSC recipients, in spite of one recipient's assertion that clients rarely come to the office contending they have been "malapportioned," had sought resources for specialized computer equipment and a computer specialist to draw new election district boundaries to the recipients' satisfaction. In addition, recipients hired lobbyists to work on reapportionment issues, yet (in contravention of section 1007(a)(5) of the LSC Act, 42 U.S.C. 2996f(a)(5)) had no documented request from an eligible client or elected official to undertake this activity. Further, recipients also sought to orchestrate a State-wide effort of legal services programs to ensure elections of specific persons, who would in turn be used as powerful allies in anticipated battles over funding for legal services programs.

The LSC study also revealed that certain LSC recipients requested and received Federal funds from the Corporation to establish a Voting Rights Project center in connection with the 1980 census for the purpose of strengthening Mexican-American political power, yet had no request from an eligible client to do so. These recipients prepared a voting rights litigation manual that outlined how to solicit clients for a redistricting battle and how to locate such a client. Since these redistricting activities were obviously conducted by legal services attorneys in pursuit of general policy goals (or even in their own self-interest), rather than in the vindication of individual clients' rights, it is clear that involvement in redistricting activity is subject to abuse. Comments asserting that the reports of past abuse have been overstated were non-specific. Evidence of past abuse already before the Corporation, wherein legal services grantees have been linked to redistricting activities designed to obtain favorable Congressional support for the recipient's objectives, may legitimately be considered by the Corporation in deciding how best to ration legal services resources.

Finally, redistricting risks entanglement with political activities, *see Gaffney* v. *Cummings*, 412 U.S. 735, 753 (1973) ("Politics and political considerations are inseparable from redistricting and apportionment"), which should be avoided assiduously by LSC recipients. As noted in the discussion of the LSC study above, recipient involvement in redistricting too often was linked to obtaining Congressional support for recipients' political or self-interest objectives. The LSC Act declares that "to preserve its strength, the legal services program must be kept from the influence of or use by it of political pressures." 42 U.S.C. 2996. The LSC Act also specifically prohibits involvement in "any political activity." 42 U.S.C. 2996f(a)(6)(A).

In separate instances, LSC recipients were involved in reapportionment cases with counsel for the Democratic and Republican parties. *Upham* v. *Seamon*, 456 U.S. 37 (1982); *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). Comments from attorneys involved in *Gingles* asserted that LSC recipient involvement was limited to filing *amicus* briefs and that actions taken by the Republican Party lawyers were totally separate and independent. While the Corporation makes no finding as to whether LSC recipients have aligned themselves with a particular political party, it believes that any such activity risks an impermissible political alignment under the Act.

Many of these same considerations warrant inclusion of "the timing or manner of taking of a census" in the definition of redistricting. Comments challenged the inclusion on the grounds that such activities are not intertwined with political activity, because the census is used for a wide variety of purposes other than drawing election districts. The United States Constitution mandates that a census be taken every ten years for purposes of reapportionment. U.S. Const. Art. 1, Sec. 2, Cl. 3. In essence, any participation by LSC recipients to influence the timing or manner of taking a census would affect the first step in the redistricting process. As such, involvement in census-taking properly may be prohibited, as it is a necessary antecedent to redistricting.

Additionally, ample alternative public and private entities are available to pursue census cases. Overwhelmingly, the cases challenging the census have been brought by State and local governments because they have a strong interest in the outcome of the census. *See generally, City of New York* v. *United States Dept. of Commerce*, No. 88 CV 3474 (E.D.N.Y. 1989); *Cuomo* v. *Baldrige*, 674 F.Supp. 1089 (S.D.N.Y. 1987); *City of Willacoochee, Ga.* v. *Baldrige*, 556 F.Supp. 551 (S.D.Ga. 1983); *Young* v. *Klutznick*, 497 F.Supp. 1318 (E.D. Mich. 1980), *rev'd on other grounds*, 652 F.2d 617 (6th Cir. 1981), *cert. denied*, 455 U.S. 939 (1982); *Carey* v. *Klutznick*, 637 F.2d 834 (2d Cir. 1980); *City of Philadelphia* v. *Klutznick*, 503 F.Supp. 663 (E.D. Pa. 1980). A review of this sampling of cases reveals the following named plaintiffs: States of New York and California; Cities of New York, Los Angeles, Chicago, Houston, Philadelphia and Detroit; Dade County, Florida; the United States Conference of Mayors; the National League of Cities; the League of United Latin American Citizens; the NAACP; and various mayors, governors and State and national legislators. This wide range of available representation would make any representation by LSC recipients unnecessary. Any undercount reduces the share of Federal revenue to which states and localities may be entitled—particularly for assistance programs for the poor—thus affecting their interest in the quality and quantity of social services they can offer their indigent citizens and their own financial status as governments. Local governments are also in a better financial position to make census challenges. Thus, any use of LSC funds for such purposes would clearly not be an economical or effective utilization of resource. *See* 42 U.S.C. 2996f(a)(3).

In summary, the Corporation has ample authority and policy grounds to prohibit redistricting activity by LSC recipients with LSC or private funds.

Clarifying amendments. Several clarifying amendments were adopted by the Board to delineate certain permissible activities that fall outside the scope of the rule's prohibition. Paragraph (a) of § 1632.4 provides that redistricting activity is the only type of Voting Rights Act litigation prohibited

by this rule. Other suits brought under the act, such as the right to vote itself and physical access cases, are permitted.

Paragraph (b) makes clear that the public and tribal funds are not governed by this part. Thus, the prohibition in this part shall not prevent the use of public or tribal funds for redistricting as long as it is in accord with the purposes for which the funds were provided.

Paragraph (c) provides that employees of recipients may be involved in redistricting activities as long as their involvement does not make use of the program's resources or time, does not involve identification with the program, and is outside the context of advice and representation. This provision is intended to ensure that the prohibition in this part does not infringe upon the First Amendment rights of recipient employees.

Finally, paragraph (d) provides that this part does not prohibit any activities otherwise permitted by 45 CFR Part 1604, LSC's regulation on the outside practice of law. Generally, Part 1604 prohibits outside practice of law, except that newly employed attorneys may close cases from previous law practices, and uncompensated representation pursuant to a court order, for a close friend or family member, or for a religious, community, or charitable group may be permitted.[5]

Under Pub. L. 100-459, 102 Stat. 2226 (1988), the Corporation is required to give 15 days' notice to the appropriations committees of both Houses of Congress prior to promulgating new regulations. Notice letters duly were sent to the House and Senate Committees on Appropriations. No objection was voiced by the Senate committee. The Chairman of the House Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies responded on July 28, 1989, and his letter appears in Appendix A to this notice.

List of Subjects in 45 CFR Part 1632

Legal services.

For the reasons set out in the preamble, 45 CFR Chapter XVI is amended by adding Part 1632 as follows:

[5] The breadth of the exception in section 1604.4 with regard to legal services program attorneys being compensated in connection with an "outside" law practice has been criticized as going beyond the terms of the section of the LSC Act on which it is based. 42 U.S.C. 2996f(a)(4). *See Dubose v. Pierce*, 579 F. Supp. 937, 963 (D. Conn. 1984), *rev'd on other grounds*, 761 F.2d 913 (2d Cir. 1985); *Jordan v. City of Greenwood*, 808 F.2d 1114, 1118 (5th Cir. 1987), *cert. denied sub nom. Jordan v. North Mississippi Rural Legal Services, Inc.*, 108 S. Ct. 89 (1987).

PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.
1632.4 Permissible activity.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

§ 1632.1 Purpose.

This part is intended to ensure that funds available to recipients will be utilized to the maximum extent for the delivery of basic day-to-day legal services to eligible poor individuals. Involvement in redistricting activities does not constitute the provision of basic day-to-day legal services and is prohibited by this part.

§ 1632.2 Definitions.

As used in this part:

"Advocating or opposing any plan" means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

"Recipient" means any grantee or contractor receiving funds made available by the Corporation under section 1006(a)(1) or 1006(a)(3) of the act. The term "recipient" includes subrecipient and employees of recipients and subrecipients.

"Redistricting" means any effort, directly or indirectly, to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§ 1632.3 Prohibition.

Neither the Corporation nor any recipient shall be involved in or contribute or make available any funds, personnel, or equipment for use in advocating or opposing any plan, proposal, or litigation intended to or having the effect of altering any redistricting at any level of government.

§ 1632.4 Permissible activity.

Nothing in this part shall prohibit:

(a) Any litigation brought by a recipient of the Legal Services Corporation under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting;

(b) The expenditure of public or tribal funds that are used in accordance with the purposes for which they were provided;

(c) Activities undertaken by employees of recipients without the use of program resources, including time, and without identification with the recipient and outside the context of advice and representation; or

(d) Activities otherwise permitted by 45 CFR Part 1604.

Timothy B. Shea,

General Counsel.

Editorial Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A—Response From Chairman Neal Smith of House Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies

July 28, 1989.

Honorable Terrance J. Wear,
President, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751

Dear Mr. Wear: This is in response to your letter of July 11, 1989 notifying the Committee of the Corporation's intent to promulgate 45 CFR Part 1632, the Corporation's new regulation on redistricting activity.

I note that the prohibition in this regulation is similar to that contained in section 6 of S. 2409, a bill to reauthorize the Legal Services Corporation, which was introduced by Senators Hatch and Rudman in 1986 and is not in conflict with the provisions further restricting the Corporation from adopting new regulations relating to fee generating cases and use of private funds which were included in the recent appropriations Supplemental (Pub. L. 101-45). I also have specifically noted your statement in the cover letter that the regulation was amended to make clear that "employees of legal services programs can be involved in redistricting activities, as long as the involvement does not make use of program resources or time, does not involve identification with the program, and is outside the context of advice and representation."

Conditioned upon the understanding that you agree with the above statements, the Committee has no objection to this regulation. We appreciate your keeping the Committee informed of changes within the Legal Services Corporation.

Sincerely,

Neal Smith,

Chairman, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies.

[FR Doc. 89-18102 Filed 8-2-89; 8:45 am]
BILLING CODE 7050-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-215; RM-5742, RM-5791, RM-6017, RM-6176, RM-6294, RM-6557, RM-6558]

Radio Broadcasting Services; Campbellsville, Smiths Grove, Cave City, Liberty, Kentucky, and Donelson and Mt. Juliet, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Campbellsville, Kentucky, at the request of Michael Harding, Channel 264A to Horse Cave, Kentucky, in response to a counterproposal filed by Lee Stinson, Channel 254A to Liberty, Kentucky, in response to a petition filed by Carlos D. Wesley, and Channel 294A to Mt. Juliet, Tennessee, in response to a petition filed by Grady Lynn. *See* 53 FR 20659, June 6, 1988. Channel 260A can be allotted to Campbellsville in compliance with the Commission's minimum distance separation requirements. The coordinates are 37–20–36 and 85–20–24. Channel 264A, Horse Cave, Kentucky, requires a site restriction of 1.7 kilometers south. The restricted site coordinates are 37–09–49 and 85–54–00. Channel 254A, Liberty, Kentucky, requires a site restriction of 2.2 kilometers southwest. The restricted site coordinates are 37–18–22 and 84–55–02. Channel 294A, Mt. Juliet, Tennessee meets the minimum spacing requirements of the Commission's Rules at coordinates 36–16–33 and 86–35–31. Horse Cave, Kentucky, and Mt. Juliet, Tennessee, will both be provided with first local service. Proposals requesting the substitution of Channel 296C2 for Channel 296A at Smiths Grove, Kentucky, the substitution of Channel 279A for Channel 294A at Cave City, Kentucky, and the substitution of Channel 281A for Channel 280A at Campbellsville, Kentucky, will be the subject of a *Second Report and Order.*

DATES: Effective September 11, 1989; The window period for filing applications for Channel 260A at Campbellsville, Kentucky, Channel 264A at Horse Cave, Kentucky, and Channel 294A at Mt. Juliet, Tennessee, will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–215, adopted July 10, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Campbellsville, Kentucky, Channel 260A; Horse Cave, Kentucky, Channel 264A; Mt. Juliet, Tennessee, Channel 294A; and by adding Channel 254A at Liberty, Kentucky and removing Channel 288A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18168 Filed 8–2–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–39; RM–6611]

Radio Broadcasting Services; Alexandria, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 222C2 to Alexandria, Minnesota, and modifies the license for Station KXRA–FM, Channel 224A, to specify operation on Channel 222C2. This action is taken in response to a petition filed by Paradis Broadcasting of Alexandria, Inc., licensee of Station KXRA–FM. The coordinates for Channel 222C2 are 45–54–00 and 95–39–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–39, adopted July 13, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alexandria, Minnesota, is amended by removing Channel 224A and adding Channel 222C2.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18169 Filed 8–2–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–543; RM–6457]

Radio Broadcasting Services; Essex, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Russell P. Kinsley, allots Channel 267A to Essex, New York, as the community's first local FM service. Channel 267A can be allotted to Essex in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.9 kilometers northwest to avoid a short-spacing to the proposed substitution of Channel 268A for Channel 270A at Brandon, Vermont. The coordinates for this allotment are North Latitude 44–19–30 and West Longitude 73–23–05. Canadian concurrence has been received since Essex is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective September 11, 1989. The window period for filing applications will open on September 12, 1989, and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–543,

adopted July 13, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York is amended by adding the entry, Essex, Channel 267A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18170 Filed 8-2-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 801

RIN 2900-AE07

VA Acquisition Regulation; Internal Management of the Department of Veterans Affairs Acquisition System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to make several changes in order to improve the management, control and reviews of contract actions. Thresholds for reviewing contract actions are revised, the process for obtaining final clearances prior to awarding major acquisitions is added, coverage for the ratification of unauthorized procurement actions is relocated to conform to FAR and is enhanced, relevant changes are made to the Contracting Officer Certification Program, and organization title changes are made throughout the regulation.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Acquisition Management Service (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 233-3054.

SUPPLEMENTARY INFORMATION:

I. Background

This regulation revises and adds internal administrative oversight of the VA acquisition program, relocates certain material in order to conform to the Federal Acquisition Regulation (FAR) format, adjusts requirements for the VA Contracting Officer Certification Program, and updates various VA organizational titles.

The VA Acquisition Management Service and the Office of General Counsel provide legal and technical review for proposed contract actions at specified thresholds. This regulation revises the thresholds in order to provide uniformity and it delegates legal/technical review for VA Marketing Center contracts. Additionally, the regulation provides for a technical review of certain proposed contracts just prior to contract execution. This regulation unifies all FAR/VAAR individual deviation authority into the Office of Acquisition and Materiel Management.

Coverage regarding the ratification of unauthorized commitments was recently codified in the FAR. VAAR 801.603-72, covering this subject, is removed and necessary supplementing and implementing guidance is relocated to 801.602-3 to conform to the FAR numbering system. VAAR 801.403 is revised to specify that the Director, Office of Acquisition and Materiel Management, is the official to approve individual FAR and VAAR deviations. This is prescribed in order to provide for a single office for such deviation approval.

The VAAR revised coverage for the VA Contracting Officer Certification Program includes several amendments intended to strengthen the program by clarifying the warranting process and clearly specifying that lack of progress in attaining requisite training requirements could result in loss of contracting authority.

VA finds good cause exists for making these regulations final without previous publication of a notice of proposed rulemaking. All the changes are internal VA management policies and public participation is therefore unnecessary (5 U.S.C. 553(d)(3)).

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this proposed rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 801

Government procurement.

Approved: July 25, 1989.

Edward J. Derwinski,

Secretary.

In 48 CFR Chapter 8, Part 801 is amended as follows:

1. The authority citation for Parts 828 and 829 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Part 801 is amended by revising the title to read as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

801.000 [Amended]

3. In 801.000 remove the word "Administration" and insert in its place, the word "Affairs".

801.102 [Amended]

4. In 801.102 remove the word "Administrator" and insert in its place, the word "Secretary".

801.104-1 [Amended]

5. In 801.104-1 remove the word "Administration" wherever it appears and insert in its place, the word "Affairs".

801.201 [Amended]

6. In 801.201 remove the words "Veterans' Administration's" and insert in their place, the word "Department of Veterans Affairs'".

801.201-1 [Amended]

7. In 801.201-1 remove the words "Procurement and Supply" and insert in

their place, the words "Acquisition and Materiel Management", and remove the words "Veterans' Administration and insert in their place, the words "Department of Veterans Affairs".

801.301 [Amended]

8. In 801.301(a) remove the word "Administrator" and insert in its place, the word "Secretary", and in 801.301(c), in the undesignated paragraph, remove the words "Director, Office of Procurement and Supply (91)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (93)".

801.301-70 [Amended]

9. In 801.301-70(b)(2) remove the words "Director, Office of Procurement and Supply (91)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (93)", and remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

801.303 [Amended]

10. In 801.303 remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management", and remove the words "Office of Procurement and Supply" and insert in their place, "Office of Acquisition and Materiel Management".

801.304 [Amended]

11. In 801.304 remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

12. Section 801.403 is revised to read as follows:

801.403 Individual deviations.

(a) When contracting officers consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (93). The request will clearly set forth the circumstances warranting the deviation and nature of the deviation.

(b) When a deviation in an individual case is authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, the authorization will be filed in the purchase or contract file, whichever is appropriate. The Deputy Assistant Secretary for Acquisition and Materiel Management will review each deviation authorized and when considered necessary either prepare a change to the VAAR or recommend a change to the FAR through the CAA Council.

801.404 [Amended]

13. In 801.404, remove the words "Director, Office of Procurement and Supply" wherever they appear and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Mangement", and remove the word "Administrator" and insert in its place, the word "Secretary".

801.470 [Amended]

14. In 801.470(b) remove the words "Veterans' Administration" and insert in their place, the words "Department of Veterans Affairs".

801.602 [Amended]

15. In 801.602(a) remove the word "Administrator" and insert in its place, the word "Secretary", and remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

16. In 801.602-2, paragraphs (a) and (b) are revised to read as follows:

801.602-2 Responsibilities.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the contracting officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the contracting officer shall, except as provided in paragraph (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or telefaxing the default letter and related documents which are required to make an evaluation directly to the General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination (FAR 49.102);

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in FAR 49.402-3(f) have been fully considered; and

(4) Final decision language and appeal rights.

17. Section 801.602-3 is added to read as follows:

801.602-3 Ratification of unauthorized commitments.

(a) Contracting officers shall not ratify contractual commitments made by other VA personnel without prior approval as prescribed below. Such unauthorized commitments include commitments made by other contracting officers which exceed their respective contracting authority as well as unauthorized commitments made by individuals lacking contracting authority.

(1) At field stations, for supplies, services and construction, the approving authority is the director of the field facility concerned.

(2) For central office contracting officers, for supplies, and services and construction, the approving authorities are the heads of the administrations and directors of the staff offices concerned, and the Deputy Assistant Secretary for Acquisition and Materiel Management.

(3) For acquisitions of leasehold interest in real property the approving authority is:

(i) The Deputy Assistant Secretary for Facilities, for 1-5,000 square feet, and for 1-100 parking spaces costing less than $50,000 per annum.

(ii) The Assistant Secretary for Acquisition and Facilities for 5,001-20,000 square feet, and for parking spaces exceeding 100 which cost less than $100,000 per annum.

(iii) The Deputy Secretary for 20,001 square feet and above, and for parking spaces exceeding 100 which cost more than $100,000 per annum.

(4) This approval authority shall not be redelegated.

(b) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the approving authority specified in paragraph (a) of this section with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of General Counsel or the District Counsel, as appropriate.

(3) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(c) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the contracting activity. That individual will take such action as may be indicated to preclude future instances of such awards.

18. In 801.602–70, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4)(vi), (a)(4)(vii), (b)(2), (d), and (h)(1), and (h)(2)(i) are revised, and paragraph (j) is added, to read as follows:

801.602–70 Legal/technical review requirements to be met prior to contract execution.

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the Office of Acquisition and Materiel Management prior to contract execution. (Additionally, the Office of Acquisition and Materiel Management may, when considered necessary, request preaward technical review regardless of dollar value). Office of General Counsel legal reviews of such proposed contracts and agreements will be performed when requested and determined necessary by the Office of Acquisition and Materiel Management. (Excluded from this requirement is the Marketing Center which will perform its own technical reviews at the thresholds herein prescribed. The Marketing Center will receive preaward legal review of solicitation from the General Counsel staff located in Hines, Illionis).

(1) All negotiated and sealed bid contracts (except as specified in (a)(2) and (a)(3)) exceeding $250,000 in either appropriated or nonappropriated funds. This includes indefinite quantity contracts when expenditures of $250,000 or more can reasonably be expected, and multiyear contracts in which $250,000 or more will be expended over the life of the contract. (Note also that multiyear contracts also require review any time the cancellation ceiling exceeds 20 percent of the contract amount (see 817.1)).

(2) All fixed price, sealed bid construction contracts involving $500,000 or more in either appropriated or unappropriated funds.

(3) All 8(a) contracts exceeding $500,000.

(4) * * *

(vi) Competitive contracts exceeding $50,000 and noncompetitive contracts exceeding $200,000, for scarce medical specialist services.

(vii) Competitive contracts exceeding $50,000 and noncompetitive contracts exceeding $200,000 for the mutual use, or exchange of use, of specialized medical resources.

* * * * *

(b) * * *

(2) Contract modifications granting a time extension of more than 20 days.

* * * * *

(d) Utility construction and connection contracts which are developed in the Office of Facilities and cost $50,000 or more will be be reviewed by General Counsel and the Deputy Assistant Secretary for Facilities.

(h) * * *

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by VA as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) * * *

(i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Acquisition and Materiel Management (93D) shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities.)

(j) The following apparent low responsive and responsible bids/offers with the respective solicitations will be submitted for the review of the Deputy Assistant Secretary for Acquisition and Materiel Management (93D), prior to award:

(1) Negotiated contract actions in the Office of Facilities which exceed $2 million.

(2) Bids/offers for construction contracts to be awarded by VHS&RA facilities which exceed $5 million.

(3) Bids/offers for service contracts, including A/E, which exceed $2 million, and

(4) Bids/offers for supply contracts which exceed $5 million in total evaluated cost (excluding FSS contracts awarded by VA Marketing Center).

801.602–71 [Amended]

19. a. In 801.602–71(b) in the heading, remove the words "Department of Medicine and Surgery" and insert in their place, the words "Veterans Health Services and Research Administration (VHS&RA)", and remove the word "Stations", and insert in its place, the word "Facilities".

b. In 801.602–71(b)(1) remove the words "Director, Office of Procurement and Supply" wherever they appear, and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

c. In 801.602–71(b)(3) remove the words "Director, Office of Procurement and Supply (91)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (93)", and remove the words "Office of Procurement and Supply" and insert in their place, the words "Office of Acquisition and Materiel Management".

d. In 801.602–71, paragraph (b)(4) is removed, and paragraphs (b)(5), (b)(6), and (b)(7) are redesignated as paragraphs (b)(4), (b)(5), and (b)(6), respectively.

e. In 801.602–71, in newly-designated paragraphs (b)(5) and (b)(6), remove the words "Director, Office of Procurement and Supply" wherever they appear and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

f. In 801.602–71, in paragraph (c)(1) remove the word "Counseling" wherever it appears and insert in its place, the word "Education", in paragraph (c)(2) remove the word "station" and insert in its place, the word "facility", and in paragraph (c)(2) remove the words "appropriate Regional Director" and insert in their place, the words "Chief Benefits Director for Field Operations (201)".

20. In 801.602–71, newly designated paragraph (b)(4) is revised, in paragraph (c) the heading is revised, paragraph (d) is revised, and paragraph (e) is added, to read as follows:

801.602–71 Processing contracts for legal/technical review.

* * * * *

(b) * * *

(4) Proposed facility-level modification specified in 801.607–70(b) will be forwarded by the contracting officer to General Counsel (025), through the Deputy Assistant Secretary for Acquisition and Materiel Management (93D).

* * * * *

(c) *Veterans Benefits Administration field facilities.*

* * * * *

(d) *Central office.* Any element of contracting prescribed for legal review

in 801.602–70 originating in central office, will be submitted for legal review by the contracting officer, or approving official in the case of agreements with other Government agencies through the Deputy Assistant Secretary for Acquisition and Materiel Management (93D). (Except that in the case of Office of Facilities contracts, a selected sample of contracts will be processed through the Office of Acquisition and Materiel Management (93D). All other Office of Facilities contract actions identified in 801.602–70 will be sumitted for legal review in accordance with Office of Facilities procedures).

(e) All bids/offers required to be reviewed prior to award in accordance with 801.602–70(j), will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (93D), with a cover letter identifying:

(1) The date in which the award is anticipated;

(2) Responsibility determination results or efforts ongoing;

(3) Determinations of price reasonableness;

(4) Explanation of proposed award to other than low responsible bidder/offeror.

21. In 801.602–72, paragraph (d) is revised and paragraph (e) is added, to read as follows:

801.602–72 Documents to be submitted for legal review.

* * * * *

(d) For contract modifications described in 801.602–70(b) and 801.602–71(b)(4) and (d):

* * * * *

(e) For bids/offers submitted as required by 801.602–70(j), the following documents will be provided:

(1) Request for contract action, including justification of need.

(2) The solicitation.

(3) Abstracts of bids/offers.

(4) Price negotiations memorandum, if applicable.

(5) Justification and approval (see 806.303), if applicable.

(6) Documents relevant to determination of contractor's responsibility.

(7) Documents relevant to price reasonableness.

801.603–71 [Amended]

22. In 801.603–71(b) remove the word "station" and insert in its place, the word "facility", in paragraph (c) remove the words "Veterans Administration" wherever they appear and insert in their place, the words "Department of Veterans Affairs", and in paragraph (d) remove the word "Administration" wherever it appears and insert in its place, the word "Affairs".

801.603–72 [Amended]

23. Section 801.603–72 is removed.

801.670 [Amended]

24. In 801.670 remove the word "Administrator" and insert in its place, the word "Secretary", and remove the word "Agency" and insert in its place, the word "Senior".

801.670–2 [Amended]

25. In 801.670–2(a)(3) remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

801.670–3 [Amended]

26. In 801.670–3(a) remove the word "station" and insert in its place, the word "facility".

27. In 801.670–4, the heading, introductory text, paragraphs (a)(1) and (a)(2), and (b)(1) are revised, to read as follows:

801.670–4 National Cemetery System.

Authority for the National Cemetery System to procure supplies, equipment and nonpersonal services is delegated as follows:

(a) * * *

(1) Chief, Acquisition Division, Monument Service.

(2) Chief, Transportation Section, Monument Service and Freight Rate Specialist.

(b) * * *

(1) Director, National Cemetery System, and Deputy Director, National Cemetery System.

801.670–5 [Amended]

28. In 801.670–5(a) remove the word "837.270" and insert in its place, the word "837.2", in paragraph (a)(2) remove the words "Director, Office of Personnel and Labor Relations", and insert in their place, the words "Deputy Assistant Secretary for Personnel and Labor Relations", in paragraph (a)(6) remove the words "Director, Office of Procurement and Supply" and insert in their place, the words "Deputy Assistant Director for Acquisition and Materiel Management", in paragraph (a)(9) remove the word "837.270" and insert in its place, the word "837.2", and in paragraph (b) remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

801.670–6 [Amended]

29. In 801.670–6 remove the words "VA Department of Medicine and Surgery" and insert in their place, the word "VHS&RA", and remove the words "open market prosthetic items or".

801.680 [Amended]

30. In 801.680(d) remove the word "Administrator's" and insert in its place, the word "Secretary's".

31. In 801.690–1, paragraphs (h) and (j) are revised to read as follows:

801.690–1 Definitions.

* * * * *

(h) "Certification" means an evaluation that the candidate has the experience, education and training to perform properly the duties of a contracting officer.

* * * * *

(j) "Termination" means the revocation of contracting authority of a contracting officer by the designating official. Termination provisions are identified in 801.690–6.

* * * * *

801.690–2 [Amended]

32. In 801.690–2(a) remove the words "Veterans Administration" and insert in their place, the words "Department of Veterans Affairs".

801.690–3 [Amended]

33. a. In 801.690–3(a) remove the words "Director, Office of Procurement and Supply (OP&S)" and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management (A&MM)", and remove the words "Director, OP&S" and insert in its place, the words "Deputy Assistant Secretary for A&MM".

b. In 801.690–3(c) remove the word "shall" and insert in its place, the word "may", and remove the word "OP&S" and insert in its place, the word "OA&MM".

c. In 801.690–3(c)(1) remove the word "(DM&S)" and insert in its place, the word "(VHS&RA)".

d. In 801.690–3(d) remove the word "OP&S" wherever it appears and insert in its place, the word "OA&MM", and remove the words, "Director, OP&S", and insert in their place, the words "Deputy Assistant Secretary for A&MM".

34. In 801.690–3, paragraph (b) is revised to read as follows:

801.690–3 Responsibility for administration of Contracting Officer Certification Program (COCP).

* * * * *

(b) *Heads of contracting activities (HCA).* The HCA is responsible for:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and

nonpersonal services assigned to the activity.

(2) Establishing adequate controls to ensure compliance with applicable laws and regulations.

(3) Appointing or terminating appointments of contracting officers at the Basic Level within their activity. Each HCA will establish procedures for the appointment or termination of appointment of contracting officers at the Basic Level to include maintenance of records on individual training and experience, as well as appointment and termination actions.

(4) Recommending to the designating official the appointment or termination of appointment of contracting officers at the Intermediate and Senior Levels of authority based on candidate qualifications, as well as a valid organizational need.

* * * * *

35. In 801.690–4, paragraphs (c)(1)(i), (c)(3)(i)(A), and (f) are revised, undesignated flush paragraphs are added in paragraphs (c)(2)(i)(C) and (c)(3)(i)(D), and paragraph (g) is added, to read as follows:

801.690–4 Selection.

* * * * *

(c) * * *

(1) * * *

(i) *Training*—Forty hours of basic acquisition or small purchase training that can be accomplished on the job in formalized courses of instruction. If on-the-job training is conducted, it must be documented for the record and include a brief description of the duties and responsibilities that comprised that training.

* * * * *

(2) * * *

(i) * * *

(C) * * *

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

* * * * *

(3) * * *

(i) * * *

(A) *ATP Level I*—Fundamentals of Acquisition.

* * * * *

(D) * * *

ATP courses may include tests or other assessments to indicate what information has been learned by the student. An assessment will then be made to determine if additional formal or on-the-job training is needed.

* * * * *

(f) Candidates who do not meet the minimum qualifications established in this section, may be granted interim appointments in accordance with 801.690–7.

(g) The Privacy Act of 1974 applies to the information collected during the selection and appointment of contracting officers.

801.690–5 [Amended]

36. In 801.690–5(a) remove the word "Director, OP&S" and insert in its place, the word "Deputy Assistant Secretary for A&MM".

37. 801.690–6 is revised to read as follows:

801.690–6 Termination.

(a) The designating official may revoke the appointment of a contracting officer at any time after evaluation of written recommendations by an HCA or other management officials based on:

(1) The fact that the need for the appointment no longer exists;

(2) Personnel actions such as resignation or retirement;

(3) Cause. (Cause covers such areas as, e.g., unsatisfactory performance, official misconduct pending criminal or administrative investigations, failure to meet training requirements.)

(b) Situations involving termination of contracting authority of contracting officers for cause should be discussed with the servicing Personnel Office to determine impact, if any, on the employee's continued employment.

38. In 801.690–7 a sentence is added at the end of paragraph (a), and paragraphs (b) and (d) are revised to read as follows:

801.690–7 Interim appointment provisions.

(a) * * * Failure to complete minimum training requirements within the time frame may result in the loss of the interim appointment.

(b) If training requirements are met during the interim appointment period through the ATP, a permanent warrant may be issued by the designating official upon satisfactory completion of all the required courses. Where equivalent courses have been completed, appropriate documentation (copies of course certificates) must be submitted before a permanent warrant can be issued.

* * * * *

(d) Interim appointments shall normally not exceed a 2-year period.

39. Section 801.690–8 is revised to read as follows:

801.690–8 Distribution of SF 1402, Certificate of Appointment

(a) The original SF 1402, Certificate of Appointment, shall be provided to the appointed contracting officer and displayed at the contracting officer's duty station.

(b) A copy of the certificate will be filed in the delegation of authority file and another copy will be furnished to the fiscal activity.

(c) Each certificate will be serially numbered.

[FR Doc. 89–17838 Filed 8–2–89; 8:45 am]

BILLING CODE 8320–01–M

Proposed Rules

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 210

[INS No.: 1221-89]

Adjustment to Permanent Resident Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule amends procedures for the adjustment of status of applicants under section 210 of the Act from temporary resident status to permanent resident status. This rule will remove the burden on the alien for determining whether they have maintained temporary resident status.

DATE: Comments must be received on or before September 5, 1989.

ADDRESS: Written comments should be mailed in triplicate to the Deputy Assistant Commissioner, Special Agricultural Worker Programs, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Worker Program (SAW), 202-786-3658.

SUPPLEMENTARY INFORMATION: Pursuant to section 210(a)(2) of the Act, aliens are to be automatically adjusted from temporary resident status to permanent resident status.

Section 210.5(b)(2) is removed as the Service has determined that the procedures for determining maintenance of status are unduly burdensome on aliens and the Service and are not necessary because aliens who are found deportable are subject to deportation even after adjustment. Since the adjustment is automatic, an eligible alien will only be required to appear at a Service office for ADIT processing, i.e., preparation of Form I-551, Alien Registration Receipt Card.

Section 210.5(b)(3) is redesignated as (b)(2) and revised to indicate that an alien must also present proof of identity upon appearance for ADIT processing. The Service will attempt to contact aliens through a notice to appear advising them of the adjustment and necessity to appear at a Service office with proof of identity for the ADIT processing. Such contact may occur before or after the adjustment date.

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

Lists of Subjects 8 CFR Part 210

Aliens, Permanent resident status.

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

PART 210—SPECIAL AGRICULTURAL WORKERS

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

Authority: 8 U.S.C. 1103, 1160, 8 CFR Part 2.

2. Section 210.5 is amended by revising the heading of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2) with revisions, to read as follows:

§ 210.5 Adjustment to permanent resident status.

* * * * *

(b) *ADIT processing*—(1) *General.* To obtain proof of permanent resident status an alien described in paragraph (a) of this section must appear at a legalization or Service office designated for this purpose for preparation of Form I-551, Alien Registration Receipt Card. Such appearance may be prior to the date of adjustment, but only upon invitation by the Service. Form I-551 shall be issued subsequent to the date of adjustment.

(2) Upon appearance at a Service office for preparation of Form I-551, an alien must present proof of identity, suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I-89.

Date: July 14, 1989.

James A. Puleo,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-18070 Filed 8-2-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-6]

Proposed Alteration and Revocation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal airways located in the states of North Dakota, South Dakota, Ohio, and Indiana by revoking some airway segments and renumbering other segments. This action supports FAA's agreement with the International Civil Aviation Organization (ICAO) to remove all alternate airway segments from the National Airspace System (NAS).

DATES: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 88-AWA-6, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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:

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–AWA–6." 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 Rules Docket 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. 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. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–15, V–462, V–26, V–412, V–148, V–80, V–78, and V–159 located in the states of North Dakota, South Dakota, Ohio, and Indiana, by removing all alternate airway designations. These airways are the final segments of alternate airways that must be removed from the NAS per our agreement with ICAO. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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, VOR federal airways.

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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–15 [Amended]

By removing the words "Huron, SD, including a west alternate from Sioux Falls to Huron via Mitchell, SD, Aberdeen, SD, including a W alternate;".

V–462 [Revised]

From Fort Dodge, LA; Sioux Falls, SD; Mitchell, SD; Huron, SD; INT Huron 343° and Aberdeen, SD, 193° radials; to Aberdeen.

V–26 [Amended]

By removing the words "including a S alternate;".

V–412 [Revised]

From Huron, SD; INT Huron 103° and Redwood Falls, MN, 255° radials; Redwood Falls; INT Redwood Falls 067° and Flying Cloud, MN, 270° radials; to Flying Cloud.

V–148 [Amended]

By removing the words "including an S alternate,".

V–80 [Revised]

From Akron, CO; North Platte, NE; O'Neill, NE; Sioux Falls, SD; INT Sioux Falls 070° and Redwood Falls, MN, 221° radials; to Redwood Falls.

V–78 [Amended]

By removing the words "including a S alternate;".

V–159 [Amended]

Add to the end of the description "Huron, SD; INT Huron 072° and Watertown, SD, 223° radials; to Watertown.".

Issued in Washington, DC, on July 25, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–18125 Filed 8–2–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 89–AEA–8]

Proposed Alteration of Jet Route J–8

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J–8 between Charleston, WV, and Casanova, VA. The realignment of J–8 would utilize the route more efficiently in conjunction with other jet routes in the vicinity. The realignment of J–8 would allow for more separation between air traffic traversing those routes.

DATES: Comments must be received on or before September 21, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 89–AEA–8, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., 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) 267–9253.

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. 89–AEA–8." 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 Rules Docket both before and after the closing date for comments. A report summarizing such 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. 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. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of J–8 between Charleston, WV, and Casanova, VA. This change would allow for more separation between J–6 and J–8, thereby allowing for more separation between air traffic traversing those routes. This action would increase safety in the designated area. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) 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. § 75.100 is amended as follows:

j–8 [Amended]

By removing the words "INT Charleston 085° and Casanova, VA, 262° radials;" and substituting the words "INT Charleston 902° T(095°M) and Casanova, VA, 253° T(259°M) radials;"

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–18126 Filed 8–2–89; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 327

RIN 3220–AA65

Available for Work

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend Part 327 of its regulations under the Railroad Unemployment Insurance Act to clarify the meaning of the phrase "available for work" as used in section 1(k) of the Act (45 U.S.C. 351(k)).

DATE: Comments must be received on or before September 5, 1989.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312) 751–4513 (FTS) 386–4513.

SUPPLEMENTARY INFORMATION: To receive unemployment benefits under the Railroad Unemployment Insurance Act (Act), an unemployed railroad employee must be available for work, that is, ready and willing to work. 45 U.S.C. 351(k). The Board proposes to amend Part 327 of its regulations to delineate certain conditions under which an unemployed employee will be considered as not available for work and thus not eligible for benefits.

Initially, the Board proposes to amend § 327.10(a) to take into consideration the revisions made to Part 325 of this chapter, which permits registration for unemployment benefits by mail. Under the mail-in procedure, upon receipt of a claim for unemployment benefits the Board will notify the claimant's base year employer. If, within a period of time prescribed by the Board, the employer presents no evidence regarding the claimant's availability for work, the claimant shall initially be considered to be available for work.

In addition, the Board proposes to add five new paragraphs to § 327.10 to further describe circumstances under which an employee would be considered not available for work.

Proposed new paragraph (d) provides that an employee who works fewer than five days a week but is continuously employed from week to week under a schedule that provides the equivalent of full-time work shall not be considered to be available for work on his or her days off. Under the Act an individual may be paid benefits for days of unemployment, not to exceed 10, within a 14-day registration period. Four days of unemployment within a 14-day registration period are considered normal rest days, which are not compensable under the Act. Individuals who work compressed work weeks may have more than four rest days within a 14-day registration period but yet are essentially employed full-time. Under this proposed rule such individuals will not be considered as available for work on these additional rest days and would not receive benefits for those days.

The new paragraph (e) proposed to be added to § 327.10 provides that an employee who voluntarily leaves work to attend school shall be presumed not available for work. It also proposes to provide guidance on determining availability for work in other cases where an employee is enrolled in a school or training course.

The proposed new paragraph (f) provides that an employee in train and engine service who does not work on a day or days because he or she expects to work the maximum mileage permitted in a month under a work agreement is not considered available for work on such day or days.

New paragraph (g) provides that an individual in prison or jail or otherwise confined by a governmental unit shall not be considered available for work and thus not eligible for unemployment benefits. This includes an individual who has been released from confinement under a furlough program. An individual would not be considered as unavailable for work solely because he or she is out on bail awaiting trial or because he or she is on parole or probation after conviction for a crime.

New paragraph (h) prvides that a train and engine service employee assigned to pool service will not be considered available for work on any day on which he or she would have worked if he or she had not missed his or her turn in pool service employment.

Finally, the Board proposes to remove § 327.20, which provides that a claimant should not be considered unavailable for work simply because he or she was enrolled in training under the Manpower Development Training Act of 1962. Such training programs have expired and this section is thus obsolete.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 327

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, Title 20, Chapter II, Part 327 of the Code of Federal Regulations is proposed to be amended as follows:

PART 327—[AMENDED]

1. The authority citation for Part 327 is revised to read as follows:

Authority: 45 U.S.C. 362(i), 362(1).

2. Section 327.1 is revised to read as follows:

§ 327.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of unemployment benefits to qualified railroad employees for days of unemployment. Under section 1(k) of the Act, an unemployed employee must be "available for work" as a condition of eligibility for unemployment benefits for any day claimed as a day of unemployment. This part defines the phrase "available for work" and explains how the Board will apply that phrase to claims for unemployment benefits.

3. Section 327.10 is amended by revising paragraph (a) and by adding new paragraphs (d) through (h) as follows:

§ 327.10 Consideration of availability.

(a) *Initial proof.* A claimant who registers for unemployment benefits in accordance with the provisions of Part 325 of this chapter shall, absent any evidence to the contrary, initially be considered available for work. Evidence that a claimant may not be available for work shall include any evidence provided by the claimant's base year employer(s) pursuant to section 5(b) of the Railroad Unemployment Insurance Act.

* * * * *

(d) *Equivalent of full-time work.* (1) A claimant who is continuously employed from week to week under a work schedule that provides the equivalent of full-time employment shall not be considered available for work with respect to any rest day or other non-work day within a 14-day registration period.

(2) The application of this paragraph (d) may be illustrated by the following examples:

Example (1). A claimant's regular work schedule requires him or her to work five nine hour days one week followed by three nine hour days and one eight hour day in the next week. The claimant has five non-work days within this two-week period. The claimant is not considered available for work on those non-work days.

Example (2). On Monday an employee who has been working a shift which has Saturdays and Sundays off changes to a shift which normally has Wednesdays and Thursdays off. As a consequence, the employee has six non-work days within a 14-day period. The employee is not considered available for work with respect to any of the six non-work days.

Example (3). An employee regularly receives remuneration for 40 hours per week by working 10 hours on each of four days per week, thus giving him or her six rest days in a 14-day period. The employee will not be considered available for work on the rest days.

(e) *Attendance in school or training course.* (1) A claimant who has voluntarily left work to enroll as a student in an educational institution shall be presumed not to be available for work. For the purpose of this provision, leaving work is considered voluntary when the claimant on his or her own initiative left work that he or she could have continued to perform but for the claimant's decision to attend school. In all other cases, this presumption shall not apply, but eligibility shall instead be determined on the basis of the facts of each case. In each such case, the claimant shall be given an opportunity to establish that he or she remains ready and willing to engage in full-time employment for hire, notwithstanding his or her school attendance. If a claimant is enrolled in a vocational training program at a trade or technical school, he or she shall be considered available for work if his or her current prospects for work are poor and the vocational training can reasonably be expected to increase his or her prospects for obtaining new employment.

(2) *Examples.* The application of paragraph (e) may be illustrated by the following examples:

Example (1). An individual is laid off by his or her railroad employer. Instead of looking for other employment, the individual decides to enter college in order to become a teacher. He or she is enrolled as a full-time day student. The individual is not available for work.

Example (2). An employee is furloughed by his or her railroad employer and will not likely be able to return to railroad work. After making a reasonable effort to obtain

work and finding none, the individual enrolls in a six month course of training, which upon completion would permit him or her to obtain an entry level job in the data processing industry. The individual is considered available for work while training for the data processing job.

(f) *Failure to work in anticipation of maximum mileage.* (1) An employee in train and engine service who voluntarily lays off work in anticipation of reaching the maximum mileage or earnings permitted under an agreement with his or her employer shall not be considered available for work.

(2) *Example.* Halfway through the month an engineer has worked in train service covering 2000 miles. By agreement with his or her employer he or she may not operate a train in excess of 3000 miles per month. In order to allow engineers with less seniority to perform service, the engineer lays off work for five days. The engineer is not considered available for work on those days.

(g) *Confinement.* A claimant who is confined in a penal institution or is in the custody of a Federal, State or local governmental unit or official thereof shall not be considered available for work. An individual shall not be considered in the custody of a governmental unit or official thereof if he or she has been released on bail and is awaiting trial or he or she has been placed on probation or parole. However, an individual who has been released from custody by a governmental unit or official thereof under a program that permits leave from custody of a short duration, after which he or she must return to custody, shall not be considered available for work on those days on which he or she is on furlough from confinement.

(h) *Missed turns in pool service.* A train and engine service employee assigned to pool service shall not be considered as ready to work, within the meaning of § 327.5(c) of this part, with respect to any day on which such employee would have worked if he or she had not missed his or her turn in pool service employment.

§ 327.15 [Amended]

4. Section 327.15, Reasonable efforts to obtain work, is amended by substituting in paragraphs (a) thereof "§ 325.3" for "§ 325.13."

§ 327.20 [Removed]

5. Section 327.20, Training pursuant to Pub. L. 87–415, is hereby removed.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–18151 Filed 8–2–89; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–015]

RIN 1218–AA59

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule, notice of hearing; extension of written comment period; correction.

SUMMARY: This notice corrects two dates listed in the notice of hearing on the proposed standards on electric power generation, transmission, and distribution and on electrical protective equipment. The hearing notice, which was published on July 20, 1989 (54 FR 30401), had two different dates listed both for the hearing in Los Angeles, CA, and for the submission of testimony and evidence to be introduced at the hearing. The dates listed in this notice are the correct ones.

DATES: The hearing will begin in Washington, DC, on November 28, 1989, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Los angeles, CA, on December 12, 1989, for the receipt of testimony of parties who prefer to testify at that location. Written comments on the proposed standards and notices of intention to appear must be postmarked by September 30, 1989. Testimony and evidence to be introduced into the record at the hearing must be postmarked by October 30, 1989.

ADDRESSES: The informal public hearing will begin in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The hearing will be reconvened at the Sheraton Plaza La Reina Hotel, 6101 West Century Boulevard, Los Angeles, CA 90045. (Telephone: 213–642–4867.)

Four copies of written comments must be sent to the Docket Office, Docket No. S–015, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202–523–7894.)

Four copies of each notice of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202–523–8615.)

FOR FURTHER INFORMATION CONTACT: *Hearing:* Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202–523–8615.) For information on how to submit notices of intention to appear, see the section of this notice entitled "Public Participation."

Proposal: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: 202–523–8148.)

SUPPLEMENTARY INFORMATION: The following corrections are made to the hearing notice published in the **Federal Register** on July 20, 1989 (54 FR 30401):

Page	Column	Line	Correction
30404	1	4th from bottom.	Change "December 5" to "December 12".
30404	2	24th from bottom.	Change "September 30" to "October 30".

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 27th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89–18077 Filed 8–2–89; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3403/P483; FRL-3624-3]

Pesticide Tolerance for Ethyl 3-Methyl-4-(Methylthio)Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity strawberries. The proposed regulation to establish a maximum permissible level for residues of the nematicide in or on the commodity was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3403/P483], must be received on or before September 5, 1989.

ADDRESS: By mail, submit written comments to:

Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3403 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California, Florida, New Jersey, Maryland, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the nematicide fenamiphos ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate and its cholinesterase inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the raw agricultural commodity strawberries at 0.6 part per million (ppm).

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for cholinesterase inhibition (ChE) at 1 ppm (equivalent to 0.025 milligram (mg)/kilogram (kg)/day) and no systemic effects at 10 ppm (the highest dose tested).

2. A 2-year feeding/oncogenicity study in rats with a NOEL for cholinesterase inhibition at less than 2.0 ppm (equivalent to 0.1 mg/kg/day) and no systemic effects at 10 ppm (equivalent to 0.5 mg/kg/day). The study was negative for oncogenic effects under the conditions of the study at all feeding levels.

3. An 18-month oncogenicity study in mice with feeding levels of 2, 10, and 50 ppm (equivalent to 0.3, 1.5, and 7.5 mg/kg/day) which was negative for oncogenic effects under the conditions of the study at all levels tested.

4. A three-generation reproduction study with no reproductive effects at 30 ppm (highest dose tested).

5. A teratology study in rabbits with developmental and maternal NOEL's at 0.5 mg/kg.

6. A neurotoxicity study in hens with no neurotoxicity damage at 12.5 mg/kg (highest dose tested).

7. In a metabolism study in rats, fenamiphos was metabolized to its sulfoxide and sulfone analogs with 50 percent excreted in the urine within 12 to 15 hours.

8. Genotoxicity studies including an Ames test (negative), a dominant-lethal test in mice (negative), an *in vitro* assay in Chinese hamster ovary cells (negative for non-activation assay at concentrations up to 130 micrograms/milliliter and for activation assay up to 230 micrograms/milliliter), and gene mutation using *Bacillus subtilis* (negative).

Data currently lacking include a teratology study in a second species. Data requirements for registration of fenamiphos are identified in a Registration Standard for the chemical, which was issued in June of 1987.

The acceptable daily intake (ADI), based on the 2-year feeding study in dogs with a NOEL for cholinesterase inhibition at 1.0 ppm (0.025 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.00025 mg/kg of body weight (bw)/day. The anticipated residue contribution (ARC) from existing tolerances is calculated to be 0.000094 mg/kg bw/day, which is equivalent to 37.8 percent of the ADI. The current action will contribute an additional 0.000021 mg/kg bw/day of residues to the human diet.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using a thermionic detector, is available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.349 would protect the public health. No secondary residues in meat, milk, poultry, or livestock are expected since strawberries are not considered a livestock feed commodity. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section

408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 6E3403/P483]. All written comments filed in response to these petitions will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: July 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.349(a) is amended by adding and alphabetically inserting the raw agricultural commodity strawberries, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Strawberries	0.6
* * * * *	

[FR Doc. 89–18071 Filed 8–2–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3493/P482; FRL–3624–2]

Pesticide Tolerance for Fluvalinate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide (alpha RS,2R)-fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl (R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate] (referred to in this document as fluvalinate) in or on the raw agricultural commodity coffee. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 7E3493/P482], must be received on or before September 7, 1989.

ADDRESS: By mail, submit written comments to:

Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 7E3493 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide fluvalinate in or on the raw agricultural commodity coffee at 0.01 part per million (ppm).

This petition was later amended to propose that this use of the pesticide be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The toxicological data considered in support of the proposed tolerance include:

1. Ninety-day feeding studies in rats and mice with a no-observed-effect level (NOEL) of 3.0 milligrams(mg)/kilogram(kg)/day in both species.

2. A 6-month feeding study in dogs with a NOEL of 5.0 mg/kg/day.

3. A 2-year feeding/oncogenicity study in rats with a systemic NOEL of 1.0 mg/kg/day and no observed oncogenic effects under the conditions of the study.

4. A 2-year feeding/oncogenicity study in mice with a NOEL for systemic effects at 10 mg/kg/day and no oncogenic effects under the conditions of the study at dosage levels of 2, 10, and 20 mg/kg/day (equivalent to 14, 70, and 140 ppm).

5. Teratology studies in rats and rabbits with a NOEL of 50 mg/kg (highest dose tested) for teratogenic effects in rats and 125 mg/kg in rabbits

6. A two-generation rat reproduction study with a NOEL of 20 ppm (equivalent to 1.0 mg/kg/day).

7. The following mutagenicity studies: Ames' *Salmonella* microsome tests, sister chromatid exchange assay, mouse lymphoma, unscheduled DNA synthesis, cell transformation (all negative except

the mouse lymphoma, which was positive with metabolic activation).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.01 mg/kg of body weight/ day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.000159 mg/kg of body weight/day; the current action will increase the TMRC by 0.000001 mg/kg of body weight/day (0.005 percent).

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes from: By mail, Information Services Section (H7506C), Program Management Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM–2, 1921 Jefferson Davis Highway, Arlington VA 222022, (703)–557–3262.

There are currently no actions pending against the continued registration of this chemical. No secondary residues in meat, milk, or eggs are expected since the commodity is not considered a livestock feed commodity.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.427 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3493/P482]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: July 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.427 is amended in the heading by adding the phrase "tolerances for residues," and by designating the current text and list of tolerances as paragraph (a), and by adding new paragraph (b), to read as follows:

§ 180.427 (Alpha RS,2R)-fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl (R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the insecticide (alpha RS,2R)-fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl (R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate in or on the following commodities:

Commodities	Parts per million
Coffee	0.01

[FR Doc. 89–18072 Filed 8–2–89; 8:45 am]
BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 28, 1989.

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

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

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

Emergency

• Agricultural Marketing Service
Regulations Governing the Fresh Apples Diversion Program for 1988 Crop Apples
FV-184-2
On occasion
Businesses or other for-profit; 1,050 responses; 70 hours; not applicable under 3504(h)
Donald A. Thibeault, (202) 447-6391

• Farmers Home Administration
Form FmHA 440-32, Request for Statement of Debts and Collateral FmHA 440-32
On occasion
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 250,000 responses; 62,500 hours; not applicable under 3504(h)
Jack Holston, (202) 382-9736

Extension

• Agricultural Marketing Service
Celery Grown in Florida (Marketing Order No. 967)
None
Recordkeeping; On occasion; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 2,399 responses; 161 hours; not applicable under 3504(h)
Virginia M. Olson, (202) 475-3930

• Animal and Plant Health Inspection Service
Brucellosis Program (9 CFR Parts 51, 71, 78, and 78 Cooperative Agreements) VS 1-23, 1-68, 4-1, 4-1D, 4-6, 4-33D, 4-54D, 4-59, 4-108, A, B, C, 6-35
Recordkeeping; On occasion; Monthly
State or local governments; Farms; 22,133,270 responses; 110,871 hours; not applicable under 3504(h)
Grace A. Henry, (301) 436-6188

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89-18127 Filed 8-2-89; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket 89-124]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the month of May 1989. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of May 1989:

Product license code	Date issued	Product	Establishment	Establishment license No.
1095.20	05-18-89	Bovine Respiratory Syncytial Virus Vaccine, Killed Virus	Boehringer Ingelheim Animal Health, Inc	124
1288.43	05-09-89	Bursal Disease-Marek's Disease Vaccine, Live Virus, Live Chicken and Turkey Herpesvirus.	Select Laboratories, Inc	279
17A1.11	05-01-89	Newcastel-Bronchitis Vaccine, B_1 Type, B_1 Strain, Mass. and Ark. Types, Live Virus.	Intervet America, Inc	286
1881.10	05-26-89	Pigeon Pox Vaccine, Live Virus	Maine Biological Laboratories, Inc	240
1895.00	05-31-89	Pseudorabies Vaccine, Killed Virus	Bio Vac Laboratories, Inc	307
2657.00	05-16-89	Haemophilus, Pleuropneumoniae, Bacterin	Bio Vac Laboratories, Inc	307
7054.00	05-22-89	Bordetella, Bronchiseptica-Erysipelothrix, Rhusiopathiae-Pasteurella, Multocida Bacterin-Toxoid.	Beecham, Inc	225

Product license code	Date issued	Product	Establishment	Establishment license No.
A231.10	05-19-89	Bronchitis Virus, Mass. Type, Live Virus, For Further Manufacture.	Select Laboratories, Inc	279
G410.00	05-17-89	Clostridium, Chauvoei-Septicum-Novyi-Sordellii-Perfringens Types C & D, Bacterin-Toxoid, For Further Manufacture.	Beecham, Inc	225

Done in Washington, DC, this 31st day of July 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-18128 Filed 8-2-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Mendocino National Forest Mendocino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest blowdown salvage timber sales within the Howard Area which encompasses a portion of Wilderness Contiguous #05137, and the Armstrong Area which encompasses a portion of Thatcher #05141 released-roadless area on the Covelo Ranger District.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal and State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

The analysis is expected to be completed by December 31, 1989. The draft environmental impact statement should be available for public review by February 1, 1990. The final environmental impact statement is scheduled for completion by April 15, 1990.

Written comments and suggestions concerning the analysis should be sent to Charles L. McFadin, District Ranger, Covelo Ranger District, Mendocino National Forest, 78150 Covelo Road, Covelo, California, 95428, by October 31, 1989.

Questions about the proposed action and environmental impact statement should be directed to Brooks Smith, Timber/Resource Officer, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, phone 707-983-6118.

Dated: July 26, 1989.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 89-18133 Filed 8-2-89; 8:45 am]

BILLING CODE 3410-11-M

Mendocino National Forest Mendocino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement commercial timber sales within the Black Butte River watershed area on the Covelo Ranger District; this EIS will encompass a portion of the Black Butte (#05269) released-roadless area.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal and State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review by January 17, 1990. The final environmental impact statement is scheduled for completion by April 18, 1990.

Written comments and suggestions concerning the analysis should be sent to Charles L. McFadin, District Ranger, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, by November 1, 1989.

Questions about the proposed action and environmental impact statement should be directed to Brooks Smith, Timber/Resource Officer, Covelo Ranger District, Mendocino National Forest, Covelo, California, 95428, phone 707-983-6118.

Dated: July 26, 1989.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 89-18134 Filed 8-2-89; 8:45 am]

BILLING CODE 3410-11-M

Mendocino National Forest Mendocino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest the Shields Timber Sale within the Jumpoff Creek watershed on the Covelo Ranger District. Initial scoping has shown that there are major public concerns; specifically, water quality and visuals. The decision has been made

that an EIS will be prepared rather than an environmental assessment.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the area.

The analysis is expected to be completed by December 31, 1989. The draft environmental impact statement should be available for public review by February 1, 1990. The final environmental impact statement is scheduled for completion by April 15, 1990.

Written comments and suggestions concerning the analysis should be sent to Charles L. McFadin, District Ranger, Covelo Ranger District, Mendocino National Forest, 78150 Covelo Road, Covelo, California, 95428, by October 31, 1989.

Questions about the proposed action and environmental impact statement should be directed to Brooks Smith, Timber/Resource Officer, Covelo Ranger District, Mendocino National Forest, 78150 Covelo Road, Covelo, California, 95428, phone (707) 983-6118.

Dated: July 26, 1989.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 89-18135 Filed 8-2-89; 8:45 am]

BILLING CODE 3410-11-M

Proposed New Minimum Fee for Special Use Authorizations and Request for Public Review and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed new minimum fee.

SUMMARY: The Northern Region, administering those National Forests in the States of Montana, North Dakota, a portion of South Dakota, and northern Idaho, is revising minimum annual rental fees for special use authorizations. A minimum fee study has been prepared and is available for review and comment.

SUPPLEMENTARY INFORMATION: The Forest Service administers approximately 1,400 special use authorizations in the Northern Region that are subject to annual payment of a minimum rental fee. The current minimum rental fee of $25.00 was established in 1979.

The Office of Management and Budget (OMB) Circular No. A-25, as amended and supplemented, requires Agencies to establish user charges based on sound business management principles and to the extent feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

In 1964, the Bureau of the Budget (Predecessor to OMB) issued further guidelines in the *Natural Resources User Charges Study*, which provided for the use of Federal land as follows:

* * * the Government should recover the fair market value for the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interests does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

The 1976 passage of the Federal Land Policy and Management Act (Pub. L. 94-579, 90 Stat. § 2743 at 2745) reinforced long-standing Congressional support of fair market value as a basis for fees. Section 102(a) of the Act states that "* * * it is the policy of the United States that * * * the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute * * *". Title V provides specific direction that fees for right-of-way uses and grants should reflect fair market values.

In accordance with these Acts and OMB directives, the Forest Service's special use regulations at 36 CFR 251.57 provide that special-use authorizations shall require "* * * the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles."

Special use authorizations for which a minimum fee is appropriate typically involve comparatively small areas or acreages of National Forest System lands. Generally, these uses provide benefits which are private and personal to the permit holder, rather than benefits to the general public. Examples include, but are not limited to, access roads, utility lines, domestic or irrigation water systems, signs, mailboxes, etc., which serve non-Federal lands. Some minimum fee uses do serve certain segments of the public, usually with an activity or event of short duration and without significant permanent improvements or facilities.

Fair market value may be determined by appraisal or other sound business management principles. The limited acreage and wide variation in the kinds of uses typical of minimum fee situations precludes use of individual appraisals due to inefficiency and high agency cost. Other appropriate methods for determining fees are administrative fee determinations by the agency, market analyses and studies, and adjustments based on widely accepted economic indexes.

The Northern Region, Forest Service, lacks sufficient data at this time to establish a minimum fee based on agency administrative costs, however this method may be employed in the future. In the past, minimum fee policies have provided no mechanism for periodic adjustment to reflect changes in economic conditions. The Forest Service believes that, in fairness to the public and permit holders and in response to Executive and Legislative direction, minimum fees need to be indexed for adjustment at not more than 5 year intervals. Similarly, there may be situations where a special minimum fee is appropriate due to the unique nature of a proposed use or availability of credible market information supporting a different fee basis. Though such cases are expected to be few in number, Forest Supervisors will be authorized to base minimum fees for unique kinds of uses on alternative methods, after consultation with and concurrence of the Regional Review Appraiser.

Proposed Minimum Fee

The Northern Region proposes a minimum fee of $45.00. This amount is developed by adjusting the current $25.00 minimum fee, established in 1979,

through application of the cumulative change in the Implicit Price Deflator—Gross National Product (PD–GNP) index. This widely accepted index is published in the Survey of Current Business of the U.S. Department of Commerce, Bureau of Economic Analysis. The Forest Sevice and other agencies use this index in developing and adjusting a variety of other fees, such as linear rights-of-way and recreation residences.

In the future, the Forest Service proposes to review the Northern Region's general minimum fee at 5 year intervals beginning with 1995 (for implementation with Calendar Year 1996 fees), and update the fee by application of the percent of change in the IPD–GNP index as of June 30 of the review year.

Proposed Implementation

After review of public comments and publication of a final notice in the **Federal Register**, a new minimum fee will be implemented for new special use authorizations effective on the date of publication. Holders of outstanding special use authorizations will be notified that the new minimum fee will be effective with billings for calendar year 1991 fees. The procedure will provide approximately one year of advance notice to current permit holders.

Fee Exemption/Waivers

The proposed change in minimum special use fees has no effect on special use authorizations exempt from fees under law or regulation.

Secretary of Agriculture's Regulation 36 CFR 251.57(b) provides that fees may be waived under certain conditions. This proposal has no effect on these procedures for fee waiver. Authority for decisions on fee waiver applications remains with the authorized officer. However, no partially waived (reduced) fee shall be less than the established minimum fee.

Some outstanding special use authorizations were issued many years ago under certain authorities which provided for free use. These authorities are no longer available to the Forest Service as they are inconsistent with the Secretary of Agriculture's current Regulations and the intent of Congress that the United States receive fair market value for the use of its lands and facilities. Many of these special use authorizations fall within the kinds of uses and situations for which a minimum fee should be charged under current direction. As a part of implementing the new minimum fee, all existing free special use authorizations will be reviewed within 5 years of the effective date for determination as to whether a full fee is appropriate, or qualification for fee waiver might exist. All permit holders in this category will be provided advance notice of this review.

Copies of this notice are being mailed to holders of existing special use authorizations that are currently categorized as free permits under earlier authorities, or charged a minimum fee. Copies will also be sent to anyone requesting copies from the contacts listed in this notice. Copies of the minimum fee study are also available at the Regional Office and Forest Supervisors offices in Montana and Idaho.

DATE: Comments on the proposal must be received, in writing on or before September 18, 1989.

ADDRESS: Send comments on the proposal to John W. Mumma, Regional Forester, Northern Region, USDA Forest Service, Federal Building, P.O. Box 7669, Missoula, MT 59807.

FOR FURTHER INFORMATION CONTACT: Jim Schoenbaum (406–329–3601) or Jim Hathaway (406–329–3110).

Dated: July 27, 1989.

John W. Mumma,

Regional Forester.

[FR Doc. 89–18136 Filed 8–2–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held August 31, 1989, at 9:00 a.m., in the Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202–377–4959.

Dated: July 28, 1989.

Betty A. Ferrell,

Director, technical Advisory Committee Unit Office of Technology and Policy Analysis.

[FR Doc. 89–18076 Filed 8–2–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–351–503]

Certain Iron Construction Castings From Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by a respondent and an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain iron construction castings from Brazil. The review covers two manufacturers/exporters of this merchandise to the United States and the period October 21, 1985 through April 30, 1988. We preliminarily determined the dumping margins to be 3.40 percent to 16.55 percent during the periods of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Linnea Bucker or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 17220) an antidumping duty order on certain iron construction castings from Brazil. A respondent and an importer requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published notices of initiation of the antidumping duty administrative review on June 19, 1987 (52 FR 23330) and on June 29, 1988 (53 FR 24470). The Department has now conducted those administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems classifiable as heavy castings under Tariff Schedules of the United States Annotated ("TSUSA") item number 657.0950, and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters, classifiable as light castings under TSUSA item number 657.0990. These articles must be of cast iron, not alloyed, and not malleable. Heavy castings are currently classifiable under HTS items 7325.10.00.10 and 7325.10.00.50. Light castings are classifiable under HTS items 8306.29.00.00 and 8310.00.00. The written description remains dispositive.

The review covers two manufacturers/exporters of certain Brazilian iron construction castings and the period October 21, 1985 through April 30, 1988.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, FOB, FAS, or C&F prices to unrelated purchasers in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, port consolidation and storage charges, and brokerage and handling charges. We made additions to United States price for countervailing duties. We accounted for taxes imposed in Brazil, but rebated or not collected by reason of the exportation of the merchandise to the United States, by multiplying the ex-factory price of the castings sold in the United States by the Brazilian tax rate and adding the result to the U.S. price.

Foreign Market Value

In calculating foreign market value, the Department used home market price when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When there were insufficient home market sales for comparison, we used third-country sales, as defined in section 773 of the Tariff Act. Because the Federal Reserve Bank of New York did not have certified exchange rates for part of the review period, as best information available we used Brazilian Ministry of Finance rates as provided by the Embassy of Brazil.

Home market price was based on the packed FOB or delivered prices to unrelated purchasers in Brazil. Third-country sales were based on packed, CIF prices to unrelated purchasers in Canada.

For home market and third-country sales, we made adjustments, where applicable, for brokerage and handling, inland freight, ocean freight, marine insurance, shipping expenses (port consolidation and storage charges) and differences in packing, commissions to unrelated parties, credit costs, and bank charges. For home market sales, we made a circumstance-of-sale adjustment for tax differences.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the dumping margins to be:

Manufacturer/ Exporter	Period	Margin (percent)
Industria Viana, Ltda	10/21/85-04/30/87	3.67
COSIGUA (USIPA)	10/21/85-04/30/87	3.40
	05/01/87-04/30/88	16.55

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice in the **Federal Register.** Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any issues raised in such comments or a hearing.

The Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required.

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after April 30, 1988, and who is unrelated to any reviewed firm, a cash deposit of 16.55 percent shall be required.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: July 25, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18069 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-809]

Preliminary Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain small business telephone systems and subassemblies thereof (SBTS) from Japan are being, or are likely to be, sold in the United States at

less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of SBTS from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 10, 1989.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Michael Ready, or David Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–1769, (202) 377–2613, (202) 377–4136, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that SBTS from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (54 FR 3516, January 24, 1989), the following events have occurred: On February 13, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of SBTS (USITC Pub. No. 2156, February 1989).

On February 3 and March 27, 1989, the Department's questionnarie was presented to the Toshiba Corp. (Toshiba) and Matsushita Electric Industrial Co., Ltd. (MEI), including its related companies Matsushita Communication Industrial Co., Ltd. (MCI) and Kyushu Matsushita Electric Co., Ltd. (KME) (hereinafter collectively referred to as "Matsushita"), which accounted for a substantial portion of exports of the subject merchandise to the United States during the period of investigation (POI).

We received replies to the questionnaire from Toshiba and Matsushita on February 17, March 3 and May 15, 1989.

On April 13, 1989, petitioners requested that the preliminary determination be postponed. On April 27, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to July 26, 1989 (54 FR 19211, May 4, 1989).

We sent deficiency letters to both respondents during May, June and July, 1989. We received partial responses to them prior to July 10, 1989. On July 10, 1989, Toshiba and Matsushita each notified the Department that they were withdrawing from active participation in the investigation. Toshiba requested that we return certain confidential information and destroy the remainder of its confidential submissions. Matsushita requested that the Department return all confidential information submitted to the Department. Both companies requested the same treatment for copies provided to petitioners' counsel and consultants under Administrative Protective Order. Pursuant to these directions, we are complying with respondents' requests, and have instructed petitioners' counsel to do the same or certify to the destruction of the information.

Period of Investigation

The POI is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotted* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without addition apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. We therefore have clarified the language describing the subassemblies under investigation.

In addition, the Department has received a number of inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. The Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Fair Value Comparisons

To determine whether sales of SBTS from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used the best information available, as required by section 776(c) of the Act, because the respondents withdrew their confidential information from the administrative record of the investigation. As best information available, we took the highest margin contained in the petition for each such or similar category, and averaged these figures on a company-specific basis to determine the margins in this investigation. These categories are based on our "scope" definition and consist of a) control and switching equipment, b) circuit cards and modules, c) telephone sets and consoles, and d) complete small business telephone systems.

In its July 10 letter explaining its withdrawal from the investigation, Matsushita stated that burdensome and unreasonable reporting requirements were a major factor in its decision to withdraw. The Department regrets the decision of both respondents to withdraw from this investigation. We note, however, that our reporting requirements were clearly stated in our questionnaire and are based on consistent Departmental practice. Recognizing the reporting burden faced by respondents, we granted their deadline extension requests to the extent possible to provide a greater opportunity to meet our requirements. Where a party made a timely request to modify and simplify the reporting requirements, we gave full consideration to the request.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SBTS from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The averages of the highest margin for each such or similar category based on information provided in the petition are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Toshiba Corp	136.77
Matsushita Electric Industrial Co. Ltd., Matsushita Communication Industrial Co., Ltd., Kyushu Matsushita Electric Co., Ltd	178.93
All others	157.85

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.38, case briefs in at least ten copies must be submitted to the Assistant Secretary by September 1, 1989, and rebuttal briefs by September 8, 1989. In accordance with 19 CFR 353.38(b), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 10:00 a.m. on September 13, 1989, at the U.S. Department of Commerce, Room 3708, 14th Steet and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the arguments to be raised. In accordance with § 353.38(b) of the Department's regulations, presentations will be limited to issued raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

July 26, 1989.

[FR Doc. 89-18066 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-05-M

[A-580-803]

Preliminary Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

AGENCY: Import Administration, International Trade, Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain small business telephone systems and subassemblies thereof (SBTS) from Korea are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of SBTS from Korea as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 10, 1989.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION: Louis Apple or Nancy Saeed, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–1769 or (202) 377–1777, respectively.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We preliminarily determine that SBTS from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the Notice of Initiation on January 24, 1989 (54 PR 3517), the following events have occurred. On February 13, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Korea of SBTS (USITC Pub. No. 2156, February 1989).

On February 9, 1989, the Department's questionnaire was presented to Goldstar Telecommunications Co., Ltd. (Goldstar) and Samsung Electronics Co., Ltd (Samsung). These two manufacturers accounted for a substantial portion of exports of the subject merchandise to the United States during the period of investigation (POI).

On April 13, 1989, petitioner requested that the preliminary determination be postponed. On April 27, 1989, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until July 26, 1989 (54 FR 19211).

On March 3 and May 15, 1989 we received replies to the questionnaire from Goldstar and Samsung.

A number of supplemental and deficiency questionnaires were issued subsequent to May 15, 1989. Supplemental and deficiency responses were received from the respondents prior to the date of this preliminary determination.

Period of Investigation

The POI is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.00.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. We therefore have clarified the language describing the subassemblies under investigation.

In addition, the Department has received a number of inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. The Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established four categories of "such or similar" merchandise consisting of: a) control and switching equipment, b) circuit cards and modules, c) telephone sets and consoles, and d) complete small business telephone systems.

Product comparisons were made on the basis of the following criteria which are ranked in the order of importance. For control and switching equipment we used the following criteria: 1) port

capacity based on minimum operational configuration, 2) type of central microprocessor, and 3) read-only memory (ROM) size. For circuit card and modules we considered: 1) functions, and 2) physical appearance. For telephone sets and consoles we considered: 1) number of buttons (regardless of function) excluding dialpad, and 2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of the subassemblies, using the criteria described in the preceding sentences.

Where there were no sales of identical merchandise in the home or third country markets with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments proved to be substantial, we used constructed value. In this case, we determined that an adjustment greater than twenty percent of the cost of manufacturing of the U.S. model is substantial.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

Samsung had no sales of complete small business telephone systems in the United States during the POI. We determined that there were sufficient home market sales to unrelated customers for each of the other such or similar categories.

For Goldstar we determined that there were sufficient home market sales to unrelated customers for two such or similar categories: telephone sets and consoles; and control and switching equipment. For two such or similar categories, circuit cards and modules, and complete telephone systems, we determined that there were insufficient home market sales.

With respect to circuit cards and modules, we determined that sales to the Philippines, Cyprus, Canada, Italy, and Norway were the most appropriate basis for calculating FMV because the merchandise sold in these countries was the most comparable to that sold in the United States. With respect to complete small business telephone systems, Goldstar made no sales to third country markets during the POI. Therefore, we are comparing United States sales to constructed value for this such or similar category.

Fair Value Comparisons

To determine whether sales of SBTS from Korea to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Samsung, we based the United States price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties to importation into the United States. For Goldstar, we based the United States price on exporter's sales price, in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States.

We were unable to make comparisons for sales where further manufacturing was claimed because sufficient data which complied with the Department's requests for information was not submitted in time for consideration in our preliminary determination.

Samsung

For Samsung, we calculated purchase price based on packed f.o.b. Korean port prices. We made deductions, where appropriate, for inland freight, wharfage and container freight station fees, customs clearance fees, and postage fees. We added rebated duties and uncollected taxes pursuant to section 772(d)(1) (B) and (C) of the Act.

Goldstar

We calculated exporter's sales price based on packed, delivered prices in the United States. We made deductions from ESP, where appropriate, for cash discounts, brokerage, warfage, inland freight in Korea, stuffing charges, ocean freight, marine insurance, United States customs duty, customs brokerage fees, inland freight in the United States, inland insurance, rebates, warranty expenses, credit expenses, promotional material, cooperative advertising, commissions, and indirect expenses and inventory carrying expenses incurred in both Korea and the United States. We added uncollected duties, and uncollected or rebated taxes pursuant to section 772(d)(1) (B) and (C) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated FMV based on home market sales, third country sales, or constructed value, as appropriate.

Samsung

For Samsung, we calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market.

We made deductions, where appropriate, for inland freight, inland insurance, rebates, and discounts. We deducted the home market packing costs from the foreign market value and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, warranty expenses, and advertising expenses, pursuant to section 773(4)(B) of the Act. We did not consider technical services to be a direct selling expense for purposes of this preliminary determination because it was not clear that this expense was directly related to sales of the subject merchandise. We will look at this expense in more detail at verification.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR section 353.57).

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market product and the U.S. product was substantial, we calculated foreign market value based on constructed value (CV), in accordance with section 773(e) of the Act. In this case, we determined that an adjustment greater than twenty percent is substantial. The calculation of constructed value is fully described in the "Constructed Value" section of this notice.

We used best information available for two U.S. products of circuit cards, for which both the difference in merchandise adjustment was greater than twenty percent and no constructed value was supplied on the computer tape. As best information available, we took the highest margin for Samsung contained in the petition for circuit cards and modules.

Goldstar

Where sales in the home market were used, we calculated foreign market value based on the packed, delivered or ex-works prices to unrelated customers. We made deductions, where appropriate, for inland freight, cash discounts, volume rebates, product rebates and exchange rebates. We deducted the home market packing costs from the foreign market value and added all U.S. packing costs. We made deductions, where appropriate, for differences in credit terms and advertising. We also deducted home market indirect selling expenses, including: warranty expenses, inventory carrying costs, and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.41 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

We calculated foreign market value, in the third country markets, based on the packed, delivered or ex-works prices to unrelated customers. We made deductions, where appropriate, for wharfage, ocean freight, inland freight in the third countries, brokerage, stuffing and marine insurance. We deducted the home market packing costs from the foreign market value and added all U.S. packing costs. We made deductions, where appropriate, for differences in credit terms and commissions. We added duty rebates to the third country price. We also deducted third country indirect selling expenses, including: inventory carrying costs and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.41 of the Department's regulations.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market or third country product and the U.S. product was substantial, we calculated foreign market value based on constructed value in accordance with section 773(e) of the Act. In this case, we determined that an adjustment greater than twenty percent is substantial.

Constructed Value

In the situations described above, we calculated foreign market value based on constructed value for Samsung and Goldstar, in accordance with section 773(e) of the Act. The constructed value included amounts for materials, fabrication costs, general expenses, profit and packing. The statutory minimum of eight percent profit was applied in the case of Samsung. For Goldstar, the actual profit rate submitted by the respondent was used since it exceeded the eight percent statutory minimum. In all cases the amounts for actual general expenses were used since these figures exceeded the statutory minimum of ten percent of the cost of materials and fabrication. Reported finance expenses were reduced to account for the interest portion included in the imputed credit and finished goods inventory carrying costs.

In general, the information submitted by respondents was relied upon in calculating constructed value, except in those instances where the costs were not appropriately quantified or valued. For Samsung, we adjusted several costs which were not appropriately quantified or valued. First, the Department used Samsung's corporate general and administrative (G&A) and finance expenses, as a percentage of the cost of sales, to develop a ratio in calculating the G&A and finance expenses for the subject merchandise. Samsung had reported these expenses using a ratio based primarily on the divisional G&A and finance expenses, instead of the corporate G&A and finance expenses. Also the constructed value information reported by Samsung did not contain gains and losses on the disposal of fixed assets, research and development (R&D) amortization expenses, special depreciation, miscellaneous and other losses incurred. Amounts for these losses were therefore allocated to the subject merchandise as non-specific operating expenses in the computed general expenses. We made circumstance of sale adjustments for credit, warranty, and advertising expenses.

For Goldstar, we adjusted the costs which were not appropriately quantified or valued as follows. The G&A and finance expenses of consolidated Goldstar Telecommunications as a percentage of the cost of sales for consolidated Goldstar Telecommunications were used by the Department to develop the factor used in calculating the G&A and finance expenses for the subject merchandise. Goldstar had used a ratio based on divisional G&A and finance expenses instead of corporate-wide G&A and finance expenses. We also made deductions from constructed value for home market selling expenses consisting of credit and advertising. We made an adjustment to constructed value for home market indirect selling expenses consisting of warranty expenses, inventory carrying costs, and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.41 of the Department's regulations.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York in accordance with § 353.60 of the Department's regulations.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SBTS from Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Korea exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Samsung Electronics Co., Ltd	9.33
Goldstar Telecommunications Co., Ltd	6.09

Manufacturer/Producer/Exporter	Weighted-average margin percentage
All others	7.79

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs in at least ten copies must be submitted to the Assistant Secretary by September 21, 1989, and rebuttal briefs by September 26, 1989. In accordance with § 353.38(b) of the Department's regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 1 p.m. on September 29, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the arguments to be raised. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: July 26, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18067 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-05-M

[A-122-804]

Final Determination of Sales at Less Than Fair Value: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that new steel rail, except light rail, (hereinafter referred to as new steel rail) from Canada is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of new steel rail from Canada as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5050 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that new steel rail from Candada is being, or is likely to be, sold in the United States at less than fair value, as provided for in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On March 6, 1989, we made an affirmative preliminary determination (54 FR 10393, March 13, 1989). The following events have occured since the publication of that notice.

On March 13, 1989, petitioner filed a request for alignment of the countervailing duty and antidumping duty final determinations. On March 16, 1989, respondent filed a request for postponement of the final determination for 60 days. Pursuant to section 705(a)(1) and section 735(a)(2)(A) of the Act, respectively, we aligned the countervailing duty and antidumping duty final determinations and postponed the final determinations to not later than July 26, 1989 (54 FR 14264, April 10, 1989).

The questionnaire responses from the Algoma Steel Corporation, Ltd. (Algoma) were verified in Canada between May 8 and May 17, 1989.

On June 28, 1989, the Department held a public hearing. Interested parties submitted comments for the record in their case briefs on June 19, 1989, and in their rebuttal briefs of June 26, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is new steel rail, whether of carbon, high carbon, alloy or other quality steel, and includes, but is not limited to, standard rails, all main line sections (at least 30 kg. per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails (rails less than 30 kg. per meter or 60 pounds per yard). Also excluded are relay rails which are used rails taken up from a primary railroad track and relaid in a railroad yard or on a secondary track.

The product covered by this investigation is currently provided for under the following HTS subheadings: 7302.10.1020, 7302.10.1040, 7302.10.5000, 8548.00.0000. Prior to January 1, 1989, such merchandise was classifiable under items 610.2010, 610.2025, 610.2100 and 688.4280 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Period of Investigation

The period of investigation is April 1, 1988, through September 30, 1988.

Fair Value Comparisons

To determine whether sales of new steel rail from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified below.

United States Price

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of new steel rail where sales were made to unrelated purchasers prior to importation of the product into the United States. We also used the purchase price to represent the United States price for sales of the subject merchandise where sales were made to an indirectly related purchaser, who was the end-user of the product, prior to importation of the product into the United States.

We calculated purchase price based on packed, f.o.b. prices. We made deductions, where appropriate, for inland freight, duty, and brokerage and handling.

Foreign Market Value

For the reasons cited below and in accordance with section 776(b) of the Act, we have determined that the use of best information available is appropriate for foreign market value. As best information available, we used the constructed values for certain types of new steel rail. These constructed values were developed from costs presented in the petitioner's allegations of sales below the cost of production (COP). We were not able to use all U.S. sales in our analysis because we did not have costs for all products. Furthermore, because we used best information available for foreign market value, we did not use any of the claimed home market adjustments in our calculations.

On January 19, 1989, petitioner alleged that Algoma's home market sales of new steel rail were made at prices below the COP. On March 3, 1989, we initiated a COP investigation and requested cost information from the respondent.

At verification we determined that the cost information submitted by the respondent was materially deficient and could not be verified. For further discussion of this issue see our response to Comment 1 under the "Interested Party Comments" section of this notice.

As respondent's costs could not be verified, we were unable to compare home market prices to the respondent's COP. Accordingly, we have assumed that all home market prices are below the COP. Therefore, as previously noted, as best information available for foreing market value, we based our calculation of constructed values on the cost information contained in the petitioner's COP allegation.

Petitioner calculated a COP for each of the four rail sizes with a particular hardness range. Each COP was developed separately for both the second and third quarters of 1988. Petitioner's costs were based on standard costs adjusted for variances, fixed costs, depreciation and general, selling, and administrative expenses (GS&A). Adjustments were also made for differences between steel production costs using electric furnace versus basis oxygen furnace technology and for other differences between U.S. and Canadian production costs, including materials, fabrication, and factory overhead.

We substracted U.S. taxes from petitioner's COP because a home market constructed value is net of taxes. We also added U.S. credit expenses to petitioner's COP because the U.S. price includes credit and petitioner's COP was net of any sales-specific credit expenses. We added the statutory eight percent profit, in accordance with section 773(e)(1)(B)(ii) of the Act, to obtain a constructed value for each rail size. Petitioner's COP included GS&A which exceeded the statutory minimum of 10 percent. We further adjusted the constructed values by adding U.S. packing, in accordance with section 773(e)(10)(C) of the Act. We also made a circumstance of sale adjustment for U.S. credit, in accordance with section 773(A)(4) of the Act.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve Bank of New Nork in accordance with § 353.60 of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.60).

Verification

Except where noted, used verified information in making our final determination in this investigation in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: Petitioner maintains that Algoma's cost of production information should not be used because it could not be verified. Petitioner, theefore, claims that "best information available" should be used and that such information should be the higher of the petitioner's information or the "actual costs" obtained during verification.

Respondent claims that the Department should use the submitted cost response, which Algoma considers reasonable, because its costs are based on the cost of sales, with subsequent adjustments made for the purposes of the investigation. Respondent contends that it misinterpreted the Department's cost questionnaire, and instead of providing the actual cost of production which it records in its normal course of business, it chose to submit product costs based on standards developed subsequent to the period of investigation. Respondent also maintains that it would be unfair to reject the response at this late date.

DOC Position: Because Algoma's cost respones could not be verified, we have not compared Algoma's home market prices to its COP. Instead, we have used the cost information submitted in petitioner's allegations of sales below COP to calculate constructed values. These constructed values were compared top respondent's verified U.S. sales information to calculate the less than fair value margins.

The Department did not accept the cost of production information provided in the response for the following reasons. The Department requested actual costs in its questionnaire. However, respondent developed information for the investigation based on the standard product costs used by the company, which were not part of the normal financial accounting system and which were for a period subsequent to the period of investigation. Moreover, the company had a cost system which investigation. Moreover, the company had a cost system which reported actual costs for each product but chose not to use this information for its response. The company also did not provide documentation to support the reported standard costs or to tie them to the company's financial records. In addition, the standard costs, as adjusted, submitted by respondent did not reconcile to the company's actual inventory costs and were developed based on data outside the period of investigation. These and other deficiencies are outlined in detail in the public version of our cost verification

report, which is on file in Room B-099 of the Main Commerce building.

Based on the respondent's failure to report actual costs and its inability to provide supporting documentation for the standard costs at verification, the Department determined that Algoma's cost response could not be relied upon for this final determination. Because we did not use the cost response, other comments by the petitioner and the respondent relating to cost of production methodologies are moot.

Comment 2: Petitioner argues that the Department's determination of "such or similar" merchandise should be based upon objective physical characteristics used in the marketplace, *i.e.*, size, hardness and length, in accordance with American Rail Engineering Association (AREA) standards. Petitioner argues that the Department placed disproportionate importance on rail hardness in the preliminary determination, thereby skewing the fair value comparison.

Respondent claims that rail hardness, as opposed to rail size, is the most important physical and commercial characteristic of steel rails. Respondent contends that railway specifications distinguish between small differences in rail hardness. Furthermore, respondent states that rails with different hardnesses have different metallurgical properties, and that both petitioner and respondent sell rails of the same hardness, but different sizes, at about the same prices and charge a premium price for rails with a higher hardness.

Respondent further argues that AREA specifications alone should not dictate how the Department makes its product comparisons because many railways specifically order rail with a hardness that deviates from AREA standards. Respondent claims that petitioner's own testimony and pricing practices conflict with its contention that rail size is the most important distinguishing factor between different types of rails. Respondent argues that the Department should use its preliminary product comparisons in the final determination.

DOC Position: As best information available, we used the costs alleged by petitioner to calculate a constructed value as the basis for foreign market value. We matched constructed values to particular U.S. sales using two criteria: Size (pounds per yard of rail) and hardness (as measured by the Brinnell hardness scale). U.S. sales were compared to the adjusted constructed values when the sizes were exactly the same and when the hardness was within the narrow hardness range of the costs developed by petitioner.

Using these two criteria, we also determined that there were no corresponding costs in the petition which could reasonably be compared to certain sales in the United States. Accordingly, these sales, representing a small percentage by value of all U.S. sales during the period of investigation, were not included in our calculation of the margins in this final determination.

Comment 3: Petitioner claims that what respondent terms "downgraded" rail is in fact standard rail and should be compared to other sales of standard rail. Petitioner also argues that sales of industrial rail should be included in the Department's calculations for the final determination.

Respondent contends that there is no basis for petitioner's argument disputing the existence of downgraded rail. Respondent further argues that the Department should disregard sales of downgraded and industrial rail in its analysis because these sales were made of obsolete and clearance merchandise and were made outside the ordinary course of trade.

DOC Position: Sales of industrial rail, downgraded rail and rail with a hardness outside the range used by petitioner in its COP allegation were not used in our calculations for this final determination because we did not have constructed values for these types of rails.

Comment 4: Petitioner contends that the Department's treatment of Canadian federal and provincial sales taxes in the preliminary determination was incorrect. Petitioner claims that it is improper for the Department to deduct home market taxes from the reported home market price and add back the amount of taxes imputed to the U.S. sale. Petitioner argues that the statute does not require this methodology and that this approach results in an undercollection of duties. There is no indication in the statute that the foreign market value should be adjusted, nor does this tax qualify as a circumstance of sale adjustment. Petitioner contends that the Department should add the estimated taxes to the U.S. price and then include the tax actually paid in the foreign market value. On the other hand, petitioner argues that the Department could instruct Customs on entry to adjust the U.S. price used to calculate the estimated duty deposit.

Respondent states that the Department's methodology in the preliminary determination is consistent with the statute and past practice. Respondent argues that the Department should use the methodology applied in the preliminary determination in its final determination.

DOC Position: This issue is moot because home market prices were not used to calculate foreign market value. Accordingly, no adjustments were made to foreign market value or U.S. price for Canadian federal and provincial taxes.

Comment 5: Petitioner argues that respondent's claim for duty drawback should be either partially or entirely rejected because verification did not establish that the allocation was reasonable. Petitioner contends that, at the least, the Department should include the duty drawback on rails to the extent that the increased cost of blooms is allocated to rails as well as structural shapes. Petitioner also claims that the Department only verified that imported materials were used in the production of steel as opposed to steel rails, and that respondent did not provide documentation showing that the steel tonnage on which the duty drawback claim was made included steel rails.

Respondent claims that it is entitled to a full adjustment for duty drawback. Respondent contends that petitioner does not define its "reasonableness test" nor cite statutory authority for its claim that the Department should only include the duty drawback on rails to the extent that the increased cost of blooms is allocated to rails as well as structural shapes. Respondent further argues that the information which the Department verified is sufficient to satisfy the meaning of section 772 of the Act.

DOC Position: It is unclear whether any duties are reflected in the costs submitted by petitioner which we used as the basis for foreign market value. As best information available, we have assumed that duties are not included and accordingly have not made an adjustment to U.S. price for duty drawback.

Comment 6: Petitioner claims that the Department should not assume that the U.S. credit period was equal to the average number of days on shipments for which no payments were received by April 30, 1989. This average is applied as the number of payment days in the very first transaction in the listing. Petitioner argues that if the shipment for a particular transaction took place during the second quarter of 1988, the payment period is much greater than the average payment days reported. Petitioner also argues that the supporting documentation submitted in respondent's rebuttal brief has not been verified and, therefore at the least, the Department should assume that all sales where no payment has been made prior to April 30, 1989, have a credit cost

equal to the number of days between the date of shipment and May 1, 1989.

Respondent states that payment has now been made for U.S. observation 1 and the average days payment figure should be corrected.

DOC Position: This sale was not used in our analysis because we did not have a constructed value to compare to this U.S. sale.

Comment 7: Petitioner claims that duty charges on U.S. observations 5 and 6 are apparently incorrect.

Respondent states that the duty amount on U.S. observation 5 is incorrect due to a clerical error. Respondent argues that the duty charge on U.S. observation 6 was verified and is correct.

DOC Position: U.S. observation 5 was not used in our analysis because we did not have a constructed value to compare to this U.S. product. Although the rail in observation 6 is an alloy rail, the actual duty charged by respondent to its customer was based on the sale of a carbon rail (U.S. observation 2). We verified that the duty actually charged on the invoice for U.S. observation 6 was based on this carbon rate. We have therefore accepted respondent's figure for duty for U.S. observation 6.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of new steel rail from Canada, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Algoma Steel Corporation, Ltd.	38.79
All Others	38.79

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on new steel rail from Canada entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act, 19 U.S.C. 1673(d).

Eric I. Garfinkel,

Assistant Secretary for Import Administration

July 26, 1989.

[FR Doc. 89-18064 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-806]

Preliminary Determination of Sales at Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain small business telephone systems and subassemblies thereof (SBTS) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of SBTS from Taiwan, except those produced by Sun Moon Star Inc., as described in the 'Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 10, 1989.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Jim Terpstra, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-4103, respectively.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We preliminarily determine that SBTS from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 24, 1989 (54 FR 3516), the following events have occurred. On February 13, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Taiwan of SBTS (USITC Pub. No. 2156, February 1989).

On February 9 and March 27, 1989, the Department's questionnaire was presented to Taiwan Nitsuko Co., Ltd. (Taiwan Nitsuko) and Sun Moon Star Inc. (Sun Moon Star). These two manufacturers account for a substantial portion of exports of the subject merchandise to the United States during the period of investigation (POI).

On April 13, 1989, petitioners requested the preliminary determination be postponed. On April 27, 1989, in accordance with section 733(c)(i)(A) of the Act, we postponed the preliminary determination until July 26, 1989 (54 FR 19211 May 4, 1989).

On February 17, March 6, May 16 and May 17, 1989 we received replies to the questionnaire from Taiwan Nitsuko. On March 3 and May 15, 1989 we received replies to the questionnaire from Sun Moon Star.

A number of supplemental and deficiency questionnaires were issued subsequent to May 15, 1989. Supplemental and deficiency responses were received from the respondents prior to this preliminary determination.

On July 7, 1989, the Department initiated an investigation of Taiwan Nitsuko under the special rule for certain multinational corporations, section 773(d) of the Act (the MNC

provision). This initiation was based on information provided by petitioners in several submissions. We presented sections B(a), B(b), B, and D of the Department's MNC questionnaire to Taiwan Nitsuko.

On July 11, 1989, Taiwan Nitsuko requested a one week extension to respond to section B(a) and B(b) of the Department's MNC questionnaire, which we granted.

On July 21, 1989, Taiwan Nitsuko submitted a letter declining to respond to sections B(a), B(b), B, and D of the Department's MNC questionnaire.

The MNC Provision

As noted above, the petitioners alleged that the MNC provision was applicable with respect to Taiwan Nitsuko. Similar to the Department's practice with regard to sales below cost investigations, the Department did not automatically request data relevant to the MNC provision. Instead, the Department required petitioners to present an adequate and timely allegation regarding the applicability of the MNC provision. An adequate allegation is one that gives the Department a basis for believing that the following criteria exist:

(1) Merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which ae located in another country or countries.

(2) The sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States.

(3) The foreign market value (FMV) of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation.

(4) Because the Department bases its fair value comparisions on comparable merchandise, any observed differences in FMV are not solely attributable to physical differences in merchandise.

(5) Any observed differences in value between the FMV of products produced outside the country of exportation and the FMV of products produced in the country of exportation are not solely attributable to differences in costs of production, pursuant to the final paragraph of the MNC provision.

There are two stages in an MNC investigation. In the first stage, the Department must establish that the five criteria for applying the MNC provision are satisfied (the same criteria as for initiating an MNC investigation). In the second stage, assuming the five criteria are met, the Department must calculate FMV by reference to the FMV of such or similar merchandise produced in facilities outside the country of exportation. This FMV must be adjusted for differences in costs of production (including taxes, labor, materials, and overhead) between the country of exportation and the facilities outside the country of exportation.

As noted above, the threshold for initiating an MNC investigation was met by petitioners. Consequently, we issued a questionnaire to Taiwan Nitsuko seeking additional data relevant to the MNC provision. However, Taiwan Nitsuko declined to respond to this questionnaire. Therefore, as explained below, the Department is using best information available (BIA) for Taiwan Nitsuko in accordance with section 776(c) of the ACT.

Period of Investigation

The POI is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et. seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software

used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. We therefore have clarified the language describing the subassemblies under investigation.

In addition, the Department has received a number of inquiries regarding the inclusion of dual use subassemblies within the scope of this invetigation. The Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C), we established four categories of "such or similar" merchandise consisting of: (a) control and switching equipment, (b) circuit cards and modules, (c) telephone sets and consoles, and (d) complete small business telephone systems.

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria:(1) port capacity based on minimum operational configuration, (2) type of central microprocessor, (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) functions, (2) physical appearance. For telephone sets and consoles we considered: (1) number of buttons (regardless of function) excluding dialpad, (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

Where there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments proved to be substantial, we used constructed value. In this case, we determined that an adjustment greater than 20 percent is substantial.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

For Sun Moon Star, we determined that there were sufficient home market sales to unrelated customers for three such or similar categories. There were no sales of complete small business telephone systems in the United States during the POI.

Fair Value Comparisons

To determine whether sales of SBTS from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Since Taiwan Nitsuko declined to provide information essential to our investigation, we used the best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for products manufactured by Nitsuko Japan for each such or similar category and averaged these figures to determine the margin for Taiwan Nitsuko in this investigation.

Taiwan Nitsuko declined to respond to the Department's MNC questionnaire. Because the MNC provision calls for the Department to calculate FMV with reference to merchandise produced in facilities outside the country of exportation, we attemtped to compare the FMV in the petition for merchandise produced and sold in Japan with actual United States prices reported by Taiwan Nitsuko, for products produced in Taiwan and sold in the United States, or Taiwan Nitsuko U.S. sales prices provided in the petition. Since there were no sales for Taiwan Nitsuko reported in the petition and we were unable to find comparable merchandise from Taiwan sold during the POI, we used the margins calculated in the petition based on a comparison of the FMV of merchandise produced and sold in Japan and the United States price of merchandise produced in Japan and sold in the United States. Petitioner supplied information indicating that Taiwan Nitsuko and Nitsuko Japan produce the same products for sale in the United States and that these products are sold at the same prices to the same single customer.

For Sun Moon Star Inc., we compared the United States price to the foreign market value, as described below.

United States Price

Because virtually all sales by Sun Moon Star were made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. We calculated purchase price based on packed f.o.b. Taiwan port prices. Gross unit price was based on the contract price plus the exchange rate adjustment as calculated by Sun Moon Star. Sun Moon Star made a further upward adjustment to gross unit price to account for early payment on future sales. We made deductions where appropriate for inland freight and brokerage and handling. We added uncollected duties and value-added tax pursuant to § 353.41(d) (ii) and (iii) of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR § 353.41).

For Taiwan Nitsuko, we used information contained in the petition for United States price.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Sun Moon Star based on home market sales, or constructed value, as appropriate. We calculated foreign market value based on the packed, delivered or ex-works prices to unrelated customers in the home market. We make deductions, where appropriate, for inland freight, discounts, advertising and rebates. We deducted the home market packing costs from the foreign market value and added all U.S. packing costs. We make circumstance of sale adjustments, where appropriate, for differences in credit terms and warranties. We made adjustments for indirect selling expenses and inventory carrying costs in the home market to offset commissions paid in the United States in accordance with § 353.56(b) of the Department's regulations.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value added tax we computed for the United States price.

For those products sold in the United States for which the difference in

merchandise adjustment between the reported home market product and the U.S. product was substantial, we calculated foreign market value based on constructed value in accordance with section 773(e) of the Act. In this case we determined that an adjustment greater than 20 percent is substantial.

For Taiwan Nitsuko, we used information contained in the petition for FMV.

Constructed Value

In the situations described above, we calculated the constructed value in accordance with section 773(e) of the Act. Except where noted below, the Department used the materials, fabrication, and general expenses based on the respondent's submissions. We added U.S. packing, as reported by the respondent.

The Department analyzed the cost submissions of Sun Moon Star to determine the sufficiency of such data for the purpose of calculating constructed value for the preliminary determination. The Department determined that the submission was substantially complete and sufficient and used the submission for the preliminary determination. However, adjustments to Sun Moon Star's data were made when it appeared from the explanation provided in the response that certain costs necessary for the production of the product under investigation were not included or were not appropriately quantified or valued.

For Sun Moon Star, constructed value was calculated on the basis of reported materials and fabrication costs plus general expenses, profit, and import duties. Material cost was adjusted to agree with the supporting detail provided by the respondent. General expenses exceeded the statutory minimum requirement of ten percent of materials and fabrication. General expenses were adjusted to reflect an allocation over cost of goods sold, which is in accordance with the Department's normal methodology. Financial expenses were adjusted to reflect the interest expenses of the entire Sun Moon Star Group. Interest income was not used to offset interest expense since the Department was unable to determine if the revenue was earned from short-term investments related to the current operations of the company. When imputed inventory and/or credit expenses are included in selling expenses, interest expenses reflected on the company's books is reduced for a portion of the expenses related to these activities in order to avoid double counting. The offset to interest expense for imputed credit and inventory carrying costs was calculated using the Sun Moon Star Group nonconsolidated financial statements. Since the respondent's profit calculation reflected less than eight percent, the statutory minimum of eight percent was used.

We made circumstance of sale adjustments, where appropriate, for differences in credit terms, warranties, and advertising. We made adjustments for commissions paid in the United States with indirect selling expenses and inventory carrying costs in the home market in accordance with § 353.56(a)(2) of the Department's regulations. For fair value comparisons, we made an upward adjustment to constructed value for the value-added tax we computed for the United States price.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York in accordance with § 353.60 of the Department's regulations.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SBTS from Taiwan, except those produced by Sun Moon Star, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Taiwan Nitsuko Co., Ltd.	129.73
Sun Moon Star Inc.	00.00
All Others	129.73

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, the U.S. industries before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs in at least ten copies must be submitted to the Assistant Secretary by September 11, 1989, and rebuttal briefs by September 15, 1989. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs at 12:30 p.m. on September 20, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B099, at the above address within ten days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the arguments to be raised. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published

pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Eric I. Garfinkel,
Assistant Secretary for Import Administration.
July 26, 1989.

[FR Doc. 89-18068 Filed 8-01-89 8:45 am]
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[C-122-805]

Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Canada of new steel rail, except light rail ("steel rail"), as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 113.56 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except the Algoma Steel Corporation Ltd. (Algoma), which is excluded from this determination. The estimated net subsidy for Algoma is 0.24 percent *ad valorem*, which is *de minimis*. We have calculated a separate estimated net subsidy for Algoma because its rate differs significantly from the country-wide rate. (See the "Suspension of Liquidation" section of this notice.)

We have notified the United States International Trade Commission (ITC) of our determination. If the ITC determines that imports of steel rail materially injure, or threaten material injury to a U.S. industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of steel rail from Canada that are entered or withdrawn from warehouse, for consumption on or after the date of publication of our countervailing duty order and to require a cash deposit on entries of steel rail in an amount equal to the estimated net subsidy.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose or Margot Paijmans, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414 (Malmrose) or 377-1442 (Paijmans).

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters of steel rail in Canada. For purposes of this investigation, the following programs are found to confer subsidies:

Federal Programs

- Debenture Guarantees Provided to Sydney Steel Corporation (Sysco)
- Forgiven Wharf Loan
- Regional Development Incentives Program
- Certain Investment Tax Credits

Joint Federal-Provincial Programs

- General Development Agreements
- Economic and Regional Development Agreements
- Iron Ore Freight Subsidy to Algoma

Provincial Programs

- Grants for Payment of Principal and Interest on Debentures
- Operating Grants Provided to Sysco
- Long-Term Loan Guarantees Provided to Sysco
- Equity Infusions Provided to Sysco

We determine the estimated net subsidy to be 113.56 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except Algoma, which is excluded from this determination.

Case History

Since the last Federal Register publication pertaining to the substance of this investigation ("Preliminary Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada," (Preliminary Determination), 54 FR 8784, March 2, 1989, the following events have occurred.

On March 13, 1989, petitioner filed a request for alignment of the countervailing duty and antidumping duty final determinations. On March 16, 1989, respondents filed a request for postponement of the final determination for 60 days. Pursuant to section 705(a)(1) and section 735(a)(2)(A) of the Act, respectively, we aligned the countervailing duty and antidumping duty final determinations and postponed the final determinations to no later than July 26, 1989 (54 FR 14264, April 10, 1989).

On May 18, 1989, we delivered a supplemental/deficiency questionnaire to the Government of Canada (GOC). On May 25, 1989, we received responses to our questionnaire from Algoma, Sydney Steel Corporation (Sysco), Nortrack Ltd. (Nortrack), Grand Valley Steel Limited (Grand Valley) and Sessenwein Inc. (Sessenwein). On May 26, 1989, Sessenwein filed corrections to certain errors contained in its May 25, 1989, submission.

We conducted verification in Canada from May 29 through June 14, 1989, of the questionnaire responses from the GOC, the Provincial Government of Ontario, the Provincial Government of Nova Scotia (GONS), Sysco, Algoma, Grand Valley, Sessenwein, C.P. Rail and Nortrack.

On June 6, 1989, Nortrack submitted corrections to certain clerical errors reported during verification. Also on June 6, 1989, Sysco submitted clarifications to its responses. On June 29, 1989, Algoma submitted clarifications, corrections, and other supplemental information.

On July 6, 1989, in accordance with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), we notified U.S. Customs to terminate the suspension of liquidation in this investigation as of July 1, 1989.

On July 10, 1989, GOC submitted supplemental information on the tariff classification of contact or "third" rails. On July 12, 1989, GOC forwarded a report to the Department which was inadvertently omitted at verification.

On July 13, 1989, Algoma filed supplemental information that the Department had requested at verification. On July 14, 1989, Sysco submitted clarification of information on its debentures which the Department had requested at verification.

Petitioner and respondents requested a public hearing in this case on March 8, 1989, which was held on July 18, 1989. Petitioner and Sysco filed case briefs on July 13, 1989, and rebuttal briefs on July 17, 1989. Algoma did not file a case brief but filed a rebuttal brief on July 19, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely

according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is new steel rail, whether of carbon, high carbon, alloy or other quality steel, includes but is not limited to, standard rails, all main line sections (at least 30 kg. per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail(or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails (rails less than 30 kg. per meter or 60 pounds per yard). Also excluded are relay rails which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track.

The product covered by this investigation is currently provided for under the following HTS subheadings: 7302.10.1020, 7302.10.1040, 7302.10.5000 and 8548.00.0000. Prior to January 1, 1989, such merchandise was classifiable under items 610.2010, 610.2025, 610.2100 and 688.4280 of the "Tariff Schedules of the United States Annotated" (TSUSA).

Analysis of Programs

For purposes of this determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987 for Algoma and April 1, 1987–March 31, 1988 for Sysco. These review periods correspond to the respective companies' fiscal years. Normally, we would select the calendar year as the review period for all companies if the companies under investigation had different fiscal years. We have chosen Sysco's fiscal year as that company's review period in order to measure more accurately the subsidies received over time, which have been reported to the Department on a fiscal year basis.

Petitioner alleged that Sysco is unequityworthy and uncreditworthy. We have consistently held that the government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment or, in other words, whether the company was "equityworthy."

The GONS is the sole owner of Sysco, which it purchased in 1968. Sysco has never issued shares; therefore, we must determine whether Sysco was equityworthy in each instance when the GONS made an equity infusion. We do not reach the question of whether Sysco was equityworthy in 1968. The initial purchase of Sysco by the GONS occurred prior to the 15 year period in which we are examining all the financial assistance received by Sysco which may have benefited the company during the review period. We are using 15 years because it represents the average useful life of assets in the steel industry as determined by the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. Use of the IRS tables is in accordance with past practice and is described in detail in the "Subsidies Appendix" attached to the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel and Flat-Rolled Products from Argentina," (Subsidies Appendix), 49 FR 18006, April 26, 1984.

Although Sysco's equityworthiness in 1968 and the GONS's equity infusion in 1968 will not be examined, the GONS made additional equity infusions into Sysco in the period 1974 through 1988. Therefore, we have reviewed Sysco's equityworthiness in each of the years in which it received equity capital from the GONS during that period.

A company is considered unequityworthy if it is deemed unable to generate a reasonable rate of return within a reasonable period of time. In making our equityworthiness determinations, we assess the company's current and past financial health, as reflected in various financial indicators taken from its financial statements. The indicators we examine include the following ratios: rate of return on total assets and net equity, profit margin on sales, operating loss to financial expense, the current and quick ratios and debt to equity and debt to total assets. We give great weight to the company's recent ability to earn a return on total assets and to generate a profit margin on sales as indications of the company's financial health and prospects. Based on the factors described above, we determine that Sysco was unequityworthy in each year in which it received an equity infusion in the period from 1973 through 1988.

Petitioner additionally alleged that Sysco is uncreditworthy. We consider a company creditworthy if it appears that it will have sufficient revenues or resources to meet its costs and fixed financial obligations, absent government intervention. Like our equityworthiness test, to determine the creditworthiness of a company we analyze the company's past operations, as reflected in various financial indicators calculated from its financial statements. We give great weight to the company's recent past ability to meet its financial cost obligations with its cash flow. Based on an analysis of the factors described above, we determine Sysco to be uncreditworthy for the period from 1973 through 1988.

We determine that Sysco is uncreditworthy despite the fact that it has received financing from private commercial sources. We are discounting the importance of such financing because we have determined that Sysco would not have received this financing but for the guarantees provided by the GOC and the GONS.

All of Sysco's debentures and loans are guaranteed by either the federal or the provincial government. (See sections I.A.1., I.C.3. and II.A.) With respect to the provincial loan guarantees, Sysco has argued that these guarantees are not countervailable. In support of their position, respondents cite § 355.44(c)(1) of the proposed Countervailing Duty regulations, published in the **Federal Register** on May 31, 1989 (54 FR 23366) (to be codified at 19 CFR Part 355) (proposed regulations), which states "[t]he explicit guarantee by a government of a loan to a firm shall not confer a countervailable benefit if the government is a principal owner or majority shareholder of the firm and it is a normal commercial practice in the country in question for owners or shareholders to provide loan guarantees on comparable terms to their firms."

The statement in the proposed regulations embodies the Department's general policy on loan guarantees as exhibited in previous cases. (*See*, "Final Affirmative Countervailing Duty Determination on Carbon Steel Wire Rod from Trinidad and Tobago," 49 FR 480, January 4, 1984.) However, we note that our past practice has been limited largely to government guarantees on commercial loans to equityworthy companies or to government guarantees on loans from government sources. When analyzing loan guarantees to companies that may not be reasonable commercial investments, we believe it is appropriate to use the same "reasonable investor" analysis as we would for an equity infusion. Just as a reasonable investor would not purchase stock in an unequityworthy firm, it would not guarantee a loan to a company in such poor financial straits that the guarantor would be bound to lose money. This analysis is consistent with prior cases in

which we considered the government guarantee to be "the action of a major shareholder contributing to its investment in a * * * project." *Id.* at 485. In such cases, we have evaluated the loan guarantees in terms of whether the investment was inconsistent with commercial considerations. *Id.* Based on our analysis of Sysco's financial position, as outlined earlier under our equityworthy analysis, we determine that the government's provision of loan guarantees to Sysco is not a reasonable commercial decision. Based on this analysis, and because these guarantees are limited to a specific industry, we determine that the government provision of loan guarantees to Sysco provides a potential countervailable benefit.

Our past practice, described in the "Subsidies Appendix", for measuring the benefit conferred by the provision of a government loan guarantee, is to first compare the cost of the government guarantee to the cost the firm would have paid for a comparable commercial guarantee. If no difference between government and commercial guarantee costs is evident, we then compare the terms of the guaranteed loan to the benchmark financing. We verified that loan guarantees cannot normally be purchased from commercial sources. Consequently, we cannot compare Sysco's treatment against normal commercial practices in Canada. Therefore, for all of Sysco's guaranteed financing we analyzed the extent to which the company received more favorable terms on its financing than the benchmark financing. (See sections I.A.1., I.C.3. and II.A.)

With respect to the calculations of benefits from grants and government debenture and loan guarantees received by Sysco, we used as the discount rate for allocating the benefits over time the benchmark interest rate calculated for purposes of valuing the subsidy provided on Sysco's debentures and loans which were guaranteed by either the federal or provincial government. (See sections I.A.1. and I.C.3.) We were unable to use Sysco's weighted cost of capital, which is our preferred method of deriving the discount rate, for the following reasons. In the years 1973–1976, we do not have information on the national average rate of return on equity. In the years 1977–1988, either Sysco's equity as a percent of total capitalization was negative or Sysco's capitalization in its entirety was negative. Consequently, we could not meaningfully employ our weighted cost of capital formula.

Sysco received grants and/or equity infusions, which we are treating as grants (see section I.C.4.), in every year during the period 1974–1988. In accordance with past practice (*see* "Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada", (*OCTG*), 51 FR 15037, April 22, 1986), for all the programs which provided non-recurring grants and for all the benefits received by Sysco which we treated as non-recurring grants, we first determined if the benefit amount received by Sysco, in each of the years in which the benefit was received, was more than 0.50 percent of the company's total sales for that year. In every year, the benefit amount exceeded the 0.50 percent rate; therefore, for all of the grants and equity infusions received by Sysco, we allocated the benefit over the average useful life of equipment in the steel industry, which is 15 years. Using the above methodology, we also allocated over 15 years, unless otherwise specified, the benefit from the grants received by Algoma.

As mentioned in the "Case History" section, we verified questionnaire responses from the two producers and four non-producer exporters. We verified that none of the non-producer exporters received any benefits from the programs under investigation with respect to steel rails exported to the United States. Therefore, the steel rail exports of each respondent non-producer exporter will be subject to the estimated net subsidy of the producer from which it purchased the steel rail. As the best information available, we are assigning the estimated net subsidy rate of Sysco to the one non-respondent non-producer exporter, Bernard Railtrack Export Inc.

Based upon our analysis of the petition, the responses to our questionnaires, verfication, and written comments filed by petitioner and respondents, we determine the following.

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers or exporters in Canada of steel rail under the following programs.

A. Federal Programs

1. Debenture Guarantees Provided to Sysco

Sysco issued its Series C debenture in 1973 and its Series D debenture in 1975. Series C was denominated in U.S. dollars, issued for 20 years and guaranteed by the GONS. The terms of Series C provided for semi-annual interest payments and annual principal repayments starting in 1979.

Series D was denominated in Canadian dollars, issued for 20 years and guaranteed by the Cape Breton Development Corporation (Devco), a crown corporation of the GOC. The terms of Series D provided for semi-annual interest payments and gradually increasing annual principal repayments. No fee was paid for the GONS or Devco guarantees.

These guarantees were provided to one company. Thus, we determined that their provision was limited to a specific enterprise. Based on the reasons explained in the "Analysis of Programs" section pertaining to the government provision of debenture and loan guarantees, Sysco's debenture guarantees are countervailable to the extent that the terms are more favorable than the benchmark financing.

As described in the "Analysis of Programs" section, we have determined that Sysco has been uncreditworthy throughout the period 1973–1988. In the case of uncreditworthy companies, we assume that private lenders either would not provide loans to such companies or would require a premium interest rate. (See the Subsidies Appendix.) In selecting an appropriate benchmark, we must formulate an approximation of the premium interest rate a commercial source of financing would charge an uncreditworthy company. The first step in the formulation of such an interest rate is to determine the highest long-term fixed interest rate a marginally creditworthy borrower would have to pay in order to receive a loan.

The next step is the calculation of a risk premium. This amount represents the difference in risk between a marginally creditworthy company and an uncreditworthy company. In previous cases (*See* "Certain Carbon Steel Products from Brazil: Final Results of Countervailing Duty Administrative Review", 52 FR 629, January 9, 1987), we have derived this risk premium by examining the difference between Moody's Aaa and Baa corporate bond rates and calculating the percentage this difference represents of the prime interest rate in the United States. We have found that the risk premium as calculated by this approach is 12 percent. If the financing is not in U.S. currency, this percentage is then applied to the prime interest rate in the country concerned to derive a comparable measure of the risk premium in the local economy. The final step in our calculation of the appropriate benchmark for an uncreditworthy

company is to add the risk premium to the highest long-term fixed interest rate commonly available to a marginally creditworthy company.

For the series D debenture denominated in Canadian dollars, we chose for the highest long-term fixed interest rate commonly available to a marginally creditworthy company the rate on BBB Canadian corporate bonds. To this we added the risk premium, calculated as 12 percent of the Canadian prime rate. We used the resulting interest rate as our benchmark for the debenture denominated in Canadian currency.

With respect to the series C debenture denominated in U.S. dollars, we followed the same general approach described above in constructing a benchmark. We used the rate on Baa U.S. corporate bonds as the highest long-term fixed interest rate commonly available to a marginally creditworthy company and 12 percent of the U.S. prime rate for the calculation of the risk premium. Based on this methodology, we derived a benchmark for the debenture denominated in U.S. dollars. In addition, we calculated an effective interest rate on this debenture to account for the difference in the face value of the issue and the actual amount received by Sysco for the issue.

We compared the two benchmarks formulated above to the interest rates received on the two series of debentures issued by Sysco and found that the interest rates on Sysco's debentures were lower than the respective benchmarks. Therefore, we determine that the guarantees provided to Sysco by the GOC and the GONS are countervailable.

To determine the benefit, we calculated the payment differential between the benchmark financing and the guaranteed debentures using our long-term loan methodology which is described in the "Subsidies Appendix" and has been described in numerous previous cases. (*See*, for example, "Final Affirmative Countervailing Duty Determination; Certain Granite Products from Spain", 53 FR 24340, June 28, 1988.) We allocated the benefit over 20 years using as the discount rate the benchmark interest rates described above. (We were not able to base the discount rate on Sysco's weighted cost of capital for the reasons discussed in the "Analysis of Programs" section.) We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 1.13 percent *ad valorem* for Sysco.

2. Forgiven Wharf Loan

In 1972, the federal government provided Sysco with a loan to construct a loading wharf, which was completed in June 1978. Beginning in June 1979, Sysco was to make twenty equal payments to pay off the total advances from the government consisting of principal and interest accrued during the construction of the wharf. The twenty equal payments did not include any additional interest charges beyond 1978. No payments on the loan were made. In May 1981, the federal government announced that the loan would be forgiven. In 1982, Sysco removed the outstanding principal and estimated accrued unpaid interest from its long-term liabilities as shown in its audited financial statement.

We determine that the benefit provided by the loan forgiveness is countervailable because it was provided to a specific enterprise. Furthermore, we determine that for the period 1979 through 1981, the year in which the loan was forgiven, the loan was interest-free. Therefore, we have added to the original balance the interest that would have been paid for the period 1979 through 1981 at the benchmark interest rate, described in the previous section. We treated this entire amount as a grant given in 1981. Using the declining balance methodology and the benchmark rate, we allocated the benefit over 15 years, for reasons explained in the "Analysis of Programs" section of this notice, and divided the benefit attributable to the review period by Sysco's total sales. The calculated estimated net subsidy rate is 2.36 percent *ad valorem* for Sysco.

3. Regional Development Incentives Program (RDIP)

The RDIP was administered by the Department of Regional Economic Expansion (DREE) until its replacement with the Industrial Regional Development Program (IRDP) in 1983. It was established in 1969 for the purpose of creating stable employment opportunities in certain regions of Canada where employment and economic opportunities are chronically low, particularly the Atlantic provinces. The DREE offered incentives based on a case-by-case evaluation of capital investment projects. Projects that could proceed without RDIP assistance were ineligible. Assistance was provided in the form of grants or loans guarantees.

Although the program was terminated in 1983, RDIP grants were provided to both Sysco and Algoma prior to its termination. We determine that the RDIP grants are countervailable because the benefits are limited to companies located within certain regions of Canada. (*See* also OCTG and "Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada" (Groundfish), 51 FR 10041, March 24, 1986.)

Algoma received two RDIP grants; Sysco received four RDIP grants. We verfied that one of the grants received by Algoma was specifically tied to the production of products not under investigation. Therefore, consistent with past practice (see OCTG), we did not include this grant in our calculations. Algoma's other grant was approved in 1972.

To calculate the benefit, we used the declining balance methodology. We used as the discount rate for Algoma the national average long-term interest rate in Canada in 1972. (We were unable to use our weighted cost of capital formula because we do not have information on the national average rate of return on equity in Canada in 1972.) We used as the discount rate for Sysco the interest rate benchmark discussed in section I.A.1. On this basis, we calculated the benefits attributable to the review period and allocated them to the respective total sales of Algoma and Sysco. We calculated the estimated net subsidy to be 0.03 percent *ad valorem* for Algoma and 1.10 percent *ad valorem* for Sysco.

4. Certain Investment Tax Credits (ITCs)

There are a number of categories of ITCs in Canada and varying tax credit percentage levels within some of the categories. Based on our previous examination of all the types of ITCs in Canada (See OCTG and Groundfish), we initiated an investigation on the following four types of ITCs: (1) Tax credits of three and 13 percent, above the basic seven percent rate which we have previously found non-specific, for investment in "qualified property" located in certain regions of Canada; (2) tax credits for investment in "certified property"; (3) tax credits for large companies of ten percent above the basic 20 percent for investment in capital equipment used for scientific research; and (4) tax credits for investment in transportation and construction equipment.

Canadian tax law provides that ITCs may be subtracted from taxes owed, but if no taxes are owed (either because a company is initially in a tax loss position or because only some of the ITCs have been used to satisfy all tax liability), those excess ITCs earned after April 19, 1983, have a refundable, one-time cash value equal to 20 percent of

the initial, face value of the ITC (40 percent for small businesses).

We verified that Sysco, as a provincially-owned corporation, is not liable for federal tax. Because the company is not liable for federal taxes, it was not eligible for a refund of taxes under the ITC law.

We verified that Algoma benefited from the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" because it is located in northern Ontario, and that it did not use the other ITCs under investigation. Furthermore, we verified that Algoma did not owe taxes on the tax return filed in the review period, but that it received a refund under the procedures described above.

We determine that the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" is countervailable because it is limited to companies located in certain regions of Canada.

To calculate the benefit from the "qualified property" ITC, we followed our standard tax methodology. Under our tax methodology, we allocate an income tax benefit claimed on a tax return to the year in which that tax return was filed. Algoma received a refund on the tax return filed during the review period. Therefore, we consider the amount of the refund attributable to the three percent in excess of the basic rate of seven percent to be the benefit Algoma received during the review period. We divided this benefit amount by Algoma's total sales for the review period and calculated an estimated net subsidy of 0.02 percent *ad valorem*.

B. Joint Federal-Provincial Programs

1. General Development Agreements (GDA)

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic assistance programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with most provinces in 1974.

Subsidiary agreements were signed pursuant to the GDAs. Subsidiary agreements were generally between particular federal and provincial government departments and addressed certain economic development problems under the jurisdiction of the government agency signatories. These agreements established various individual types of economic development programs, delineated administrative procedures, and set out the relative funding commitments of the federal and provincial governments. Subsidiary agreements were typically directed at establishing traditional government economic assistance programs, developing infrastructure, providing for economic development assistance for certain regions within the province, and providing financial assistance to specific industries or enterprises.

Three such subsidiary agreements were signed between the federal government and the GONS. Two agreements were specifically established to provide assistance to Sysco. We determine that funds provided to Sysco under these agreements are countervailable in their entirety because they provided grants to a specific enterprise.

The third subsidiary agreement primarily provided funds for feasiblity and market studies and funds for the development of industrial parks. In our Preliminary Determination, we determined that only the GOC's portion of funds under this third subsidiary agreement was countervailable because it was limited to companies in a particular region of Canada (*i.e.*, the Province of Nova Scotia). We also stated that the GONS's portion of funding was not countervailable because the assistance was not limited to a specific enterprise or industry or group of enterprises or industries in Nova Scotia. However, we also noted in our Preliminary Determination that, although the agreement provided benefits to a wide range and number of industries, an amendment was made to the agreement, subsequent to its implementation, naming Sysco as the specific recipient of new funds not previously authorized under the agreement. Consequently, we stated that we would examine this amendment in detail to determine whether it constituted a discretionary governmental action which provided a benefit to a specific enterprise.

As noted above, the general purpose of the third subsidiary agreement was for general feasibility and market studies and the development of industrial parks. No specific companies were named in the original agreement. The amendment however specifically permitted the provision of funds to Sysco for capital repair. During verification, federal and provincial agreement officials were unable to provide any specific information concerning the circumstances surrounding this amendment. Therefore, we are assuming, as the best information available, that the amendment to the third subsidiary agreement constituted a discretionary governmental action which provided a benefit to a specific enterprise. Thus, we determine that funds provided to Sysco under the amendment to the third subsidiary agreement are countervailable in their entirety.

No assistance to Algoma was provided under the Canada/Ontario GDA or corresponding subsidiary agreements.

We calculated the benefit conferred by the grants using the discount rate for Sysco referred to above (see section I.A.1.) and our declining balance methodology. We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 25.48 percent *ad valorem* for Sysco.

2. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the GDAs. ERDAs were signed with every province and territory in the early 1980's. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments.

Two subsidiary agreements were signed between the federal government and the province of Nova Scotia which related to Sysco. The first provided for grants to fund the modernization of Sysco's operations. The second provided for the funding of economic planning studies throughout the Province, including three feasibility studies which examined different modernization alternatives for Sysco.

We determine that funds provided to Sysco under the first subsidiary agreement are countervailable in their entirety because the agreement provides grants to a specific enterprise.

The monies under the second subsidiary agreement were used to conduct feasibility and market studies for various projects throughout the Province of Nova Scotia. We verified that these funds were provided for such diverse projects as the development and diffusion of communications and information, the identification of a site for a harness racing facility, the assessment of viability of a miniature theme park, and impact studies for rail line abandonment. Therefore, we determine that the portion of funds provided by the GONS is not countervailable because the assistance is not limited to a specific enterprise or industry or group of enterprises or industries. We determine that the portion of funds provided by the GOC

are countervailable because they are limited to companies in a particular region of Canada (*i.e*, the Province of Nova Scotia).

The only indirect assistance received by Algoma under the Canada/Ontario ERDA is described in the next section.

To calculate the benefit we used the same methodology described in the "GDA" section. We calculated an estimated net subsidy of 6.70 percent *ad valorem* for Sysco.

3. Iron Ore Freight Subsidy to Algoma

Algoma ships sintered iron ore pellets from its mine in Wawa, Ontario to its steel mill at Sault Ste. Marie by rail on the Algoma Central Railway (ACR). The ACR also operates the Agawa Canyon Tour Train which is an important tourist attraction in Northern Ontario.

In 1986, Algoma reconsidered its use of Wawa iron ore because the delivered cost of Wawa ore was not competitive when compared to the delivered cost of ore from alternative sources. We verified that Algoma obtained and analyzed bids from a number of companies capable of trucking its iron ore from the Wawa mine. In order to make the delivered cost of Wawa ore competitive, Algoma sought a reduction in ACR's freight rates.

If ACR did not reduce its freight rate to a competitive level, Algoma was considering closing its Wawa mine. Such an action would have forced ACR to cease all operations, including its tour train operation. To preserve the continued operation of ACR, the federal and the Ontario governments provided grants to ACR. The grants were made under the "Canada-Ontario Subsidiary Agreement for Tourism Development" (COTDA), which is a subsidiary agreement under ERDA. As a result of these grants ACR was able to charge Algoma a lower freight rate.

Because the amount of the grants was calculated to permit ACR to charge the lower freight rate sought by Algoma, we determine that the COTDA grants provided an indirect benefit specifically to Algoma. Thus, we determine that this benefit was limited to a specific enterprise.To calculate the benefit to Algoma we compared the truck rate Algoma would have been charged to the reduced freight rate charged by ACR. We divided the difference by Algoma's total sales and found the estimated net subsidy rate to be 0.19 percent.

C. Provincial Programs—Province of Nova Scotia

1. Grants for Payment of Principal and Interest on Debentures

The GONS has provided Sysco with grants to cover principal payments and interest payments on its long-term debentures since 1982. Because these grants are limited to a specific enterprise they are countervailable.

Respondents have argued that we should treat these grants as recurring grants. In determining whether grants are recurring or non-recurring, we must consider the following factors: (1) Whether the program providing the benefit is exceptional; (2) whether the program is of longstanding nature; and (3) whether there is any reason to believe that the program will not continue into the future. (*See* "Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada," 50 FR 25,097, June 15, 1985, and Groundfish.)

In this case, we determine that these grants are non-recurring for the following reasons. First, the government action of providing these grants is exceptional because it is not under any particular established provincial program and because the provincial legislature must approve the funds each year. Moreover, if Sysco had turned a profit, it is unlikely the province would have continued to provide the grants. Second, although these grants have been provided for several years, presumably they will terminate when the debentures are paid off in the near future. Third, if Sysco does become profitable in the future, the grants will probably stop. Therefore, we determine that these grants are non-recurring grants.

To calculate the benefit, we used the same methodology described in the "GDA" section. The estimated net subsidy is 22.73 percent *ad valorem* for Sysco.

2. Operating Grants Provided to Sysco

The GONS has provided Sysco with operating grants to cover its general operating expenses and for capital expenditures. We determine that these operating grants are countervailable because they provide funds to a specific enterprise. We further determine that they are non-recurring because they are not provided under any particular provincial program and because they are provided according to the irregular financial needs of Sysco.

To calculate the benefit, we used the same methodology described in the "GDA" section. The estimated net subsidy is 19.34 percent *ad valorem* for Sysco.

3. Long-term Loan Guarantees Provided to Sysco

Sysco has a number of five-year loan agreements with several Canadian trust companies. The GONS guarantees all of these loans. Interest rates on these five-year loans are variable according to the prime or banker's acceptance (BA) rates. Interest is payable monthly. The trust companies have the option of demanding repayment, in full, of the outstanding principal with 30 days notice. Sysco also has the option of repaying, in full, the outstanding principal. None of these loans have ever been prepaid, nor have the trust companies ever demanded payment before maturity.

These guarantees were provided to one company. Thus, we determine that their provision was limited to a specific enterprise. For the reasons explained in the "Analysis of Programs" section pertaining to the government provision of debenture and loan guarantees, Sysco's loan guarantees are countervailable to the extent that the terms are more favorable than the benchmark financing.

As described in the "Analysis of Programs" section, we have determined that Sysco has been uncreditworthy throughout the period 1973–1988. In the case of uncreditworthy companies, we assume that private lenders either would not provide loans to such companies or would require a premium interest rate. (*See* the "Subsidies Appendix".) In selecting an appropriate benchmark, we must formulate an approximation of the premium interest rate a commercial source of financing would charge an uncreditworthy company. Our preferred benchmark for a long-term variable interest rate government guaranteed loan to an uncreditworthy company is the highest long-term variable interest rate commonly available to a marginally creditworthy company in the country in question, plus the risk premium described in section I.1.A. Statistical information concerning the highest long-term variable interest rate in Canada does not exist. Absent such a rate, we have determined that the best alternative benchmark is the highest long-term fixed interest rate commonly available to a marginally creditworthy company in the country in question. Although in prior cases we have used short-term financing as our benchmark, it is more appropriate to use a long-term benchmark when it is available. For long-term projects a company will

typically require long-term financing. Therefore, a company seeking such financing will consider all long-term financing options before turning to short-term financing. And, in the absence of long-term variable rate financing, a company would rely on long-term fixed rate financing. For this reason, we determine that a long-term fixed interest rate is the best alternative benchmark when no variable rate benchmark is available. For this rate, we are using the interest rate on Canadian BBB bonds to which we have added the risk premium, as is our practice in dealing with uncreditworthy companies.

To determine the benefit, we calculated the payment differential between the interest that would have been paid at the benchmark interest rate and the actual interest paid on each of the guaranteed five-year loans during the review period. We then divided the benefit by Sysco's total sales and calculated an estimated net subsidy of 12.83 percent *ad valorem* for Sysco.

4. Equity Infusions Provided to Sysco

GONS has made a number of equity infusions into Sysco. As noted in the "Analysis of Programs" section, we find Sysco to be unequityworthy. Therefore, we determine the equity infusions made by the GONS to be countervailable.

We normally calculate the benefit conferred by government equity infusions inconsistent with commercial considerations by determining the difference between the national average rate of return on equity and the rate of return on equity of the company under investigation. However, Sysco's financial statements indicate that the entire amount of the GONS's equity capital has been consumed. Therefore, the calculation of any rate of return on equity for Sysco would not be a meaningful measure. Furthermore, we believe that even if we could somehow calculate a rate of return on equity for Sysco, the difference between Sysco's rate of return, presumably a negative value, and the national average rate of return would be so great that the "grant cap" would be exceeded. Therefore we treated all the equity infusions received by Sysco as grants.

We calculated the benefit from the equity infusions using the grant methodology described in previous sections (see, for example, section I.B.1.). We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 21.89 percent *ad valorem* for Sysco.

II. Programs Determined Not To Confer Subsidies

We determine that the following programs do not confer subsidies:

A. Short-Term Loan Guarantees

The GONS guarantees all of the demand loans, or lines of credit, provided to Sysco by chartered banks. The guarantees on these demand loans were provided to a specific enterprise; however, they are only countervailable to the extent that the terms of the loans are more favorable than the benchmark financing. (See the "Analysis of Programs" section of this notice pertaining to the provision of loan guarantees.)

Our past practice has been to select as the short-term benchmark the interest rate on the predominant source of short-term financing in the country in question. (*See* "Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela", (Redraw Rod), 53 FR 24, 763, June 30, 1988.) Although we obtained interest rate information on BAs and corporate paper at verification, we established that together these forms of short-term financing only account for twenty percent of total short-term financing. Average interest rate information on the remaining 80 percent of short-term financing in Canada is not available. We did however, verify that Algoma also has short-term financing, which is comparable to Sysco's lines of credit. Therefore, we are using as the best information available in this investigation the interest rate charged Algoma on its short-term financing. We chose this rate primarily because of the close comparability between the two types of financing. When we compare Sysco's rate to this benchmark rate, we find that Sysco's short-term financing is not on terms more favorable than benchmark financing and, therefore, is not countervailable.

B. Research Grant Received by Algoma

At verification, we found that Algoma received a research grant from the GOC under the Industrial Energy Research & Development Program for a project to study sulfur reduction at Algoma's Wawa mine.

Research and development grants are considered to confer a countervailable benefit when they are provided to a specific enterprise or industry or group of enterprises or industries and the results of such research and development are not made available to the public.

An examination of the documentation related to this grant demonstrates that, as a condition of receiving the grant, Algoma was obligated to make the results of this study available to the public and had to show how the findings of the study would be beneficial to energy conservation efforts in Canada. Furthermore, we verified that the results of Algoma's study have been made public. Therefore, we find that the grants under this research program do not confer a countervailable benefit to Algoma.

III. Programs Determined Not To Be Used

We determine, based on verified information, that the following programs were not used by manufacturers, producers or exporters in Canada of steel rail during the review period. For a full description of these programs, see our Preliminary Determination.

A. Federal Programs

1. Defense Industry Productivity Program (DIPP)

Algoma received DIPP grants for the installation of hot metal desulphurization facilities in 1980 and 1981. We examined these grants in OCTG. Consistent with the "Subsidies Appendix", we divide the sum of all grants received in each year by the total sales of the company in the same year. Algoma received no other grants in 1980 and 1981. The calculated benefits in OCTG were *de minimis, i.e.*, less than 0.50 percent. Therefore, as in OCTG, we expensed them in the year of receipt. Because the DIPP grants received by Algoma were expensed prior to the review period and because no DIPP grants were received by Algoma during the review period, we determine that Algoma did not use this program.

2. Industrial and Regional Development Program

3. Loans under the Enterprise Development Program

4. Program for Export Market Development and Promotional Projects Program

5. Federal Expansion and Development/ Northern Ontario

6. Community-Based Industrial Adjustment Program Grants

7. Export Credit Financing

B. Joint Federal-Provincial Programs

Mineral Development Agreement Benefits to Algoma

C. Provincial Programs

1. Ontario Development Corporation Export Support Loans, Other Loans and Loan Guarantees

2. Provision of Electricity by Ontario Hydro to Algoma

3. Income Tax Exemption for Sysco

Comments

All written comments submitted by the interested parties in this investigation which have not previously been addressed in this notice are addressed below.

Comment 1: Sysco argues that the short-term interest rate benchmark should be the interest rate on BAs and commercial paper, which represent the normal type of short-term financing for large companies. Furthermore, Sysco quotes from the Proposed Regulations that a short-term benchmark should be based on an average of the predominant interest rate.

Petitioner contends that the short-term benchmark should be based on the predominant form of short-term financing and the highest short-term rate observable on that form of financing, which would be prime plus three percent. Petitioner maintains that corporate paper and BAs do not constitute the predominant forms of financing because, together, they only account for 20 percent of short-term financing in Canada. Petitioner also argues that there is no justification for a benchmark based on BAs and corporate paper because Sysco does not have the assets of a "large" company as defined by the GOC.

DOC Position

According to past practice, the short-term benchmark is based on the average interest rate on the predominant form of short-term financing. (See Redraw Rod.) Absent information on a single predominant form of short-term financing, we use as the short-term benchmark the weighted-average of the interest rates from two or more sources of short-term financing that together account for at least 50 percent of all short-term financing. We verified that BAs and corporate paper together account for only 20 percent of short-term financing in Canada. Average interest rate information on the remaining 80 percent of short-term financing is not available. Therefore, we chose as the best information available, for purposes of this investigation, the rate charged Algoma on its short-term financing.

Comment 2: Sysco contends that its five-year trust company loans should be considered short-term loans. Sysco's argument is based on the fact that each of the trust companies has the option to demand payment in full of the outstanding principal and interest with 30 days notice. In addition, as is characteristic of short-term loans, these five-year loans have variable interest rates.

Petitioner holds that Sysco's trust company loans should be considered long-term loans because on their face the loans have a term of five years. Furthermore, petitioner argues that Sysco has not demonstrated that the demand option has ever been used or that Sysco has ever prepaid any of these loans. Moreover, petitioner points out that Sysco rolled over several of these loans past their original terms.

DOC Position: We have determined that Sysco's five-year trust company loans should be treated as long-term loans because: (1) They are recorded as long-term loans in the audited financial statements of the company, (2) payment has never been demanded or made before maturity, (3) several of the loans have been rolled-over past their original term, and (4) Sysco has a grossly insufficient amount of liquid assets which could be used to pay these loans if they were demanded before maturity. This last point indicates that Sysco does not anticipate these loans being paid before maturity.

Comment 3: Sysco argues that its five-year trust company loans should be considered short-term loans because for all long-term loan benefits, and other benefits allocated over time, a "grant equivalent" can be calculated and that for a long-term loan with a variable interest rate a grant equivalent cannot be calculated because the total amount of any countervailable benefit is contingent upon future benchmarks. Therefore, according to Sysco, we must treat Sysco's five-year trust company loans as short-term.

DOC Position: It is true that a grant equivalent cannot be calculated for a variable rate loan. However, simply because a grant equivalent cannot be calculated does not prevent the Department from treating the loans in question as long-term for other purposes.

Comment 4: Petitioner argues that the benchmark for the long-term variable interest rate loans guaranteed by the GONS should be eight percent over prime, plus a risk premium.

Sysco argues that petitioner's suggested benchmark should not be used because it was a "guesstimate" by a Canadian banking official. Sysco also points out that the Department in Groundfish stated that there was "no comparable long-term variable or fixed interest rate commonly available to Canadian firms" and that, as a result, "a short-term benchmark interest rate was used to calculate the benefit from long-term variable rate loans."

DOC Position: We have explained our choice of a benchmark for Sysco's long-term variable rate loans in Section I.C.3. Petitioner's suggested benchmark is based on a statement made by a Canadian banking official, which we have determined to be too speculative for use. With respect to Sysco's comment, regarding Groundfish, in this investigation we were able to obtain information on a comparable long-term fixed interest rate; therefore, we did not use a short-term benchmark.

Comment 5: Sysco argues that if the debenture guarantees are considered countervailable, the benefit is equal to an annual fee of one percent which is charged under other government loan guarantee programs.

DOC Position: We have determined that the most appropriate method of measuring the benefit from a government loan guarantee is to compare the terms of the guaranteed financing to the benchmark financing. (See the "Analysis of Programs" section.)

Comment 6: Sysco argues that a "put" option on its debenture effectively lowered the risk on the debenture issue and, therefore, lowered the interest rate. Respondent refers to the "Final Affirmative Antidumping Determination: Generic Cephalexin Capsules from Canada" (Cephalexin), 54 FR 26,820, June 26, 1989, in which the Department made the following statement regarding the treatment of a stock convertibility option: "this option represents a real * * * cost to respondent over and above the cost of the interest payments to the debenture holders." Sysco also submitted with its case brief two debenture prospectuses, one with a "put" option and the other without, and calculated the value of the option at 1.375 percent.

Petitioner first points out that Sysco never provided information concerning the "put" option in its questionnaire responses. Petitioner further argues that Sysco has not adequately stated how the two debenture prospectuses submitted are comparable to Sysco's debentures. Moreover, petitioner states that Sysco mischaracterizes its option as

one of convertibility rather than redemption and that Sysco omitted a key portion of the quote from Cephalexin, which reads in full "[t]his represents a real, though unquantifiable cost to respondent over and above the cost of the interest payments to the debenture holders."

DOC Position: This issue was not raised in any of the questionnaire responses of Sysco. It was first raised during verification. Thus, this information was submitted too late for the Department to analyze prior to verification and for the petitioner to meaningfully comment upon. (See § 353.31(a) of the Department's regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 353.31(a).)

Comment 7: Sysco argues that, because the interest rates on its debentures are at market rates, an appropriate benchmark for the U.S. dollar denominated debenture would be rates on comparable debentures issued in 1973. Respondents submitted prospectuses for two debenture issues for use as possible benchmarks.

Petitioner refutes respondent's suggested benchmarks by stating that they do not represent a national average, do not follow the hierarchy of benchmarks for long-term loans outlined in the Proposed Regulations and do not include the risk premium calculated for an uncreditworthy company.

DOC Position: According to our standard practice, our benchmark in the case of long-term fixed rate financing provided to an uncreditworthy company is the highest long-term fixed interest rate commercially available to a marginally creditworthy company plus the risk premium. (See the "Subsidies Appendix" and the "Analysis of Programs" section.) We are using the rate on U.S. Baa corporate bonds as the highest long-term fixed interest rate.

Comment 8: Respondent contends that for the final determination the effective interest rate on the Series C debenture should take into account exchange rate fluctuations between the Canadian and U.S. dollars. Respondent argues that the fluctuations between the Canadian and U.S. dollars have increased the effective interest rate to Sysco of its Series C financing.

Petitioner aruges that the Department's use of effective interest rates is to ensure that, when a potentially preferential interest rate is compared to a benchmark, both rates reflect the full cost of the loan to the borrower. Petitioner then lists other aspects of a loan, such as the prepayment of interest, which can change the actual cost to the borrower. Petitioner concludes by stating that the declining value of the Canadian dollar is irrelevant and that the only question is whether the debenture guarantee permitted Sysco to pay an interest rate lower than it would have otherwise.

DOC Position: The benefit from the debenture guarantee is one that arises from issuing the debenture on terms that were more favorable than those commercially available. The currency in which the company chooses to issue the debenture is immaterial; this represents a risk chosen by the company which is irrelevant to the terms and conditions of the issue.

Comment 9: Sysco states that the Department erred in applying the specificity test to the individual subsidiary agreements and not to the general agreements under the GDA and ERDA programs. Because GDA and ERDA agreements cover all areas of Canada, these programs do not meet the specificity test and, as such, are not countervailable. Finally, Sysco argues that any government assistance program if broken down into sufficiently small subparts can be found to meet the specificity test.

Petitioner argues that GDA and ERDA benefits are specific and, thus, are countervailable. Monies provided to Sysco were at the discretion of the governments and were provided to Sysco specifically. Lastly, petitioner states that under Sysco's analysis, governments could avoid the imposition of countervailing duties by lumping all of their subidy programs into a single overall program.

DOC Position: We have found in our past cases that GDAs and ERDAs do not actually establish any government programs but instead ar merely legal agreements which, dual or conflicting jurisdictions, provide a framework to permit departments of the federal and provincial governments to cooperate in establishing and administering traditional government assistance programs. The implementation, administration and funding of industry- and regional-specific programs occur exclusively through subsidiary agreements. Therefore, we have decided that in determining whether subsidiary agreement programs are limited to a specific enterprise or industry or group thereof, the proper level of analysis is the subsidiary agreement. (*See also* Groundfish and "Final Negative Countervailing Duty Determination: Certain Softwood Products from Canada," 48 FR 24,159, May 31, 1983.)

Comment 10: Petitioner states that the basic seven percent tax credit should be countervailed since it is provided only to specific investments, *i.e.*, to "qualified property." Petitioner also states that the Department erred in relying on past Department cases on this issue and not verifying the program in this investigation. Petitioner states that an amendment to the Act made by the Omnibus Trade and Competitiveness Act of 1988 now requires the Department to investigate whether a program is in fact provided to specific industries or groups of industries.

DOC Position: The 1988 Act provision referred to clarified that in all cases the Department must examine the availability and use of alleged subsidy programs on a *de facto* as well as a *de jure* basis. Our prior investigations of the basic seven percent tax credit have satisfied us that this credit is not limited to a specific enterprise or industry or group thereof on either a *de facto* or *de jure* basis. Because the seven percent tax credit ws previously found not countervailable, and petitioner did not provide the Department with a sufficient basis to reexamine it, we did not include the program in this investigation. (*See* OCTG and Groundfish.)

Comment 11: Sysco states that the Department erroneously treated grants for repayment of principal on its debentures as equity infusions. Petitioner states that the Department should countervail the equity infusions made by GONS and use the grant methodology as it did in the preliminary determination.

DOC Position: As noted in the "Analysis of Programs" section and section I.C.4., the Department was not able to use its standard method of calculating the benefit from an equity infusion but had to treat all equity infusions as grants. As such, this issue is moot.

Comment 12: Petitioner states that in analyzing the freight rate issue the Department should not consider Algoma's ability to transport iron ore by truck or buy iron ore from other sources. Petitioner argues that the proper test is whether the freight service was provided at a preferential rate. In support of its position, petitioner cites the "Final Negative Countervailing Duty Determination: Granite from Italy" (Granite), 43 FR 27,197, July 19, 1988. Petitioner states that the reductions in freight rates was a direct result of government action so that it constituted the provision of a service on preferential terms, within the meaning of the statue.

Algoma argues that the grants to ACR did not benefit Algoma because (1) the ACR freight rates were the result of arm's length negotiations and were not

set by government intervention, (2) the ACR tour grants were tied to ACR's tour operations, and (3) even if the tour grants resulted in lower freight rate to Algoma, they have provided no commerical benefits to the company and have had an insignificant impact on its cost of production.

DOC Position: We verified that the lowering of Algoma's freight rates was part of a four party arrangement, which included the federal and provincial governments, ACR and Algoma, the result of which was the reduction in the freight rate paid by Algoma. Therefore, we have determined that the provision of grants to ACR provided an indirect subsidy to Algoma in the form of reduced freight rates.

We calculated the benefit by comparing the difference between the lowered freight rates and the available trucking rates. This case is distinguishable from Granite because unlike Granite it does not involve a government-owned railway. Therefore, the issue is not the preferential provision of a good or service by a government.

Comment 13: Petitioner states that the Department erred in not initiating an investigation on the alleged special tax subsidy to Algoma. Petitioner alleges that Algoma has accumulated ITCs which it was unable to use because it was in a loss position. In an attempt to utilize these credits and complete construction of a seamless tube mill, Algoma formed a partnership with its parent, the Canadian Pacific Railroad (CP). According to petitioner, CP was able to reduce its tax liability by using the accrued ITCs of Algoma, which had been transferred to the partnership. Later, Algoma purchased CP's partnership units, thereby dissolving the partnership.

Algoma argues that petitioner did not allege in a timely manner facts sufficient to establish a prima facie case that warranted an investigation and that, even if petitioner did make a timely allegation, the ITCs are tied to the production of seamless tube mill and, thus, do not provide any benefit to Algoma's steel rail production.

DOC Position: Our position concerning the alleged special tax subsidy has not changed since the beginning of this investigation. As we have stated previously in two memoranda to the file, we did not include this program in the investigation because the alleged benefit received by Algoma is tied to a product not under investigation. All the information submitted by petitioner clearly indicates that the specific purpose of the Algoma/CP partnership, and the attendant tax and financial transactions, was to complete the construction of a seamless tube mill. Thus, any benefit is tied to a product other than the merchandise under investigation. Nothing in the information submitted by petitioner indicates that any of the alleged benefits can be tied to the production of the subject merchandise. Therefore, we did not include the alleged special tax subsidy in the investigation.

Comment 14: Sysco maintains that the treatment of the wharf loan should be the same as at the preliminary determination. Sysco argues that only the principal amount of $7,734,483, uncollectible as of June 1978 and forgiven in 1981, should be considered a grant and allocated over 20 years.

DOC Position: The wharf was completed in June 1978, and Sysco was to make payments beginning in June 1979. Sysco made no payments on the principal and interest outstanding. The total outstanding was effectively an interest-free loan for the period 1979 through 1981. Therefore, we have added to the total original balance of $7,734,483, the interest that would have been paid on the principal outstanding at the benchmark rate and treated this total amount as a grant given in 1981.

Comment 15: The GOC raises the issue of whether HTS item number 8548.00.0000 is properly included within the scope of this investigation.

DOC Position: The HTS item number referred to by the GOC includes contact rail or "third rail" and, therefore, is properly included within the scope.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. As mentioned previously, when we could not verify the information, we used the best information available. During verification, we followed standard verification procedures, including meeting with government and company officials; inspecting internal documents and ledgers; tracing information in the responses to source documents, accounting ledgers and financial statements; and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on March 2, 1989, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require that a cash deposit or bond be posted equal to the estimated bonding rate. The instant final countervailing duty determination was extended to coincide with the final antidumping duty determination on the same product from Canada, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under Article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after July 1, 1989, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between March 2, 1989, and June 30, 1989. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit on all entries of the subject merchandise from producer exporters, except entries by Algoma, in an amount equal to 113.56 percent *ad valorem*. Algoma is excluded from this final determination.

If we reinstate suspension of liquidation and require a cash deposit, entries of the subject merchandise by Grand Valley, Sessenwein, C.P. Rail and Nortrack (all of whom are non-producer exporters) will not be subject to suspension of liquidation and a cash deposit equal to the estimated net subsidy if it can be demonstrated to the U.S. Customs Service that the entries of the subject merchandise were produced by and purchased from Algoma.

Entries made by Bernard Railtrack Export Inc. and new non-producer exporters will be subject to suspension of liquidation and a cash deposit or bond equal to the estimated net subsidy shown of 113.56 percent *ad valorem*.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury,

does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on all entries of steel rail from Canada entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

Dated: July 26, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18065 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Application

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00013." A summary of the application follows.

Summary of the Application

Applicant: International Lumber Company (ILC), 401 East 10th Avenue, Suite 400, Eugene, Oregon 97401, Contact: Ward R. Eason, President, Telephone: (503) 687-1679.

Application No.: 89-00013

Date Deemed Submitted: July 20, 1989

Members (in addition to applicant):

None

Export Trade:

Products

Forest products, including all sizes of dimensional lumber, rough or surfaced; all types of panel products; and all types of timbers, from 4" plus dimensional timbers to a length of 85' in all softwood species; with an emphasis on kiln-dried products and fully sawn Douglas fir lumber.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Consulting; international market research; marketing; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders to and for domestic Suppliers; financing; export licensing; warehousing; shipping; foreign exchange; and taking title to goods.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: ILC seeks to:

1. Enter into non-exclusive agreements with Suppliers to provide Export Trade Facilitation Services;

2. Enter into exclusive agreements with Suppliers to provide Export Trade Facilitation Services wherein:

a. ILC may agree not to represent any competitor of such Supplier for Products unless authorized by the Supplier, and/or

b. the Supplier may agree not to sell, directly or indirectly, through any other Export Intermediary into any Export Market in which ILC exclusively represents the Supplier as an Export Intermediary unless authorized by ILC; and/or

3. Respond, as they become aware of invitations to bid or of sales opportunities existing in the Export Markets, by:

a. contacting Suppliers of the Products listed in the invitation to bid,

b. inviting the Suppliers to provide independent price quotations for the Products, and/or

c. entering into agreements with Suppliers whereby ILC will submit a response to the bid invitation or request for quotation.

Definitions: 1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Products and Services to foreign buyers.

2. "Supplier" means a person who produces, provides, or sells Products and Services and/or provides Export Trade Facilitation Services.

Dated: July 31, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-18162 Filed 8-2-89; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review; Application

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATON CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A

Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–00012." A summary of the application follows:

Summary of the Application

Applicant: Kentucky World Trade Center, Lexington, Inc. ("KWTCL"), 410 West Vine Street, Suite 290, Lexington, Kentucky 40507, Contact: Kenneth A. Current, President, Telephone: 606/258–3138.
Application No.: 89–00012
Date Deemed Submitted: July 20, 1989
Members (in addition to the applicant): None.

Export Trade

1. *Products and Services.* All products and services.

2. *Export Trade Facilitation Services (as they relate to the export of Products and Services).* Export related services, including, but not limted to, market research, financing (including joint funding on research, technical and administrative costs), licensing, advertising, export documentation, transportation (including consolidation of shipments), and distribution services.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: KWTCL seeks certification for the following activities:

1. To open its membership only to Kentucky businesses.

2. To form and/or encourage the formation of industry supplier groups for the purpose of exporting Products and Services to Export Markets.

3. On behalf of its member suppliers, KWTCL intends to:

a. Establish joint manufacturing plans to meet foreign buyer needs;

b. Establish joint export pricing structures for Products and Services; and

c. Establish exclusive distributorships with export intermediaries to supply Products and Services to Export Markets.

4. On behalf of Kentucky businesses, KWTCL may provide and/or arrange for the provision of Export Trade Facilitation Services.

Dated: July 27, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc.89–18164 Filed 8–2–89; 8:45 am]

BILLING CODE 3510–DR–M

Export Trade Certificate of Review; Application

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–A0005."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89–00005, which was issued on May 26, 1989 (54 FR 24928, June 12, 1989).

Summary of Application

Applicant: CherreX Corporation ("CherreX"), 2220 University Park Drive, Suite 200, Okemos, Michigan 48846, Contact: Mr. C. Richard Johnston, Managing Director, Telephone: 517/347/0010.
Application No.: 89–A0005
Date Deemed Submitted: July 24, 1989
Request For Amended Conduct: CherreX seeks to amend its Certificate to:

1. Add each of the following companies as a "Member" of the Certificate: Chase Farms, Inc., Walkerville, MI; Larson-Seaquist Processing, Inc., Sister Bay, WI; Muir-Roberts Co., Inc., Salt Lake City, UT; Smeltzer Orchard Co., Frankfort, MI; and Utah Finer Fruits, Santaquin, UT.

2. Delete each of the following companies as a "Member" of the Certificate: Comstock/Michigan Fruit Division, a division of Curtice Burns Foods, and Great Lakes International Trading, Inc.

Dated: July 27, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89–18165 Filed 8–2–89; 8:45 am]

BILLING CODE 3510–DR–M

MINORITY BUSINESS DEVELOPMENT AGENCY

Business Development Center Applications: Manhattan, NY

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period January 1, 1990 to December 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Manhattan, New York SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institution.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is September 8, 1989. Applications must be postmarked on or before September 8, 1989.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 minority Business Development (Catalog of Federal Domestic Assistance)

Date: July 24, 1989.

Gina A. Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 89–17830 Filed 8–2–89; 8:45 am]

BILLING CODE 3510-21-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 28 September 1989.

Time: 0830–1700.

Place: Parson's Island, Chester, Maryland.

Proposed Agenda: Preventive Medicine officer reports, malaria vaccine update, HIV natural history, team spirit exercises, Streptococcus prophylaxis, malaria prophylaxis, hepatitis B recombinant vaccine report, update on Air Force food-borne outbreak.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

Dated: 18 July 1989.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 89–17847 filed 8–2–89; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 29 September 1989.

Time: 0800–1100.

Place: Parson's Island, Chester, Maryland.

Proposed Agenda: Status, Medical Followup Agency, Pest Management Board Update and the Theater Army; Medical Management Information System (TAMMIS).

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

Dated: 18 July 1989.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 89–17848 Filed 8–2–89; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the DACOWITS. The purpose of the meeting is to review the responses to the recommendations, requests for information, and continuing concerns made by the Committee at the 1989 DACOWITS Spring Conference; review the Subcommittee Issue Agenda; discuss current issues relevant to women in the Services; and finalize the program for the next DACOWITS semiannual conference scheduled for October 29–November 1, 1989. All meeting sessions will be open to the public.

DATE: August 28, 1989, 9:30 a.m.–4:30 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

Dated: July 28, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–18075 Filed 8–2–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Notice of Intent (NOI) To Prepare a Programmatic Environmental Impact Statement for Development of the Proposed Advanced Launch System

AGENCY: Department of the Air Force, DOD.

ACTION: Notice; additional launch site to be evaluated.

On July 13, 1989, the Department of the Air Force published a notice of intent document in the **Federal Register** (54 FR 29600). Replace the last sentence of the first paragraph of that document with the following sentence.

Several existing and potential launch sites are being evaluated to support the ALS, including: Cape Canaveral Air Force Station/Kennedy Space Center, Florida; Vandenberg Air Force Base, California; and a currently undeveloped site on the island of Hawaii.

FOR FURTHER INFORMATION CONTACT: Captain Hector Malave, HQ Space Systems Division/DEV, P.O. Box 92960, Los Angeles, CA 90009–2960, telephone (213) 643–0935.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–18137 Filed 8–2–89; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning OMB Report Control Number 9000–0023, Balance of Payments Program Certificate.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The offeror in submitting the Balance of Payments Program Certificate certifies that each end product or service, except the end products or services listed in the certificate is a domestic end product or service and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Offers are evaluated by giving a certain preference to domestic end products or services over foreign end products or services in accordance with § 25.303(b) of the Federal Acquisition Regulation.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,243*; responses per respondent, *5*; total annual responses, *6,215*; preparation hours per response, *.167*; and total response burden hours, *1,038*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0023, Balance of Payments Program Certificate.

Dated: July 26, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–18138 Filed 8–2–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Office of General Counsel

Notice of Intent To Grant Exclusive Patent License

Notice is hereby given of an intent to grant to Geo-Temp Corporation, of San Leandro, California, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,005,289, entitled "Method For Identifying Anomalous Terrestrial Heat Flows." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on July 27, 1989.
Eric J. Fygi,
Acting General Counsel.

[FR Doc. 89-18155 Filed 8-2-89; 8:45 am]
BILLING CODE 6450-01-M

Intent To Grant Partially Exclusive Patent License

Notice is hereby given of an intent to grant to Imdel Corporation, of Crystal Lake, Illinois, a partially exclusive license to practice in the United States the invention described in U.S. Patent No. 4,572,864, entitled "Composite Materials For Thermal Energy Storage." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be partially exclusive, i.e. exclusive, but limited to fields of use of heat storage materials for outdoor stadium seats and clothing, and food and beverage containers, and subject to a license and other rights retained by the U.S. Government. The license will further be subject to a negotiated royalty. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously in the fields of use of the proposed license.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC on July 27, 1989.
Eric J. Fygi,
Acting General Counsel.

[FR Doc. 89-18156 Filed 8-2-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI89-477-000 et al.]

Trans Marketing Houston, Inc., et al.; Applications for Blanket Certificates With Pregranted Abandonment [1]

July 26, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 16, 1989, 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 and 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.	Date filed	Applicant
CI89-477-000	7-6-89	Trans Marketing Houston, Inc., 5200 Republican Center, 700 Louisiana Street, Houston, Texas 77002.
CI89-479-000	7-12-89	Western Gas Processors, Ltd., Suite 609, 10701 Melody Drive, Denver, Colorado 80234.

[FR Doc. 89-18079 Filed 8-2-89; 8:45 am]
BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. RP89-202-001, RP89-202-002]

CNG Transmission Corp.; Filing

July 27, 1989.

Take notice that on July 20 and 21, 1989, CNG Transmission Corporation (CNG) filed Fifth Revised Sheet No. 32 and Substitute Fifth Revised Sheet No. 32 to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1989.

CNG states that these tariff sheets correct errors found in its June 30 and July 20, 1989 filings in this proceeding. CNG requests that Substitute Fifth Revised Sheet No. 32 replace Fifth Revised Sheet No. 32.

CNG states that copies of these filings have been mailed to each of its Volume 1 customers and other interested parties.

Any person desiring to protest said filing should file 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 protests should be filed on or before August 3, 1989. 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. Persons that are already parties to this proceeding need not 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. 89-18081 Filed 8-2-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-174-002; RP88-195-003]

Dynasty Gas Marketing, Inc. v. Northern Border Pipeline Co. and Northern Border Pipeline Co.; Settlement

July 25, 1989.

Take notice that on June 30, 1989, Northern Border Pipeline Company and Dynasty Gas Marketing, Inc. (collectively referred to as sponsoring parties) filed a permanent settlement of the credit requirement issues identified in the Commission's order issued on November 3, 1988, Docket Nos. RP88-174-001 and RP88-195-002 (45 FERC ¶ 61,177). Copies of the settlement have been sent to all parties in the consolidated proceeding.

Under the terms of the settlement, previously effective credit provisions

applicable to Rate Schedule IT–1 are modified so that commencing October 1, 1989, any Rate Schedule IT–1 shipper who fails to meet Northern Border's standard for creditworthiness or who becomes insolvent may receive service under Rate Schedule IT–1 by providing, on a month-to-month basis, a standby letter of credit from a major U.S. or Canadian bank or a prepayment in an amount equal to the transportation charge for volumes shipper estimates will be transported by Northern Border. Such prepayment or standby letter of credit must be furnished to Northern Border no later than noon, Central Standard Time, on the third business day prior to the first day in which transportation service is desired during a billing month.

In addition, the shipper will be allowed, once during the month, to increase the prepayment or standby letter of credit to cover volumes in excess of the originally estimated volumes. Such one-time monthly adjustment may permit shipper to continue transportation for volumes in excess of the originally estimated volumes by providing by noon, Central Standard Time, on the third business day prior to the continuation of shipper's transportation for such month, an additional prepayment in U.S. federal funds, same day wire transfer, or an amendment to increase the standby letter of credit or an additional standby letter of credit equal to the adjustment amount for the balance of the month.

Initial comments on the settlement shall be filed on or before August 15, 1989. Reply comments shall be filed on or before August 29, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18082 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–210–000]

Florida Gas Transmission Co.; Petition for Limited Waiver

July 28, 1989.

Take notice that on July 24, 1989, Florida Gas Transmission Company (FGT) filed a petition for limited waiver of § 154.302(j) of the Commission's Regulations. FGT requests that the Commission renew for an additional one-year period its authorization granting FGT a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's Regulations.

In addition, FGT requests that the Commission expand such waiver to permit FGT to include in its purchased gas adjustment filings the flow through of costs of liquified natural gas that FGT may purchase to maintain competitively-priced service on the FGT system.

FGT states that granting the requested waiver will enable its customers to benefit from the lower weighted average cost of gas and the accompanying benefits of maintaining a high load profile on the FGT system. At the same time, FGT states that it will not exacerbate its take-or-pay exposure. FGT states that granting the requested waiver is in the public interest.

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 Commissions Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before August 4, 1989. 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. 89–18083 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–3–45–001]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

July 27, 1989.

Take notice that on July 21, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective August 1, 1989:

Original Volume No. 1

First Revised Thirty-Fourth Revised Sheet No. 4

Inter-City states that this revised tariff sheet is filed as Inter-City's quarterly PGA pursuant to Order Nos. 483 and 483–A.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any persons 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, Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 3, 1989. 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. 89–18084 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–209–000

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

July 27, 1989.

Take notice that K N Energy, Inc. ("K N"), on July 24, 1989 tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1–B.

First Revised Sheet No. 1
Original Sheet No. 45
Original Sheet No. 46
Original Sheet No. 47
Original Sheet No. 48
Original Sheet No. 49

K N states that the above-referenced tariff sheets are being filed to implement the flow-through and recovery of Buyout-Buydown Obligations allocated to K N by Colorado Interstate Gas Company ("CIG") pursuant to CIG's filing in Docket No. RP89–98, Docket No. RP89–133 and Docket No. RP89–178. As a downstream pipeline, K N proposes to recover such obligation on an as-billed basis, pursuant to § 2.104(e) of the Commission's General Policy and Interpretations. For fixed costs billed to K N by CIG, K N will allocate such costs between its jurisdictional and nonjurisdictional firm sales customers utilizing the same purchase deficiency methodology, base period, and deficiency period as used by CIG in the above-mentioned Dockets.

K N has requested that the Commission accept this filing to become effective August 1, 1989.

K N states that copies of this filing are being served on all of its jurisdictional sales 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18085 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–140–005]

Midwestern Gas Transmission Co.; Filing

July 28, 1989.

Take notice that on July 24, 1989, Midwestern Gas Transmission Company (Midwestern) filed Substitute Fifth Revised Sheet No. 164, Substitute Second Revised Sheet No. 169C, and Substitute Second Revised Sheet No. 169D to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1989.

Midwestern states that these tariff sheets reflect typographical corrections requested by the Commission Staff during the review of the previous filings of April 29 and November 28, 1988.

Any person desiring to protest said filing should file 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 or Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 4, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18086 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–211–000]

Natural Gas Pipeline Co. of America; Change in FERC Gas Tariff

July 28, 1989.

Take notice that on July 25, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing the tariff sheets listed below as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective September 1, 1989:

Seventh Revised Sheet Nos. 401 and 402; Eighth Revised Sheet No. 403; Sixth Revised Sheet No. 404; Seventh Revised Sheet No. 405; Eighth Revised Sheet No. 406; Original Sheet Nos. 406A, 406B and 406C.

Natural states that the purpose of the filing is to reflect the current maximum delivery volumes by delivery point under various sales and storage rate schedules in accordance with § 9.3 of the General Terms and Conditions of Natural's tariff.

Natural states that the delivery point volumes of its jurisdictional customers have been revised, where required, to reflect additions and deletions in sites and service changes. Mississippi River Transmission Corporation (MRT), a DMQ–1 customer, was deleted from Sheet No. 403 because MRT converted 100% of its sales contract to firm transportation service on October 1, 1988. Entex Corporation, a G–1 customer, was added to Sheet No. 401 because they had not previously been listed on the page. The above tariff sheets list Natural's forty-eight (48) jurisdictional customers.

A copy of the filing was mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

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 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before August 4, 1989. 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. 89–18087 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–207–000]

Northern Natural Gas Co., Filing

July 27, 1989.

Take Notice that on July 21, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Fourth Revised Sheet No. 52f.3.

The proposed effective date is August 20, 1989. Norther proposed to delete from the presently effective tariff sheet the following sentence contained in section 5(b) of Rate Schedule FT–1:

For all requests other than priority requests, the effective date shall be the date of execution by Shipper of the FT–1 Firm Transporation Service Agreement.

Northern states that in response to the concerns of Shippers on Northern's system, Northern is proposing to change its policy to allow in a nondiscriminatory manner Shippers to execute firm Service Agreements prior to the proposed effective date thereof. Northern states that this will allow advance planning by prospective Shippers, provide assurance that the firm transportation service will be available when required without necessitating the payment of reservation fees before the service is actually required or can be utilized, and remove the restrictions on Shippers' options and increase competition in the transportation service business.

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 the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will 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. 89–18088 Filed 8–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. IR-000-924]

Public Utility Commission of Texas; Petition for Waiver

July 26, 1989.

Notice is hereby given that the Public Utility Commission of Texas (TPUC) has filed on July 12, 1989 pursuant to § 292.403 of the Commission's regulations for waiver of certain obligations imposed under § 292.303(a) and 292.303(b) of the Commission's regulations (18 CFR Part 292 Subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The applicant has duly implemented the Commission's PURPA regulations by filing a PURPA implementation plan on November 16, 1981.

The TPUC indicates that the waiver, if granted, would allow South Texas Cooperative, Inc. (STEC) and its five members to reallocate among themselves certain QF-related purchase and sales responsibilities imposed upon them by operation of PURPA. Specifically, the TPUC states that the purpose of the requested waiver is to allow STEC to meet the goals set by the Commission when it adopted 18 CFR 292.303 (a) and (b) in a manner consistent with the organizational functions of STEC and its members. According to the TPUC, the waiver will accomplish this (i) by allowing STEC to purchase any energy and capacity which a QF may seek to sell to any of its members and (ii) by allowing the members to supply any retail energy and capacity otherwise required to be supplied by STEC to a QF under the Commission's regulations. To achieve this goal, the TPUC requests a waiver to STEC's obligations to sell retail capacity and energy to QFs and, correspondingly, a waiver of the members' obligations to buy capacity and energy directly from QFs.

Any person desiring to be heard or to protest any of the above filings 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, 385.214). All such motions or protest should be filed within thirty (30) days of publication of notice in the Federal Register, and should reference the applicable docket number. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18091 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1818-000]

Shell Offshore Inc.; Petition for Declaratory Order Disclaiming Jurisdiction

July 26, 1989.

Take notice that on July 17, 1989, Shell Offshore Inc. (Shell), One Shell Plaza, P.O. Box 2463, Houston, Texas 77252-2463, filed in Docket No. CP89-1818-000 a petition for an order disclaiming jurisdiction under section 1(b) of the Natural Gas Act over a natural gas gathering facility it proposes to construct in federal waters offshore Louisiana, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Shell proposes to install a gathering line from the platform connecting the Prospect Monty well located in Eugene Island Block 30 (Block EI 30) to one of two alternatives. The first and primary alternative is to install a 12-inch 6-mile line to connect Block EI 30 to the United Gas Pipe Line Company's (United) jurisdictional 20-inch wet gas pipeline at United's pipeline junction platform located in Eugene Island Block 32 for transportation of wet gas and condensate to United's onshore separation facility and then to the Marathon Burns Point gas processing plant (Burns Point) located in St. Mary Parish, Louisiana, it is stated. Shell states that the condensate and free water would be removed at the United separation facility and the gas would be dehydrated and processed to merchantable quality at Burns Point.

The second alternative Shell proposes is to install a 12-inch 11-mile line from Block EI 30 to a subsea connection on American Natural Resource's (ANR) jurisdictional 20-inch wet gas pipeline in either Eugene Island Blocks 34, 40 or 42. Shell states the actual location of the subsea connection would be determined by pipeline crossovers, subsea obstructions or environmental concerns and shipping fairways. Wet gas and condensate from Block EI 30 would be transported through ANR's 20-inch pipeline to ANR's onshore separation facility and then to the Shell operated Calumet gas processing plant located in St. Mary Parish, Louisiana, it is stated. Shell states the condensate and free water would be removed at the separation facility and the gas would be dehydrated and processed to merchantable quality at the Calumet plant.

Shell states that it owns 100 percent of the working interest in the entire Block EI 30 lease block and in 1770 acres of the Eugene Island Block 31 lease block. Initially, it is stated only the Block EI 30 would be drilled and developed. Shell indicates that it plans to sell all the gas produced from Block EI 30 to Shell Gas Trading Company but would retain processing rights.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 16, 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). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18080 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-8-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 27, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 20, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Seventh Revised Sheet No. 68
Seventh Revised Sheet No. 69
Seventh Revised Sheet No. 70
Seventh Revised Sheet No. 71

This filing is being made in compliance with the Commission's letter order on March 31, 1989 in Docket No. TM89-4-17-000 which order requires Texas Eastern to track modifications to Texas Gas Transmission Corporation's (Texas Gas) take-or-pay charges in Texas Gas's Docket Nos. RP88-230 and TM89-2-18.

On June 30, 1989 Texas Gas filed tariff sheets to be effective August 1, 1989 revising fixed take-or-pay costs pursuant to Texas Gas's Docket No. RP88-230 to recover take-or-pay costs to be billed through a demand surcharge by Tennessee Gas Pipeline Company (Tennessee). Tennessee's take-or-pay

surcharge is effective for a six month period from July 1, 1989 through December 31, 1989 to recover costs incurred from December 1, 1988 through March 31, 1989, or known and measurable within nine months of that date. Texas Gas stated in its original filing in Docket No. RP88-230 on August 8, 1988 that it would file tariff sheets to be effective February 1 and August 1 corresponding with Tennessee's tariff sheets to be effective January 1 and July 1. Texas Eastern's portion of the total principal amount of Tennessee's take-or-pay charges billed by Texas Gas is $42,923 to be amortized over the six month period beginning August 1, 1989 in monthly payments of $7,154.

The tariff sheets proposed for filing herein are being filed solely to track modifications made by Texas Gas on June 30, 1989. Seventh Revised Sheet Nos. 68 through 71 set forth the monthly principal amount plus the allocation factors for carrying costs that each Texas Eastern customer will be required to pay in order to recover Texas Gas's take-or-pay charges billed to Texas Eastern pursuant to Texas Gas's filing on June 30, 1989. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which include a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix A of the filing.

In tracking Texas Gas's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

The proposed effective date of the above tariff sheets is August 1, 1989.

Copies of the filing were served on Texas Eastern's 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 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 3, 1989. 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 the intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18089 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-208-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 27, 1989.

Take notice that on July 21, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2-A, and Original Volume No. 3. The proposed tariff sheets, listed in Appendix A of the filing, are being filed in order to implement 75% recovery of an additional $2,024,096 in Take-or-Pay Settlement Payments under which the litigation exception pursuant to the procedures established in the Commission's Order No. 500 over a 33-month period. Specifically under those procedures, Texas Gas is proposing to absorb 25% (approximately $506,000) of the Take-or-Pay Settlement Payments, recover 25% (approximately $506,000) through a monthly fixed charge applicable to each of its current firm sales customers, and recover the remaining 50% (approximately $1 million) of such payments through a volumetric or commodity surcharge to be applicable to all of Texas Gas's throughput, including both sales and transportation volumes.

Texas Gas states that this filing is made without prejudice to any similar filing or filings which Texas Gas may make at a later date for the purpose of recovering additional Take-or-Pay Settlement Payments under the Commission's equitable sharing mechanism of additional costs resulting from contracts in litigation as of March 31, 1989. Texas Gas also reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court.

Texas Gas requests an effective date of August 1, 1989, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Finally, Texas Gas has filed detailed support for the costs included in the filing in a Second Supplement to the Confidential Binder A, for which it has requested privileged treatment, pursuant to the provisions of § 388.112 of the Commission Regulations.

Additionally, Texas Gas requests that the hearing established by the Commission's April 28, 1989 Suspension Order be expanded to include the prudence of the costs in the instant filing and that the protective order issued by the Presiding Administrative Law Judge on May 24, 1989, in Docket No. RP89-119-000 establish the conditions for review by the interested parties.

Texas Gas will maintain copies of the Second Supplement to Confidential Binder A at its Owensboro, Kentucky, offices and in the offices of Andrews & Kurth, in Washington, DC, for review by the appropriate parties, subject to the terms of the protective order.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1989. 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, exclusive of Confidential Binder A, are on file with the Commission, and are available for public inspection in the Public Reference Room. A copy of this filing, including Confidential Binder A, is in the non-public file with the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18090 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-29-003]

Transcontinental Gas Pipe Line Corp.; Filing

July 26, 1989.

Take notice that on July 21, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed a letter to request requisite authority to defer collection of the transition cost surcharge in this proceeding.

Transco requests that the Commission approve the proposed deferral of the surcharge and states its willingness to forgo collection of carrying charges during the deferral period. Transco

states that upon Commission approval, it will file conforming tariff sheets reflecting the suspension of collection of the special transition gas cost surcharge. Transco states that it will refund with interest at FERC rates, the surcharge collections during the interim period.

Transco states that it is serving copies of this letter to its customers, State Commissions, and interested parties to this proceeding.

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 August 2, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18092 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1857-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

July 27, 1989.

Take notice that on July 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1857-000 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 Pennzoil Gas Marketing (Pennzoil), 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 on behalf of Pennzoil from a point of receipt located in Vermilion Parish, Louisiana to points of delivery located in Ouachita and Rapides Parishes, Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Pennzoil would be 82,400 MMBtu equivalent, 82,400 MMBtu equivalent and 30,076,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-4112, filed with the Commission on July 7, 1989, it reported that transportation service for Pennzoil had begun under the 120-day automatic authorization provisions of § 284.223(a).

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (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(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18093 Filed 8-2-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1788]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

July 31, 1989.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed August 21, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Services. (PR Docket No. 88-139). Number of petitions received: 3.

Subject: Amendment of the Commission's Rules to Improve the Quality of the AM Broadcast Service by Reducing Adjacent Channel Interference and by Eliminating Restrictions Pertaining to the Protected Daytime Contour. (MM Docket No. 88-376, RM's 5532 & 6174). Number of petitions received: 1.

Subject: Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License. (MM Docket No. 88-526, RM-6122). Number of petitions received: 3.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18163 Filed 8-2-89; 8:45 am]

BILLING CODE 6712

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 17, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *M. L. Haggard, Sr.*, Waynesboro, Tennessee; to retain 28.19 percent of the voting shares of Wayne County Bancshares, Inc., Waynesboro, Tennessee, and thereby indirectly acquire Wayne County Bank, Waynesboro, Tennessee.

2. *Floyd C. Newton, Jr.*, Madison, Georgia; to acquire an additional 11.23 percent of the voting shares of Madison Bank Corporation, Madison, Georgia, for a total of 25 percent, and thereby

indirectly acquire Bank of Madison, Madison, Georgia.

Board of Governors of the Federal Reserve System, July 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18099 Filed 8-2-89; 8:45 am]

BILLING CODE 6210-01-M

The Hongkong and Shanghai Banking Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The HongKong and Shanghai Banking Corporation*, Hong Kong; HSBC Holdings, B.V., Amsterdam, The Netherlands; Kellett N.V., Curacao, Netherlands Antilles; and Marine Midland Banks, Incorporated, Buffalo, New York; to engage *de novo* through their subsidiary, Jaguar Leasing Corporation, Leonia, New Jersey, in permissible automotive lease finance activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *The Plains Corporation*, Lubbock, Texas; to engage *de novo* through its subsidiary, Plains Financial Corporation, Lubbock, Texas, a *de novo* company, in originating loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in West Texas.

Board of Governors of the Federal Reserve System, July 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18100 Filed 8-2-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting.

NAME: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

TIME AND DATE: 9 a.m—5 p.m., Tuesday, August 22, 1989.

PLACE: The Washington Room, Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington 98104.

STATUS: Open to the public, limited only by the space available.

Purpose: This Committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary and private resources involved in the provision of services to people with diabetes.

MATTERS TO BE DISCUSSED: The Committee will discuss future directions for diabetes control programs conducted by State health agencies and the conceptual content of a Request for (competing) Applications (RFA) to be issued by CDC in 1990. Current activities by the Division of Diabetes Translation (DDT) and the Center for Chronic Disease Prevention and Health Promotion (CCDPHP) will also be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Robert D. Moran, Public Health Advisor, DDT, CCDPHP CDC, 1600 Clifton Road, NE, Mailstop E08, Atlanta, Georgia 30333, telephones: FTS: 236-1855; Commercial: 404/639-1855.

Dated: July 28, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-18097 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Availability of Funds for Grants for Health Care for the Homeless

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the President's budget for Fiscal Year 1990 includes $63.6 million for grants to provide primary health and substance abuse services to homeless individuals. Should funds be appropriated, the grants will be awarded under section 340 of the Public Health Service Act, as amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, November 7, 1988, Pub. L. 100-628. This announcement is made prior to an appropriation of funds to allow new and competing continuation applicants sufficient time to establish active and broad-based community coalitions, to

prepare applications, and to enable timely award of the grants in consideration of the special needs of homeless individuals. While this solicitation of applications in advance of an appropriation is an extraordinary action, it will enable the award of appropriated grant funds in the most expeditious manner and allow prompt provision of services to homeless individuals. On the basis of the President's budget, it is anticipated that approximately 150 new and competing continuation grants will be awarded to serve homeless individuals in urban and rural areas. Applicants should understand, however, that final appropriation action will be necessary in order for HRSA to fund any applications.

DATES: To receive consideration, grant applications must be received by the appropriate Grants Management Officer by September 15, 1989. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late and will be returned to the applicant.

ADDRESSES: Application kits (Form PHS 5161–1 with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0348–0006) may be obtained from, and completed applications should be mailed to the appropriate Regional Grants Management Officer (see Appendix). For further information on this program, please contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, telephone (301) 443–8134.

SUPPLEMENTARY INFORMATION: Section 340(a) of the Public Health Service Act authorizes the Secretary, acting through the Administrator of HRSA, to award grants for the purpose of enabling grantees, directly or through contracts, to provide for the delivery of primary health services and substance abuse services to homeless individuals. Eligible applicants are nonprofit private organizations and public entities, including State and local governmental agencies. Grantees and other organizations with whom they may contract for services under this program must have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and be qualified to receive payments under the agreement.

Preference will be given to qualified applicants that (1)(A) are experienced in the direct delivery of primary health services to homeless individuals or medically underserved populations or (B) are experienced in the treatment of substance abuse in homeless individuals or medically underserved populations; and (2) agree to provide for primary health and substance abuse services to homeless individuals through both public entities and private organizations.

For applicants not previously funded under section 340(a), the amount of Federal grant funds awarded may not exceed 75 percent of the costs of providing primary health and substance abuse services under the grant. Such newly funded applicants must make available non-Federal contributions equal to the remainder of the costs. For continuation applicants, the amount of Federal grant funds awarded may not exceed 66⅔ percent of the costs of providing primary health and substance abuse services under the grant. The continuation applicant, if funded, must make available non-Federal contributions equal to the remainder of the costs. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment or services. Funds provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of the non-Federal contributions. Such determination may not include any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals (including assistance other than the provision of health services). The Secretary may waive the matching requirement if the grantee is a nonprofit private entity and the Secretary determines that it is not feasible for the grantee to comply with the requirement.

The grant may be used to continue to provide services listed below for up to 12 months to individuals who have obtained permanent housing if services were provided to these individuals when they were homeless. For the purpose of this program, the term "homeless individual" means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations, or an individual who is a resident in transitional housing.

Project Requirements

a. The following services must be provided, directly or through contract:

1. Primary health care and substance abuse services at locations accessible to homeless individuals;

2. 24-hour emergency primary health and substance abuse services to homeless individuals;

3. Referral of homeless individuals as appropriate to medical facilities for necessary hospital services;

4. Referral of homeless individuals who are mentally ill to entities that provide mental health services, unless the applicant will provide such services directly;

5. Outreach services to inform homeless individuals of the availability of primary health and substance abuse services; and

6. Aid to homeless individuals in establishing eligibility for assistance, and in obtaining services, under entitlement programs. Podiatry, dental (including dentures), and vision services are supplemental services and may be provided where medically necessary, to the extent that the level of delivery of the required services is not diminished.

b. Restrictions on the use of grant funds are as follows:

1. Grant funds may not be used to pay for inpatient services except for residential treatment for substance abuse provided in settings other than hospitals.

2. Grant funds may not be used to make cash payments to intended recipients of primary health and substance abuse services or mental health services.

3. Grant funds may not be used to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment. However, upon request by the applicant demonstrating that the purposes of the project cannot othewise be carried out, the Secretary may waive these restrictions.

c. The grantee must, directly or through contract, provide primary health and substance abuse services without regard to ability to pay for the services. If a charge is imposed for the delivery of primary health and substance abuse services, such charge (1) will be made according to a schedule of charges that is made available to the public; (2) will not be imposed on any homeless individual with an income less than the official poverty level; and (3) will be

adjusted to reflect the income and resources of the homeless individual involved.

d. The grantee may not expend more than 10 percent of the Federal grant for the purpose of administering the grant.

e. The grantee may, with respect to title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, expend amounts received for the purpose of referring homeless individuals who are chronically mentally ill, and who are eligible under the Act, to systems that provide advocacy services under the Act.

f. The grantee may provide services through contracts with nonprofit self-help organizations that are established and managed by current and former recipients of mental health or substance abuse services, who have been homeless individuals; and that have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and qualify to receive payments under the agreement.

Criteria for Evaluating Applications

An objective review of applications that are received in a timely manner will be conducted. In addition to the preferences in making grants described above, the review of applications for grant support will consider the following:

a. Experience of the applicant in providing primary health and substance abuse services;

b. Extent to which the applicant has identified the homeless population in the service area, including the social and demographic characteristics of the population and the extent to which their health needs are not being met;

c. The adequacy of the applicant's proposed outreach plan to serve the homeless population;

d. Extent to which primary health and substance abuse services are to be provided to homeless individuals in a linked and integrated manner;

e. Extent to which the applicant has the ability to involve appropriate community representatives to ensure that the program is culturally appropriate and accommodates the needs of homeless individuals in the service area;

f. The qualifications and experience of the proposed project staff; and

g. The adequacy of the proposed budget.

Grant awards will be made subject to the provisions of the Public Health Service Grants Policy Statement.

Other Award Information

The program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 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 programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a point of contact in each State for the review. Since 60 days are allowed for this review, applicants are advised to discuss projects with, and provide copies of their applications to, contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Regional Grants Management Officer.

The OMB Catalog of Federal Domestic Assistance number for this program is 13.151.

Dated: June 23, 1989.

John H. Kelso,

Acting Administrator.

DHHS Regional Offices

Region I (CT, ME, MA, NH, RI, VT)
Grants Management Officer, PHS Office of Grants Management, John F. Kennedy Federal Bldg. #1400, Boston, Massachusetts 02203, (617) 565–1482
Region II (NJ, NY, PR, VI)
Grants Management Officer, PHS Office of Grants Management, 26 Federal Plaza #3337, New York, New York, 10278, (212) 264–4496
Region III (DE, DC, MD, PA, VA, WV)
Grants Management Officer, PHS Office of Grants Management, 3535 Market Street #10–140, Philadelphia, Pennsylvania 19101, (215) 596–6653
Region IV (AL, FL, GA, KY, MS, NC, SC, TN)
Grants Management Officer, PHS Office of Grants Management, 101 Marietta Tower, Suite 1121, Atlanta, Georgia 30323, (404) 331–2597
Region V (IL, IN, MI, MN, OH, WI)
Grants Management Officer, PHS Office of Grants Management, 105 West Adams, 17th Floor, Chicago, Illinois 60603, (312) 353–8700
Region VI (AR, LA, NM, OK, TX)
Grants Management Officer, PHS Office of Grants Management, 1200 Main Tower Bldg. #1800, Dallas, Texas 75202, (214) 767–3885
Region VII (IA, KS, MO, NE)
Grants Management Officer, PHS Office of Grants Management, 601 East 12th Street #501, Kansas City, Missouri 64106, (816) 426–5841
Region VIII (CO, MT, ND, SD, UT, WY)
Grants Management Officer, PHS Office of Grants Management, 1961 Stout St., Fed. Bldg. #492, Denver, Colorado 80294, (303) 844–4461
Region IX (AS, AZ, CA, GU, HI, NV, TT)
Grants Management Officer, PHS Office of Grants Management, 50 United Nations Plaza #331, San Francisco, California 94102, (415) 556–2595
Region X (AK, ID, OR, WA)
Grants Management Officer, PHS Office of Grants Management, 2201 6th Avenue, #710, Seattle, Washington 98121, (206) 442–7997

[FR Doc. 89–18117 Filed 8–2–89; 8:45 am]
BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of August 1989:

NAME: National Advisory Committee on Rural Health, Health Services Delivery Work Group.

DATE AND TIME: August 24, 1989, 1:00 p.m.

PLACE: Room 14–22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

PURPOSE: The Work Group defines issues and makes recommendations on the priorities and strategies which should be considered regarding the delivery of health care services in rural areas.

AGENDA: This meeting will be conducted through a telephone conference call. The conference call will discuss issues and proposed recommendations for the Report to the Secretary.

Anyone requiring information regarding the subject Committee should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: July 28, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-18073 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Meeting of the Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Office of the Assistant Secretary for Human Development Services.

Times and Dates: 9:00 A.M. September 19, 1989 to 12:00 P.M. September 22, 1989.

Place: Ramada Renaissance Hotel-Techworld, 9th and K Streets, NW., Washington, DC.

Status: Advisory Board meetings are open for public observation.

Matters To Be Considered: At this meeting the Advisory Board will: review developments since the first meeting; study in detail the programs of the National Center on Child Abuse and Neglect; hear from leaders of key Congressional Committees; hear from representatives of legal, law enforcement, and judicial groups; begin work on the first set of Board reports; and explore connections between the work of the Board and corollary bodies.

Contact Person for More Information: Byron D. Metrikin-Gold, Executive Director, Advisory Board on Child Abuse and Neglect, Room 2412-B Switzer Building, Washington, DC 20201, (202) 245-0877.

Dated: July 27, 1989.

Byron D. Metrikin-Gold,

Executive Director, Advisory Board on Child Abuse and Neglect.

[FR Doc. 89-18120 Filed 8-2-89; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 54 FR 21129 on May 16, 1989) is amended to reflect the transfer of some functions in the Food and Drug Administration (FDA).

FDA proposes to transfer the functions related to the evaluation of abbreviated new drug applications (ANDAs) from the Office of Drug Standards to the newly established Office of Generic Drugs in the Center for Drug Evaluation and Research. FDA believes greater focus can be placed on the generic drug approval process if these activities are placed in a separate office.

Section HF-B Organization and Functions is amended as follows:

1. Delete subparagraph (n-3) Office of Drug Standards (HFNE) in its entirety and insert a now subparagraph (n-3) Office of Drug Standards (HFNE) reading as follows:

(n-3) *Office of Drug Standards* (HFNE). Oversees the development and implementation of standards for the safety and effectiveness of over-the-counter (OTC) drugs and drug advertising and labeling.

Coordinates the formulation and implementation of OTC drug monographs with other Agency components and assists in final monograph publication.

Monitors, evaluates, and develops policy for prescription drug promotion and labeling.

Initiates necessary actions to maintain industry compliance with prescription drug advertising and labeling regulations.

Participates in Agency sponsored consumer and professional educational programs on drug standards.

2. Insert a new subparagraph (n-8) Office of Generic Drugs (HFNM) reading as follows:

(n-8) *Office of Generic Drugs* (HFNM). Oversees the development and implementation of standards for the safety and effectiveness of generic drugs.

Reviews and evaluates abbreviated new drug applications (ANDAs), Antibiotic Forms 6, and their amendments or supplements and determines approvability based on medical and scientific data findings.

Establishes bioequivalency specifications for drug products, develops guidelines for bioequivalency reviews, and develops guidelines for industry protocols and studies.

Participates in Agency sponsored consumer and professional educational programs on generic drugs.

Dated: July 25, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-18114 Filed 8-2-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15; F-14943-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Tanacross, Inc. for approximately 11,471 acres. The lands involved are in the vicinity of Tok, Alaska.

Copper River Meridian, Alaska

T. 18 N., R. 13 E.,

That portion of Tract A more particularly described as (protracted):

Sec. 1;

Sec. 2, excluding Native allotment applications F-14423, Parcel C, F-16422, Parcel B and U.S. Survey No. 7464;

Sec. 3;

Sec. 8 to 17, inclusive;

Sec. 21, S½;

Sec. 22, S½;

Sec. 23, N½N½, S½S½;

Sec. 24, N½N½, S½S½;

Sec. 25, excluding U.S. Survey No. 2547

Sec. 26;

Sec. 29;

Sec. 35 and 36, excluding U.S. Survey No. 2547.

Containing approximately 11,471 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government of regional corporation, shall have until September 5, 1989 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley H. Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 89-18095 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-JA-M

[CO-016-09-4370-16]

Closure and Restriction to Entry and Use; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that pursuant to the authority of the Code of Federal Regulations, Title 43, Part 8300, subpart 8364, 8364.1 (Closure and Restriction Orders), which provides, in part for the authorized officer to close or restrict use of designated public lands, for the protection of persons, property, and public lands and resources and to reduce the inhumane treatment of wild horses as defined in 43 CFR subpart 4700.0-50, this order will be immediately in effect upon publication in the Federal Register.

To allow wild horses and big game animals the uninhibited use of critical watering sources, the following areas are closed and restricted from camping, construction of hunting blinds, or any other use that would disrupt normal watering periods or prevent animals from using the following water sources:

1. Coffee Pot Spring located in SE,NW, Sec. 22, T.11N., R.98W.

2. Sheepherder Spring located in SE,SE, Sec. 8, T.10N., R.98W.

3. Wild Horse Spring located in NE,SE, Sec. 26, T.10N., R.98W.

4. Two Bar Spring located in SE,SW, Sec. 35, T.9N., R.99W.

The actual areas restricted and closed include one mile distance in all directions from these water sources.

These water sources are all located within the Sand Wash Basin and more specifically within the boundary of the Sand Wash Wild Horse Herd Management Area.

The areas described above shall remain closed to the public uses mentioned, for the period August 15, 1989 through November 15, 1989.

This closure notice shall not preclude travel on public roads within the one-mile restricted area, nor administrative use by Bureau of Land Management personnel.

Any person failing to comply with this closure and restricted use order may be subject to the penalties provided in 8360.0-7, 4760.2g, and 4760.2p of Title 43 Code of Federal Regulations.

Questions may be directed to Bureau of Land Management, Little Snake Resource Area, 1280 Industrial Ave., Craig, CO 81625, Telephone (303) 824-4441.

Glen Secrist,

Area Manager, Little Snake Resource Area.

[FR Doc. 89-18139 Field 8-2-89; 8:45 am]

BILLING CODE 4310-JB-M

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be Tuesday, September 12, 1989 at 10:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: This meeting is held in accordance with Public Law 92-463 and 94-579. This agenda will include the following topics: (1) State land exchange; (2) Sanitary landfills; (3) District recreation overview; (4) Planning system briefing. Current Salmon District issues will also be discussed.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:30 a.m. and 11:00 a.m. or file written statements for the Council's consideration. Anyone wishing to make oral statement must notify the District Manager at the Salmon District Office by September 8, 1989.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Salmon District BLM, P.O. Box 430, Salmon, Idaho 83467.

Roy S. Jackson,

District Manager.

[FR Doc. 89-18140 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-040-4320-10]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be Wednesday, September 20, 1989, at 10:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The meeting is open to the public; public comments on agenda items will be accepted from 11:00 to 11:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by September 13, 1987.

The purpose of the meeting is to discuss allotment management plans for the Lemhi Resource Area. Other items on the agenda are status of FY 89 projects, project requests and any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:15 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Roy S. Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Dated: July 28, 1989.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 89-18141 Filed 8-2-89; 8:45 am]

BILLING CODE 4310-GG-M

[NM-030-08-4333-10]

Off-Road Vehicle Designations in the Caballo Resource Area in the Las Cruces District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designations decisions.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles (ORVs) on public land within the Caballo Resource Area (formerly White Sands Resource Area), New Mexico in accordance with the authority and requirement of Executive Orders 11644 and 11989, and regulations contained in 43 CFR part 8340. The following

described lands under administration of the Bureau of Land Management (BLM), Las Cruces District are designated as open, limited, or closed to off-road motorized vehicle use. The areas affected by the designations are within Otero and Sierra counties, New Mexico.

Open Designation

Areas which are designated open comprise approximately 2,11,082 acres. Open designation was determined to be appropriate for this public land since ORV use is an important recreational activity and is essential for the conduct of other authorized resource uses.

Limited Designation

Otero County, New Mexico

—Limit motorized vehicle use on 38,726 acres in the Cornudas Mountains to existing roads and trails.
—Limit motorized vehicle use on 7,162 acres in the area of Moccasin and Otto Draws southwest of Pinon to existing roads and trails.
—Limit motorized vehicle use on 10,742 acres in the area of unnamed watersheds east to Tularosa and south of the Tularosa River to existing roads and trails.
—Limit motorized vehicle use on 21,446 acres in the Three Rivers watershed north of Tularosa to existing roads and trails.
—Limit motorized vehicle use on 11,015 acres in the area east of Crow Flats to existing roads and trails.
—Limit motorized vehicle use on 960 acres at the Three Rivers Petroglyph Site and Picnic Area to existing roads and trails.
—Limit motorized vehicle use on 300 acres in the Lone Butte area to existing roads and trails.
—Limit motorized vehicle use on 3,640 acres of the Sacramento Escarpment to existing roads and trails.
—Limit motorized vehicle use on 31,606 in the Brokeoff Mountains to existing roads and trails.

Sierra County, New Mexico

—Limit motorized vehicle use on 6,160 acres in the Cuchillo Mountains to existing roads and trails.
—Limit motorized vehicle use along 280 acres of Percha Creek to existing roads and trails.

Closed Designations

Otero Country, New Mexico

—Designate the 885-acre Rattlesnake Hill Archeological District closed to off-road travel by vehicles.
—Designate the 790-acre Alamo Mountain Petroglyphs Area closed to off-road travel by vehicles.
—Designate 705 acres of the Jarilla Mountains closed to off-road travel by vehicles.

EFFECTIVE DATE: August 3, 1989.

FOR FURTHER INFORMATION CONTACT: P. Robert Alexander, Area Manager, Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005 or at (505) 525–8228 (FTS 571–8312).

SUPPLEMENTARY INFORMATION: These designations are a result of resource management decisions made in the 1986 White Sands Resource Management Plan. Comments received from public meetings, workshops, and numerous written responses influenced the designation decisions. These designations are published as final. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

These areas are identified on maps and will be identified with signs at their locations within the Caballo Resource Area. These designations become effective upon publication in this **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impacts of these designations is available for inspection at the Caballo Resource Area Office.

Dated: July 26, 1989.

H. James Fox,

District Manager.

[FR Doc. 89–18143 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–FB–M

[CO–932–09–4212–24; C–38487, C–44263, C–46589, C–46594]

Conveyance of Lands; Reconveyance of Lands; Opening of Reconveyed Lands; Eagle, Garfield, Grand and Jackson Counties, Colorado; Correction

July 27, 1989.

SUMMARY: The subject notice published on Friday, July 14, 1989, in **Federal Register** Volume 54, No. 134, pages 29786, 29787, is hereby corrected as follows:

On page 29787, column 1, 2a. under Sixth Principal Meridian, T. 7 S., R. 94 W., sec. 15, reading "SW¼SW¼" is hereby corrected to read "SW¼NW¼.".

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 89–18144 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–JB–M

[ID–020–09–4212–12; I–27064]

Amendment to the Malad Hills Management Framework Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent/notice of realty action.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1610.2 (c) that the Burley District is proposing to amend the Malad Hills Management Framework Plan to allow the exchange of the following public and State of Idaho lands:

State of Idaho Lands

	Acres
T.16S., R.36E., Boise Meridian	
Section 30: NE¼SW¼	
Sub-Total	40.00
T.16S., R.35E., Boise Meridian	
Section 3: Lot 2 (33.75) NW¼SE¼	83.75
Section 8: SW¼SW¼	40.00
Section 11: NE¼SE¼	40.00
Section 12: S½NW¼, NW¼SW¼	120.00
Section 16: All	640.00
Section 17: NW¼NW¼	40.00
Sub-Total	963.75
T.16S., R.33E., Boise Meridian	
Section 16: All	640.00
T.15S., R.34E., Boise Meridian	
Section 36: All	640.00
T.15S., R.35E., Boise Meridian	
Section 16: N½, N½S½, SW¼SW¼	520.00
Section 33: W½NE¼, SE¼NW¼	120.00
Section 34: SW¼SE¼	40.00
Section 35: SW¼NW¼, NE¼SE¼	80.00
Section 36: All	640.00
Sub-Total	1400.00
T.14S., R.33E., Boise Meridian	
Section 36: All land N. of Highway #37	230.84
T.14S., R.34E., Boise Meridian	
Section 16: All	640.00
Section 36: All	640.00
Sub-Total	1280.00
T.13S., R.33E., Boise Meridian	
Section 36: All	640.00
T.13S., R.34E., Boise Meridian	
Section 16: All	640.00
Section 36: Lot 1 (37.03), Lot 2 (37.12), Lot 3 (37.21), Lot 4 (37.30), W½NE¼, W½, W½SE¼	628.66
Sub-Total	1268.66
T.10S., R.32E., Boise Meridian	
Section 20: S½S½	160.00
Section 21: S½SW¼, SE¼, SE¼NE¼	280.00
Sub-Total	440.00
Total acres for Idaho State lands	7543.25

Public Lands

	Acres
T. 9S., R.31E., Boise Meridian	
Section 23: NE¼NE¼, S½S½	200.00
Section 24: All	640.00
Section 25 NE¼, S½	480.00
Section 26: NE¼SW¼, SE¼	200.00
Section 35: N½NE¼, NE¼SE¼	120.00
Sub-Total	1640.00

	Acres
T. 9S., R.32E., Boise Meridian	
Section 19: Lot 1 (24.08), Lot 2 (24.26), Lot 3 (24.42), Lot 4 (24.60), E½, E½W½	577.36
Section 20: Lot 5 (41.18), Lot 6 (41.26), Lot 7 (41.64), Lot 8 (42.03), W½	486.11
Section 29: Lot 5 (42.38), Lot 6 (42.71), Lot 7 (43.03), Lot 8 (43.36), W½	491.48
Section 30: Lot 1 (24.74), Lot 2 (24.85), Lot 3 (24.97), Lot 4 (25.08), E½, E½W½	579.64
Section 31: Ne¼, E½NW¼	240.00
Section 32: Lot 5 (43.62), Lot 6 (43.47), Lot 7 (43.11), N½NW¼, SE¼NW¼, NE¼SW¼	290.20
Sub-Total	2664.79
T.10S., R.31E., Boise Meridian	
Section 1: Lot 1 (40.23), Lot 2 (40.47), Lot 3 (40.70), S½NE¼, SE¼	361.40
Section 12: NE¼, NW¼NE¼	120.00
Sub-Total	481.40
T.10S., R.32E., Boise Meridian	
Section 3: Lot 3 (19.59), Lot 4 (19.90), S½NW¼, SW¼	279.49
Section 10: W½	320.00
Section 15: NW¼, N½SW¼, SW¼SW¼	280.00
Section 5: SW¼SE¼, SE¼SW¼	80.00
Section 8: W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼	240.00
Section 18: Lot 3 (37.35)	37.35
Section 19: NE¼, E½NW¼, N½SE¼, NE¼SW¼	360.00
Sub-Total	1596.84
Total acres for public lands	6383.03

The scattered parcels of State land are located throughout the Deep Creek, Pleasantview, and Samaria mountains within Oneida and Power Counties. The public lands are located six miles east of Rockland, Idaho.

A Land Use Plan Amendment Document and Land Report will be prepared for the subject lands. The documents will be reviewed by the Bureau of Land Management Interdisciplinary Resource Specialists. Public participation will involve the publication of this notice in the Federal Register and local newspapers. The adjoining landowners, grazing permittees, County Commissioners, the Burley District Grazing Advisory Board members and Advisory Council members, and the Idaho Fish and Game Department will be asked for comments. As public controversy is anticipated to be low for proposed action, no public meetings hearing, or conferences are planned.

In accordance with 43 CFR 2201.1(b), publication of this Notice in the Federal Register will segregate the above described public lands from laws, including locations under the mining laws, except as to application under mineral leasing laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of the publication, whichever occurs first.

The main issue that is anticipated for the exchange is whether it is in the public interest to exchange 6,383.03 acres of public land, for 7,543.25 acres of State land having value for livestock grazing, wildlife habitat, timber, and public access values.

The existing land use plan and maps are available for review at the Deep Creek Resource Area Office in Malad, Idaho.

The public may obtain additional information about this exchange proposal by contacting the Bureau of Land Management, Attn: John R. Christensen, Deep Creek Resource Area Office in Malad, Idaho, 83252, (208) 766–4766.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments on the segregative effect of this action to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action.

Dated: July 25, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89–18142 Filed 8–2–89; 8:45 am]

BILLING CODE 4310-GG-M

[NM-010-09-4212-13/GP9-0118]

Albuquerque District, NM; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange NM 68546.

SUMMARY: This notice is to advice that the following described public lands have been determined to be suitable for disposal through exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 17 N., R. 9 E.,
Sec. 17: Lot 5;
Sec. 20: Lots 1 thru 8.

The area described amounts to 196.58 acres.

In exchange for these lands, the United States will acquire the following described lands from the Rio Grande Land Partnership of Taos, New Mexico:

NEW MEXICO PRINCIPAL MERIDIAN

	Acres
T. 28 N., R. 9 E., NMPM:	
Sec. 3: All	655.48
Sec. 11: NE4, E2NW4	240
T. 28 N., R. 10 E., NMPM:	
Sec. 5: All	643.88
Sec. 6: Lots 1, 2, 3	122.01
T. 29 N., R. 9 E., NMPM:	
Sec. 23: W2NW4, W2SW4, NE4SW4, E2SE4, NW4SE4	320
Sec. 26: W2NW4	80
Sec. 27: S2NE4	80
Sec. 34: NE4, S2	480.5
T. 29 N., R. 10 E., NMPM:	
Sec. 31: NE4NE4, S2NE4, SE4NW4, E2SW4, SE4, Lots 2, 3, 4	520.11
T. 30 N., R. 10 E., NMPM:	
Sec. 9: E2SW4, SW4SW4, SE4	280
Sec. 10: N2, W2SW4	400
The areas described amount to 3,821.98 acres.	

The public land identified for disposal is located about 4 miles northwest of the City of Santa Fe, New Mexico and has high potential for residential development. Due to small size and adjacent development, the public land receives little public use. Land is currently leased for grazing and permittee will be notified that grazing permit will be cancelled within two (2) years and will be reasonably compensated for range improvements. The private lands located about 20 miles west of Taos, New Mexico have high resource value in terms of wildlife habitat and public recreation including hunting and hiking.

This exchange proposal is consistent with recommendation L–7.3 in the Rio Grande Management Framework Plan (MFP) and also completed Resource Management Plan (RMP) for the Taos Resource Area. Exchange will not impact any local or Federal planning.

The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations:

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

Publication of this notice segregates the public land from the operation of all

the public land laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including environmental assessment and land reports, is available for review at the Taos Resource Area Office, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571, phone (505) 758–8851.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico 87107.

Dated: July 25, 1989.

Robert Dale,

District Manager.

[FR Doc. 89–18145 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–FB–M

[ES–940–09–4520–13; ES–041306, Group 9]

Filing of Plat of Dependent Resurvey and Resurvey of Camp Lots; Maine

July 27, 1989.

1. The plat, in two sheets, of the dependent resurvey and survey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 1, Range 8, West of Bingham's Kennebec Purchase (W.B.K.P.), Fanklin County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 11, 1989.

2. The dependent resurvey and survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 11, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Beaudin

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89–18146 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–GJ–M

[NM 940–09–4730–12]

Filing of Plat of Survey; New Mexico

July 26, 1989.

The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on September 20, 1989.

A survey representing the dependent resurvey of a portion of the east boundary of Small Holding Claim 2683, Tr. 3, and certain lot boundaries in section 32, and the survey of certain lot boundaries in section 32, Township 4 South, Range 1 East, NMPM, NM.

A survey representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, the subdivision of section 7, certain lot boundaries in sections 4 and 5, the adjusted record meanders of portions of the Rio Grande in sections 4 and 5, the corrective dependent resurvey of certain small holding claim boundaries, and the subdivision of a portion of section 5, the survey of the new meanders in section 4, certain lot boundaries in sections 4, 5, and 7, and a partition of accretion line in section 4, Township 5 South, Range 1 East, NMPM, NM.

These surveys were requested by the District Manager, Las Cruces District, Las Cruces, New Mexico.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Branch of Cadastral Survey.

[FR Doc. 89–18147 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

Applicant

Name: Envirosphere Company
Address: 10900 NE 8th Street, Bellevue, Washington 98004
Type of Permit: Scientific Research
Name of Animals: Walrus (*Odobenus rosmarus*)—250,000
Summary of Activity to be Authorized: The applicant proposes to conduct aerial surveys and vessel observations of walruses in the Chukchi Sea to develop information for determining walrus abundance, distribution, and behavior relative to offshore oil/gas drilling and associated activities.
Source of Marine Mammals for Display: Chukchi Sea, east of the U.S.-Russia convention line of 1867 and north of 68 N latitude.
Period of Activity: June 1989 through November 1989 and June 1990 through November 1990.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 3507, Arlington, VA 22203–3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 N. Fairfax Drive, Room 430, Arlington, VA.

Dated: July 31, 1989.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–18119 Filed 8–2–89; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–293X]

Detroit & Mackinac Railway Co.; Abandonment Exemption in Cheboygan and Presque Isle Counties, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 55.25-mile line of railroad in Cheboygan and Presque Isle Counties,

MI: (1) In the Huron Subdivision, between milepost 151.5 at Hawks and milepost 192.0 at Cheboygan; and (2) in the Mackinaw Subdivision, between milepost 168.0 at Cheboygan and milepost 182.75 at Mackinaw City.

Applicant has certifed 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 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 on September 2, 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 August 14, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 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: Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, 1350 New York Avenue NW., Suite 800, Washington, DC 20005.

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 August 8, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. 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: July 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18005 Filed 8–2–89; 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*, 5 I.C.C.2d 377 (1989). 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).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Arrangement

Notice is hereby given that the Attorney General, by Order of July 24, 1989, has extended the period for public comment and the filing of the Antitrust Division's report concerning the application for a Joint Operating Arrangement between the *Manteca News* and the *Manteca Bulletin* filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.*

The Order provides that the Antitrust Division's report shall be filed within 14 days after the Attorney General rules on the pending requests of the *Manteca News* to withhold certain materials from public disclosure. The times allowed for the filing of comments and request for a hearing are extended to the same timeframe as the filing of the Antitrust Division's report.

Comments should be filed by mailing or delivering five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: July 27, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 89–18149 Filed 8–2–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 26, 1989, a proposed Consent Decree in *United States* v. *Jay Printing Company*, Civil No. 88–0470–P, was lodged with the United States District Court for the District of Rhode Island. The proposed Consent Decree concerns the prevention of the discharge of volatile organic compounds ("VOCs") in violation of the Clean Air Act and the limits set forth in Regulation 19 of the Rhode Island State Implementation Plan. The proposed Consent Decree requires Jay Printing to maintain compliance with the Act and the applicable emission limits for VOCs, to monitor and report on their compliance and to pay a civil penalty of $82,342.

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 Jay Printing, D.J. Ref. 90–5–2–1–1151.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10th Floor, 10 Dorrance Street, Providence, Rhode Island and at the Region 1 Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.90 (10 cents per page reproduction

cost) made payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-18148 Filed 8-2-89; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-11906; License No. 12-16941-01; EA 88-313]

Professional Service Industries, Inc., Lombard, IL; Order Imposing Civil Monetary Penalty

I

Professional Service Industries, Lombard, Illinois (licensee) is the holder of Materials License No. 12-16941-01 issued by the Nuclear Regulatory Commission on September 30, 1976 and renewed in its entirety on April 25, 1988. The licensee authorizes the licensee to possess and use licensed material for measuring the moisture and/or density of construction materials and for sample analysis.

II

A routine inspection of the licensee's activities on November 30 and December 7-8, 1988 disclosed that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated May 23, 1989. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty in two letters dated June 20, 1989. In its response, the licensee admitted the violation and requested 90 percent mitigation of the civil monetary penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and request for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered* that:

The licensee pay a civil penalty in the amount of Twenty Thousand Dollars ($20,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violation, this Order should be sustained.

Dated at Rockville, Maryland, this 24th day of July 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On May 23, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violation identified during an NRC inspection. Professional Service Industries, Inc. (PSI) responded to the Notice on June 20, 1989. The licensee admitted the violation, described corrective steps taken to ensure compliance now and in the future, and requested that the civil penalty be mitigated from $20,000 to $2,000. The following includes a restatement of the violation, a summary of the licensee's response and the NRC staff's evaluation and conclusion regarding the licensee's request.

I. Restatement of Violation

10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under the constant surveillance and immediate control of the licensee.

Contrary to the above, on November 18, 1988, an unsecured Campbell-Pacific moisture-density gauge containing a nominal 10 millicurie cesium-137 sealed source and a 50 millicurie americium-241 sealed source was left by the licensee in the back of an open bed pickup truck in an unrestricted area and the licensed material was not in storage and was not under the constant surveillance and immediate control of the licensee.

This is a repeated violation.

This is a Severity Level II violation (Supplement IV). Civil Penalty—$20,000

II. Summary of Licensee's Request for Mitigation

The licensee argues that the penalty appears to be based upon PSI being categorized with industrial radiographers, nuclear pharmacies and other industrial users licensed to use material with a large potential for exposure and/or contamination hazard to personnel and the public, a category for which the base civil penalty is ten thousand dollars ($10,000). PSI is a licensed user of moisture density gauges, and the licensee further argues that it should be categorized along with users of these and similar devices, which are included in a civil penalty category for which the base civil penalty is one thousand dollars ($1,000).

III. NRC Evaluation of Licensee's Request for Mitigation

In developing this enforcement action, the NRC staff considered the general guidance in Paragraph 5, Section V.B of the Enforcement Policy which states, in part, that ". . . operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. . . . The deterrent effect of civil penalties is best served when the amount of such penalties takes into account a licensee's 'ability to pay'. . . . NRC will consider as necessary an increase or decrease on a case-by-case basis."

In a number of cases, civil penalties have been decreased based on the size of the program and "ability to pay." Conversely, there have been several cases involving materials licensees where the civil penalty has been increased, based, in part, on increased size of a program and "ability to pay" where the Enforcement Policy would not have provided a sufficient penalty absent such consideration.

Contrary to PSI's impression, the staff has not categorized PSI among "Industrial users of materials" licensees (category f). Rather, as stated in the staff's May 23, 1989 letter, the base civil penalty for PSI's Severity Level II violation was $800. This amount is the amount that would be assessed against "Other material licensees" (category j). However, the staff in consultation with the Commission concluded that, based on the size of PSI, its activities, and ability to pay, a

base penalty significantly larger than the $800 provided for in Category j of Table 1a of the Policy was warranted. Based on the factors stated above and Section V.B of the Enforcement Policy, a base civil penalty of $8,000 was determined to be appropriate in this case. After consideration of the adjustment factors in the Enforcement Policy, the staff determined that a civil penalty of $20,000 should be proposed. The staff believes that this penalty will provide the appropriate motivation by sending a clear message of its regulatory concern to not only PSI's corporate office but also PSI's individual branches.

IV. NRC Conclusion

The NRC staff has concluded that the licensee's request for 90 percent mitigation of the proposed civil penalty is not supported by the licensee's arguments in its June 20, 1989 responses. Consequently, the proposed civil penalty in the amount of $20,000 should be imposed.

[FR Doc. 89-18157 Filed 8-2-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-142]

The University of California, Los Angeles (UCLA Research Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated June 10, 1988, as supplemented on June 21, 1988, December 7, 1988, and March 31, 1989, the University of California at Los Angeles (UCLA) requested authorization to complete dismantling of the UCLA Argonaut Reactor Facility (Phase II), located on its campus in Los Angeles, California and to dispose of the component parts, in accordance with the plan submitted as part of the application. Based upon a prior application to dismantle and dispose of the component parts, a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts of Terminating Facility License" was published in the **Federal Register** on September 24, 1984 at 49 FR 37484. Following hearings and stipulations by the parties involved, an Order was issued on November 8, 1985, by the Atomic Safety and Licensing Board that terminated UCLA License No. R-71 and authorized UCLA to possess but not operate the facility.

By application dated October 29, 1985, as supplemented, UCLA submitted a Phase I decommissioning plan. An Order authorizing Phase I dismantling of the facility and disposition of component parts was issued by the Nuclear Regulatory Commission (the Commission) on July 14, 1986. Phase I dismantlement and disposition of component parts has been completed except for the disposition of 5000 pounds of activated lead. This issue must be resolved for UCLA to be in compliance with the Phase I Order.

The Commission has reviewed the June 10, 1988 Phase II application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with UCLA's Phase II dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, UCLA is hereby ordered to dismantle the Argonaut Reactor Facility and dispose of the component parts in accordance with Phase II of its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance.

Following an inspection by representatives of the Commission to verify compliance with the Phase I and Phase II Orders, consideration will be given to releasing the facility for unrestricted use.

For further details with respect to this action, see (1) the licensee's application for Phase II authorization to dismantle the facility and dispose of component parts, dated June 10, 1988, as supplemented, (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 28th day of July 1989.

For The Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18158 Filed 8-2-89; 8:45 am]
BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Statement Regarding Contributions and Support
(2) *Form(s) submitted:* G-134
(3) *OMB Number:* 3220-0099
(4) *Expiration date of current OMB clearance:* 9-30-89
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 400
(9) *Total annual responses:* 400
(10) *Average time per response:* .292 hours
(11) *Total annual reporting hours:* 117
(12) *Collection description:* Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and

Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89-18152 Filed 8-2-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Yellowstone County, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Yellowstone County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental and Project Development Engineer, Federal Highway Administration, 301 South Park Street, Drawer 10056, Helena, Montana 59626-0056, Telephone: (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59620, Telephone (406) 444-6242.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Highways (MDOH) will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new interchange providing access to Interstate 90. The proposed interchange would be located between Billings and Laurel, Montana in Yellowstone County. The proposed interchange is considered necessary to provide for existing and projected traffic demand for the expanding City of Billings.

Alternatives under consideration include: (1) Taking no action; (2) constructing an interchange at the Shiloh Road location; (3) constructing an interchange at the Duck Creek Road location; and (4) constructing an interchange at any feasible alternative between Shiloh Road and Duck Creek Road.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of formal scoping meetings will be held near Billings beginning between October and December, 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified; comments and suggestions are invited from all interested parties. Comments and/or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on July 26, 1989.

D.C. Lewis,

Assistant Division Administrator, Montana Division, Helena.

[FR Doc. 89-18153 Filed 8-2-89; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

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 ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 89–17724

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 3, 1989, 10:00 a.m., Meeting Open to the Public.

The following items have been added to the agenda for the meeting of August 3, 1989:

Draft Advisory Opinion 1989–11:
Messrs. Mac Asbill, Jr. and Wright H. Andrews, Jr. one behalf of Sutherland, Asbill & Brennan.

Explanation and Justification of the Affiliation and Earmarking Regulations (11 CFR 110.3–110.6).

DATE AND TIME: Tuesday, August 8, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 10, 19089, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory opinion 1989–13:
Mr. Roger M. Witten and Ms. Kristina L. Ament on behalf of International Business Machines Corporation.
Draft Advisory Opinion 1989–15:
Thomas Tew on behalf of Ileana Ros-Lehtinen
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89–18273 Filed 8–1–89; 1:19 pm]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, August 8, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank holding company applications scheduled for the meeting.

Dated: July 31, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–18204 Filed 7–31–89; 4:46 pm]
BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pitman-Moore, Inc.; Withdrawal of Approval of New Animal Drug Applications

Correction

In notice document 89-16851 beginning on page 30268 in the issue of Wednesday, July 19, 1989, make the following correction:

On page 30269, in the first column, in the last paragraph, in the fifth line, after "548.112b", insert "(section reserved)."

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-7551]

Proposed Amendments to Prohibited Transaction Exemption (PTE) 78-19 Involving Insurance Company Pooled Separate Accounts

Correction

In notice document 89-17450 beginning on page 31092 in the issue of Wednesday, July 26, 1989, make the following correction:

The portion of text beginning on page 31095 with **Written Comments and Hearing Request** and ending on page 31096 with the last line of designated paragraph (i), was printed in incorrect order and should read as set forth below.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendments to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendments. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendments

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1, the Department proposes to amend PTE 78–19 as set forth below.

1. Section I(a) of the exemption is amended to read:

General exemption. Any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest, or any acquisition or holding by the pooled separate account of employer securities or employer real property, if the party in interest is not the insurance company which holds the plan assets in its pooled separate account, any other separate account of the insurance company, or any affiliate of the insurance company, and if, at the time of the transaction, acquisition or holding, either

(1) The assets of the plan (together with the assets of any other plans maintained by the same employer or employee organization) in the pooled separate account do not exceed—

(i) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs prior to February 20, 1979;

(ii) 5 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after February 20, 1979, and on or before June 30, 1988; or

(iii) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after July 1, 1988, or

(2) On or after July 1, 1988, the pooled separate account is a specialized account that has a policy of investing, and invests, substantially all of its assets in short-term obligations (having a stated maturity date of one year or less or having a maturity date of one year or less from the date of acquisition by such specialized account), including but not necessarily limited to—

(i) Corporate or governmental obligations or related repurchase agreements;

(ii) Certificates of deposit;

(iii) Bankers acceptances; or

(iv) Variable amount notes of borrowers of prime credit.

2. Section II(a)(3) of the exemption is amended to read:

The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the pooled separate account with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or .5 percent of the fair market value of the assets of the pooled separate account on the most recent valuation date of the account prior to the transaction.

BILLING CODE 4510-29-M

BILLING CODE 1505-01-D

federal register

Thursday
August 3, 1989

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 544

Adult Basic Education Program; Final Rule

28 CFR Part 523

Statutory and Extra Good Time; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Adult Basic Education (ABE) Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on the Adult Basic Education (ABE) program. The amendment requires a prior, verified high school diploma or GED certificate and academic performance at the 8.0 grade level for promotion to grade one positions in either a Federal Prison Industries, Inc. or performance pay assignment, or assignment to an incentive pay (piece rate) position. This amendment is made in recognition of the higher standards of literacy required in the workplace.

EFFECTIVE DATE: September 1, 1989.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on the Adult Basic Education (ABE) program. A proposed amendment was published in the **Federal Register** March 17, 1989 (at 54 FR 11331) to require that an inmate possess either a prior, verified high school diploma or General Equivalency Degree (GED) and be functioning at the 8.0 academic grade level before that inmate could be assigned to a performance pay or Federal Prison Industries, Inc. (UNICOR) work position at the grade one level, or be assigned to an incentive pay (piece rate) position. The existing rule required that the inmate be able to demonstrate achievement of at least an 8.0 academic grade level before being assigned to either grade one, two, or three pay positions. Public comment was invited on this proposal. No public comment was received.

In this document, the Bureau of Prisons is finalizing its March 17, 1989 amendment, with one less restrictive change. For this reason, the Bureau finds good cause under 5 U.S.C. 553(d) to finalize this amendment without a thirty day delay in effective date. The Bureau is also making several other changes to the existing ABE rule. These changes are either less restrictive or a rewording or reorganization of the existing rules. For this reason, the Bureau finds good cause under 5 U.S.C. 533(d) to make these changes without notice of proposed rulemaking or opportunity for public comment, or delay in effective date. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the **Federal Register**.

Revisions to the final rule include the following. In § 544.70 the attendance requirement is clarified to be the lesser of either 90 calendar days or until an 8.0 academic grade level is achieved. The existing § 544.71 is reorganized into two sections, and the following sections are renumbered accordingly. The reorganization of § 544.71 clarifies that the exemptions listed in existing § 544.71(a) (1) through (3) are limited to the educational area, while the exemptions listed in paragraphs (a) (4) through (6) apply to both the educational and pay compensation area. Section 544.71 is retitled "Applicability: Who must attend Adult Basic Education." The introductory text of existing § 544.71 is reworded, however, the intent is unchanged. In § 544.71, paragraphs (a)(4) and (a)(5) are removed because the number of inmates described in those paragraphs is now too few to need general mention in the rule. Nevertheless, it is the Bureau's policy to continue the exemption provided by those paragraphs for those inmates. Section 544.71(a)(6) is reworded and is included in new paragraph (a)(4) and § 544.72. Section 544.71(b) now requires that reasons for not requiring an inmate to attend the ABE program be placed both in the inmate central and education files.

Section 544.72 is now titled "Applicability: Who may be promoted." Section 544.72(a) introductory text specifies that inmates must achieve an 8.0 academic grade level to be promoted to grade 3 and 2 in a UNICOR or Inmate Performance Pay Assignment. This carries forward the intend of former § 544.71(a)(6). This change is consistent with the proposed ABE amendment published in the **Federal Register** March 17, 1989. Section 544.72(a) (1) and (2) identify exemptions to this rule. New § 544.72(a)(2) allows the Warden to make exemptions to the 8.0 academic grade requirements for good cause (e.g., a learning disability).

Section 544.72(b) introductory text restates language contained in the proposed amendment published in the **Federal Register** March 17, 1989, and requires an 8.0 academic grade level and a GED or high school diploma in order to be promoted to a grade one position. Section 544.72(b) (1) and (2) provide exceptions to this policy. For the convenience of the reader, paragraph (b)(1) includes the implementation date of this amendment. Section 544.72(b)(2) allows the Warden to make exemptions for good cause. Section 544.72(c) requires exemptions to be documented in the inmate's central file and education file. Existing § 544.72 becomes new § 544.73. In § 544.73(b) the requirement for the ABE coordinator to hold meetings with inmates involved in the ABE program is modified to allow a designated ABE teacher to hold such meetings. The final rule clarifies that the formal interview shall occur at least once every 30 days during the mandatory 90 day period. Documentation of these interviews is to be placed in the ABE Program Record. Section 544.73(c) is reworded, deleting the word "authorized" before "absences." The intent of this section, however, is unchanged. Proposed changes to existing § 544.73 were published in the **Federal Register** on March 17, 1989, and are now finalized in new § 544.74. This section is amended by inserting the word "non-graded" before "incentive pay" to identify clearly the scope of the amendment. Existing §§ 544.74 and 544.75 become new final §§ 544.75 and 544.76.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR, Chapter V, Subchapter C is amended as set forth below.

Dated: July 28, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

In 28 CFR Part 544, Subpart H is revised to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Subpart H—Adult Basic Education (ABE) Program

Sec.

544.70 Purpose and scope.
544.71 Applicability: Who must attend Adult Basic Education.
544.72 Applicability: Who may be promoted.
544.73 Procedures.
544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.
544.75 Incentives.
544.76 Disciplinary action.

Subpart H—Adult Basic Education (ABE) Program

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (repealed October 12, 1984, as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 544.70 Purpose and scope.

An inmate confined in a federal institution who cannot read, write, or do mathematics at the 8.0 academic grade level is required to attend an Adult Basic Education (ABE) program for a minimum of 90 calendar days or until an 8.0 academic grade level is achieved. The Warden shall establish incentives to encourage an inmate to complete the ABE program.

§ 544.71 Applicability: Who must attend Adult Basic Education.

(a) All inmates in federal institutions must attend the ABE program except:

(1) Pre-trial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

(4) Other inmates who, for good cause, the Warden may excuse from attending ABE.

(b) Staff shall document in the inmate's education file and central file the specific reasons for not requiring the inmate to participate in the ABE program.

§ 544.72 Applicability: Who may be promoted.

(a) All inmates must achieve an 8.0 academic grade level in order to be promoted to grades 3 and 2 in UNICOR and Inmate Performance Pay assignments except:

(1) Inmates who during their present confinement completed the ABE program at the 6.0 academic grade level prior to the 8.0 academic grade level requirement.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotion to grades 3 and 2.

(b) All inmates must achieve an 8.0 academic grade level and a GED or high school diploma in order to be promoted to grade 1 assignments except:

(1) Inmates already in UNICOR or Inmate Performance Pay (IPP) assignments in pay grade 1 at the time of implementation of this rule (September 1, 1989), who do not have their GED or a high school diploma or who may not presently function at the 8.0 academic grade level, but who were approved for promotion above grade 4.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotions to grade 1.

(c) Staff shall document in the inmate's education file and central file the specific reasons for allowing pay promotion exemptions.

§ 544.73 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who is functioning below an 8.0 academic grade level in reading, writing or mathematics is enrolled in the ABE program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ABE program. The ABE coordinator or an ABE teacher designated by the ABE coordinator shall meet initially with the inmate for the purpose of enrolling the inmate in the ABE program. Subsequently, the ABE coordinator or designated teacher shall formally interview each inmate involved in the ABE program at least once every 30 days during the mandatory 90 day period, to review and record the inmate's progress in this program. The ABE coordinator shall place documentation of these interviews in the ABE Program Record in the inmate's education file.

(c) At the end of 90 calendar days, excluding sick time, furloughs, or other absences from scheduled classes, the unit team shall meet with the inmate to encourage continued participation in the ABE program until the inmate reaches the 8.0 academic grade level. At this time, the inmate may elect not to continue in the ABE program, and no disciplinary action will be taken. The inmate may not discontinue this program where treatment is mandated by statute.

§ 544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

(a) Inmates who wish to secure a UNICOR or IPP work assignment in either grade 2 or grade 3 of compensation must be able to demonstrate achievement of at least an 8.0 academic grade level. Inmates who wish to secure a UNICOR or IPP work assignment in grade 1 or who wish to work in non-graded incentive pay (piece rate) positions must be able to demonstrate the prior obtainment of a GED or high school diploma and the achievement of at least an 8.0 academic grade level. The Warden may, for good cause, exempt inmates from this requirement.

(b) An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progress in the ABE program may be used as the basis to remove the inmate from the UNICOR or IPP work assignment.

§ 544.75 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a minimum academic grade level of 8.0.

§ 544.76 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below the 8.0 grade level when that inmate refuses to enroll in, or to complete, the mandatory 90 calendar days ABE program.

[FR Doc. 89–18160 Filed 8–2–89; 8:45 am]
BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

28 CFR Part 523

Control, Custody, Care, Treatment, and Instruction of Inmates; Statutory and Extra Good Time

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rules on good time and on extra good time. The clarifying amendments include a defintion of statutory good time, and a new section formalizing the Bureau's policy on the handling of previously earned good time following an inmate's return to custody for a violation of the

charge on which the good time was first earned. The final amendments to the rule on extra good time are intended to update the current rule, and include provisions encompassing the Comprehensive Crime Control Act of 1984.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 767, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is amending its final rule on good time and on extra good time. Proposed amendments to this rule were published in the **Federal Register** October 31, 1986 (at 51 FR 39840 et seq.). Interested persons were invited to submit comments on the proposed changes. Members of the public may submit comments concerning the changes in the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**. For ease of reading, the present document republishes the Bureau of Prisons complete rule on good time and extra good time.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

A commenter to § 523.2 objects to the Bureau crediting an inmate's statutory good time in advance, erroneously believing such a calculation allows for a forfeiture of good time, for a disciplinary violation, prior to it being earned. The Bureau policy, as set forth in 28 CFR 541.13, clearly states that only earned good time may be considered for forfeiture where an inmate is found to have committed a disciplinary infraction. The Bureau does its advance calculation for administrative purposes, to help determine the inmate's release date in the event no such forfeiture occurs during the inmate's period of confinement.

In § 523.10(a), and throughout the remainder of the rule, the reference to "Institution Discipline Committee" is changed to "Discipline Hearing Officer" as this is the term now used in the discipline process. A similar change occurs in § 523.1 and throughout the remainder of the rule, with the phrase "Community Corrections Center" substituted for "Community Treatment Center."

Section 523.10(b) is new, and recognizes that inmates sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984 are not eligible for either statutory or extra good time consideration. These inmates may be considered, however, for good conduct time credit pursuant to 18 U.S.C. 3624. The provisions for good conduct time credit will be addressed in a separate Bureau rule.

A commenter urges the Bureau to clarify § 523.17(l) by making it mandatory that a pretrial detainee be recommended for good time credit. We do not not agree. The making of such recommendations for extra good time credit is not automatic, and should only be made based on the requirements of § 523.10. If a pre-trial detainee's performance is within these guidelines, a recommendation for good time is to be considered in the event that the pre-trial detainee is later sentenced on the crime for which he or she was in pre-trial status.

List of Subjects in 28 CFR Part 523

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: July 28, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

In 28 CFR Subchapter B, Part 523 is revised to read as follows:

Subchapter B—Inmate Admission, Classification, and Transfer

PART 523—COMPUTATION OF SENTENCE

Subpart A—Good Time

Sec.

523.1 Definitions.
523.2 Good time credit for violators.

Subpart B—Extra Good Time

523.10 Purpose and scope.
523.11 Meritorious good time.
523.12 Work/Study release good time.
523.13 Community corrections center good time.
523.14 Industrial good time.
523.15 Camp or farm good time.
523.16 Lump sum awards.
523.17 Procedures.

Authority: 5 U.S.C. 301; U.S.C. 3568 (repealed November 1, 1987 as to conduct occurring on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161–4166 (repealed October 12, 1984 as to conduct occurring on or after November 1, 1987), 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—Good Time

§ 523.1 Definitions.

(a) "Statutory Good Time" means a credit to a sentence as authorized by 18 U.S.C. 4161. The total amount of statutory good time which an inmate is entitled to have deducted on any given sentence, or aggregate of sentences, is calculated and credited in advance, when the sentence is computed.

(b) "Extra Good Time" means a credit to a sentence as authorized by 18 U.S.C. 4162 for performing exceptionally meritorious service or for performing duties of outstanding importance in an institution or for employment in a Federal Prison Industry or Camp. "Extra Good Time" thus includes Meritorious Good Time, Work/Study Release Good Time, Community Corrections Center Good Time, Industrial Good Time, Camp or Farm Good Time, and Lump Sum Awards. Extra good time and seniority are inseparable with the exception of lump sum awards for which no seniority is earned.

(c) "Seniority" refers to the time accrued in an extra good time earning status. Twelve months of "seniority" automatically cause the earning rate to increase from three days per month to five days per month and seniority is then vested.

(d) "Earning Status" refers to the status of an inmate who is in an assignment or employment which accrues extra good time.

§ 523.2 Good time credit for violators.

(a) An inmate conditionally released from imprisonment either by parole or mandatory release can earn statutory good time, upon being returned to custody for violation of supervised release, based on the number of days remaining to be served on the sentence. The rate of statutory good time for the violator term is computed at the rate of the total sentence from which released.

(b) An inmate whose special parole term is revoked can earn statutory good time based on the number of days remaining to be served on the special parole violator term. The rate of statutory good time for the violator term is computed at the rate of the initial special parole term plus the total

sentence that was served prior to the special parole term and to which the special parole term was attached.

(c) Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned (extra or statutory) during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.

Subpart B—Extra Good Time

§ 523.10 Purpose and scope.

(a) The Bureau of Prisons awards extra good time credit for performing exceptionally meritorious service, or for performing duties of outstanding importance or for employment in an industry or camp. An inmate may earn only one type of extra good time award at a time (e.g., an inmate earning industrial or camp good time is not eligible for meritorious good time), except that a lump sum award as provided in § 523.16 may be given in addition to another extra good time award. The Warden or the Discipline Hearing Officer may not forfeit or withhold extra good time. The Warden may disallow or terminate the awarding of any type of extra good time (except lump sum awards), but only in a nondisciplinary context and only upon recommendation of staff. The Discipline Hearing Officer may disallow or terminate the awarding of any type of extra good time (except lump sum awards), as a disciplinary sanction. Once an awarding of meritorious good time has been terminated, the Warden must approve a new staff recommendation in order for the award to recommence. A "disallowance" means that an inmate does not receive an extra good time award for only one calendar month. Unless other action is taken, the award resumes the following calendar month. A "disallowance" must be for the entire amount of extra good time for that calendar month. There may be no partial disallowance. A decision to disallow or terminate extra good time may not be suspended pending future consideration. A retroactive award of meritorious good time may not include a month in which extra good time has been disallowed or terminated.

(b) The provisions of this rule do not apply to inmates sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. This means that inmates sentenced under the Sentencing Reform Act provisions for offenses committed on or after November 1, 1987 are not eligible for either statutory or extra good time, but may be considered for a maximum of 54 days of good conduct time credit per year (see 18 U.S.C. 3624(b)).

§ 523.11 Meritorious good time.

(a) Staff are responsible for recommending meritorious good time based upon work performance. Each recommendation must include a justification which clearly shows that the work being performed is of an exceptionally meritorious nature or is of outstanding importance in connection with institutional operations. Work performance and the importance of the work performed are the only criteria for awarding meritorious good time.

(b) A retroactive award of meritorious good time is ordinarily limited to three months, excluding the month in which the recommendation is made. A retroactive award in excess of three months requires the approval of the Warden or designee (may not be delegated below the level of Associate Warden). Staff are to include with any recommendation for an inmate to receive a retroactive award of meritorious good time, a written statement confirming the inmate's eligibility for the retroactive award.

(c) Meritorious good time continues uninterrupted regardless of work assignment changes unless the Warden or the Discipline Hearing Officer takes specific action to terminate or disallow the award.

§ 523.12 Work/study release good time.

Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.

§ 523.13 Community corrections center good time.

Extra good time for an inmate in a Federal or contract Community Corrections Center is awarded automatically, beginning on arrival at the facility and continuing as long as the inmate is confined at the Center, unless the award is disallowed.

§ 523.14 Industrial good time.

Extra good time for an inmate employed in Federal Prison Industries, Inc., is automatically awarded, beginning on the first day of such employment, and continuing as long as the inmate is employed by Federal Prison Industries, unless the award is disallowed. An inmate on a waiting list for employment in Federal Prison Industries is not awarded industrial good time until actually employed.

§ 523.15 Camp or farm good time.

An inmate assigned to a farm or camp is automatically awarded extra good time, beginning on the date of commitment to the camp or farm, and continuing as long as the inmate is assigned to the farm or camp, unless the award is disallowed.

§ 523.16 Lump sum awards.

Any staff member may recommend to the Warden the approval of an inmate for a lump sum award of extra good time. Such recommendations must be for an exceptional act or service that is not part of a regularly assigned duty. The Warden may make lump sum awards of extra good time not to exceed thirty days. If the recommendation is for an award in excess of thirty days and the Warden concurs, the Warden shall refer the recommendation to the Regional Director who may approve the award. No award may be approved which would exceed the maximum number of days allowed under 18 U.S.C. § 4162. The actual length of time served on the sentence, to the date that the exceptional act or service terminated, is the basis on which the maximum amount possible to award is calculated. No seniority is accrued for such awards. Staff may recommend lump sum awards of extra good time for the following reasons:

(a) An act of heroism;

(b) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;

(c) An act which protects the lives of staff or inmates or the property of the United States; this is to be an act and not merely the providing of information in custodial or security matters;

(d) A suggestion which results in substantial improvement of a program or operation, or which results in significant savings; or

(e) Any other exceptional or outstanding service.

§ 523.17 Procedures.

(a) Extra good time is awarded at a rate of three days per month during the first twelve months of seniority in an earning status and at the rate of five days per month thereafter. The first twelve months of seniority need not be based on a continuous period of twelve months. If the beginning or termination date of an extra good time award occurs after the first day of a month, a partial award of days is made.

(b) An inmate may be awarded extra good time even though some or all of the inmate's statutory good time has been forfeited or withheld.

(c) Parole and mandatory release violators may earn extra good time the same as other inmates. Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.

(d) Staff working in the community have the same extra good time authority as the Warden when approving the award of good time for an inmate confined in a non-federal facility and may approve meritorious good time or lump sum awards in accordance with this rule upon recommendations made by a responsible person employed by the non-federal facility. The appropriate staff in the Regional Office may review all such awards if the Regional Director requires the review.

(e) An inmate who is transferred remains in the earning status at time of transfer, unless the reason for transfer would otherwise have caused removal from an earning status, and provided the inmate's behavior is such while in transit that it does not justify removal. Where the receiving institution is a camp, farm, or community corrections center, the extra good time continues automatically upon the inmate's arrival. Where the receiving institution is other than a camp, farm, or community corrections center, the extra good time is terminated upon arrival, and staff at the receiving institution shall review each case to determine if the inmate should continue in meritorious good time earning status if not immediately employed in Federal Prison Industries or assigned to a work/study release program. If the inmate then is not continued in meritorious good time earning status, later awards must comply with procedures outlined in § 523.11.

(f) An inmate serving a life sentence may earn extra good time even though there is no mandatory release date from which to deduct the credit since the possibility exists that the sentence may be reduced or commuted to a definite term.

(g) Extra good time is not automatically discontinued while an inmate is hospitalized, on furlough, out of the institution on a writ of habeas corpus, or removed under the Interstate Agreement on Detainers. Extra good time may be terminated or disallowed during such absences if the Warden or the Discipline Hearing Officer finds that the inmate's behavior warrants such action.

(h) Extra good time earned by an inmate in a District of Columbia Department of Corrections facility is treated the same as if earned in a Bureau of Prisons institution, upon transfer to a Bureau institution.

(i) An inmate committed under the provisions of 18 U.S.C. 3651 (split sentence) may earn extra good time credits provided the sentence imposed is not under the provisions of 18 U.S.C. 5010 (b) or (c) (YCA). All extra good time and seniority earned is carried over to any subsequent probation violator sentence based on the original split sentence.

(j) An inmate committed under the provisions of 18 U.S.C. 4205(c) may earn extra good time credits towards the final sentence that may be imposed. Such extra good time credits do not reduce the three months allowed for study. An inmate committed under the provisions of 18 U.S.C. 4244, as amended effective October 12, 1984, may earn extra good time credits toward the final sentence that may be imposed. Such extra good time credits do not reduce the provisional sentence. Extra good time may continue during a commitment for examination of hospitalization and treatment under 18 U.S.C. 4245, as amended effective October 12, 1984.

(k) Inmates committed under the provisions of 18 U.S.C. 4244, 4246–47, 4252, 5010 (b), (c), (e), or 5037(c) as these sections were in effect prior to October 12, 1984, are not entitled to extra good time deductions. Inmates committed under the provisions of 18 U.S.C. 4241, 4242, 4243, or 4246 as these sections were amended effective October 12, 1984, are not entitled to extra good time deductions.

(l) A pretrial detainee may not earn good time while in pretrial status. A pretrial detainee, however, may be recommended for good time credit. This recommendation shall be considered in the event that the pretrial detainee is later sentenced on the crime for which he or she was in pretrial status.

(m) An inmate committed for civil contempt is not entitled to extra good time deductions while serving the civil contempt sentence.

(n) A military or Coast Guard inmate may earn extra good time. Extra good time earned in Federal Prison Industries in a military or Coast Guard installation is treated the same as if earned in Federal Prison Industries in the Bureau of Prisons. Other forms of military or Coast Guard extra good time, such as Army Abatement time, are fully credited, but no seniority is allowed.

(o) American citizens who are serving sentences in foreign countries and who are subsequently returned to this country under the provisions of 18 U.S.C. Chapter 306 (Pub. L. 95–144) may have earned work, labor, or program time credits in the foreign country similar to extra good time earned under 18 U.S.C. 4162. Such foreign "extra good time" credits shall be treated as if awarded under § 523.16, Lump Sum Awards, with any future lump sum award consideration in this country calculated on the basis of time served in custody of the Bureau of Prisons. After return to this country an inmate may earn extra good time at the three-day rate and advance to the five-day rate after one year of seniority is accrued. No seniority is accrued for foreign "extra good time" credits.

(p) An inmate in extra good time earning status may not waive or refuse extra good time credits.

(q) Once extra good time is awarded, it becomes vested and may not be forfeited or withheld, or retroactively terminated or disallowed.

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federal register

Thursday
August 3, 1989

Part III

The President

Proclamation 6005—Helsinki Human Rights Day, 1989

Legislative Branch

Federal Register
Vol. 54, No. 148
Thursday, August 3, 1989

Presidential Documents

Title 3—

The President

Proclamation 6005 of August 1, 1989

Helsinki Human Rights Day, 1989

By the President of the United States of America

A Proclamation

Fourteen years ago, the United States and Canada joined 33 European countries in signing the Helsinki Final Act of the Conference on Security and Cooperation in Europe. That action not only marked the culmination of the remarkable, 2-year meeting of the Conference on Security and Cooperation in Europe (CSCE), but also signaled a milestone in European post-war history.

The Helsinki accords recognized the inherent relationship between respect for human rights and fundamental freedoms and the attainment of genuine peace and security. Following years of diligent effort, the Western nations won in these accords the stated commitment of the Soviet Union and Eastern Europe to one of the most far-reaching sets of human rights standards ever enunciated by governments. By signing the Helsinki Final Act, all participating States agreed to respect freedom of thought, freedom of conscience, as well as freedom of religion and belief. Signatories also agreed to facilitate the free movement of people, ideas, and information between nations. The work begun at Helsinki to eliminate the barriers that divide East and West and to advance our goals of freedom, openness, and security has continued throughout three follow-up meetings.

The ongoing CSCE process represents an invaluable avenue to work for change. As recent developments in some nations of Eastern Europe suggest, the Western countries' insistence upon full implementation of the human rights and humanitarian provisions of the Helsinki accords is contributing to fulfillment of my Administration's goal of "a Europe whole and free." The United States welcomes recent improvements in human rights practices in Poland, Hungary, and the Soviet Union. Nevertheless, we look for further reforms in these countries as well as institutionalization of the reforms already introduced.

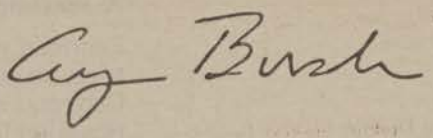
Despite some positive signs of change in the U.S.S.R. and some countries in Eastern Europe, we are still far from achieving universal compliance with the Helsinki accords. The governments of Romania, Bulgaria, Czechoslovakia, and East Germany continue to systematically deny the fundamental rights of their citizens. Religious oppression, persecution of ethnic minorities, and restrictions on freedom of information and travel in these countries violate the letter and spirit of the Helsinki accords and impede the CSCE process. The United States will continue to condemn such human rights violations and call upon these countries to meet their commitments under the Helsinki Final Act.

Respect for individual liberty and fundamental human rights is not only the duty of legitimate government, but also the key to economic prosperity and lasting peace among nations. The United States thus remains firmly committed to securing full implementation of the human rights and humanitarian provisions of the Helsinki Final Act.

In recognition of the importance this Nation places on human rights and our continuing commitment to the CSCE process, the Congress, by Senate Joint Resolution 150, has designated August 1, 1989, as "Helsinki Human Rights Day" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 1, 1989, as Helsinki Human Rights Day and reaffirm U.S. dedication to the principles of human dignity and freedom enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs, ceremonies, and activities, let us call upon all signatories of the Final Act to fulfill their obligation to respect the fundamental rights and dignity of all their citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



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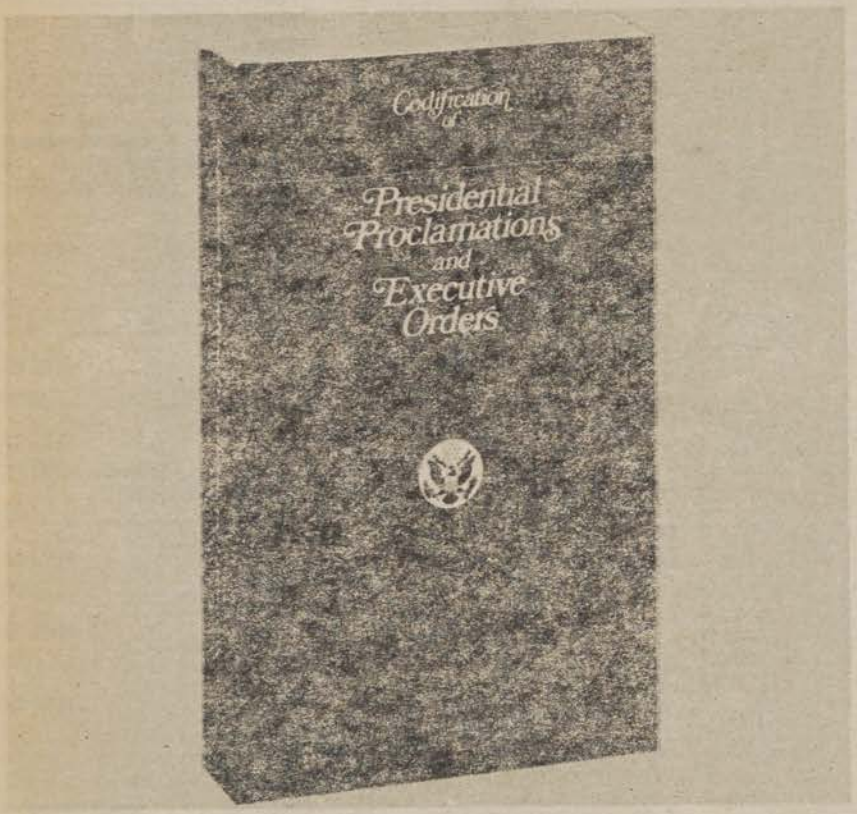
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H.R. 1485 / Pub. L. 101-67

Apex Project, Nevada Land Transfer and Authorization Act of 1989 (July 31, 1989; 103 Stat. 168; 7 pages) Price: $1.00

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