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Friday
February 3, 1989

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WHO: The Office of the Federal Register.

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-89-004]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Dancy Tangerine Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule, which temporarily relaxed the minimum size requirements for domestic shipments of Florida Dancy tangerines from size 176 (2⁶⁄₁₆ inches in diameter) to size 210 (2⁵⁄₁₆ inches in diameter). The size composition, maturity level, and current and prospective market demand conditions for the 1988–89 season Dancy tangerine crop warrants this action.

EFFECTIVE DATE: February 3, 1989.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers may be classified as small entities.

Grade and size requirements for Florida citrus fruit covered under this marketing order are specified in § 905.306 *Orange, Grapefruit, Tangerine, and Tangelo Regulation 6* (7 CFR 905.306). Section 905.306 is effective on a continuing basis subject to modification, suspension, or termination by the Secretary.

An interim final rule amending paragraph (a) of § 905.306 was issued November 18, 1988, and was published in the Federal Register (53 FR 47660, November 25, 1988). That rule provided that interested persons could file written comments through December 27, 1988. No comments were received.

The interim final rule amended paragraph (a) of § 905.306, temporarily relaxing the minimum size requirements for domestic shipments of Florida Dancy tangerines from size 176 (2⁶⁄₁₆ inches in diameter) to size 210 (2⁵⁄₁₆ inches in diameter) for the period November 21, 1988, through August 20, 1989. The relaxation is only for 1988–89 season Dancy tangerine shipments. Tighter minimum size requirements (size 176) will resume for Dancy tangerines effective August 21, 1989, as provided in § 905.306. The tighter minimum size requirements are for 1989–90 season shipments and are based upon the maturity, size, quality, and flavor characteristics of Florida Dancy tangerines early in the shipping season.

The Citrus Administrative Committee (committee), which administers the program locally, recommended that size 210 Dancy tangerines be released effective November 21, 1988, at its meeting of October 18, 1988. The committee recommended this action based on the projected maturity and flavor levels and size composition of the tangerine crop remaining for shipment at that time. Relaxing the minimum size requirements follows the practice of prior years of lowering such requirements when the crop has reached an acceptable level of flavor and maturity. The maturity and flavor of size 210 tangerines is adequate to foster strong sales in fresh market channels for the remainder of the season. Florida Dancy tangerine shipments normally start in November and peak in December.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida tangerine shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the

current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

The relaxation of the minimum size requirements applicable to Dancy tangerines was designed to maximize fresh domestic shipments and permit shipments to meet buyer needs. The relaxation is meeting these objectives. Therefore, the Department's view is that the impact of this action upon producers and shippers will be beneficial because it will enable shippers to continue to provide Dancy tangerines consistent with buyer requirements. The application of minimum size requirements to Dancy tangerines over the past several years has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets.

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

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

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed minimum size requirements currently in effect for Florida Dancy tangerines; (2) Florida Dancy tangerine shippers are aware of this action which was recommended by the committee at a public meeting and they are prepared to continue operating in accordance with the relaxed requirements; (3) shipment of the 1988–89 season Florida Dancy tangerine crop is currently underway; (4) the interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

§ 905.306 [Amended]

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** (53 FR 47662, November 25, 1988), is adopted as a final rule without change.

Note.—This section will appear in the Code of Federal Regulations.

Dated: January 31, 1989.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2590 Filed 2–2–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 907

[Navel Orange Reg. 686]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 686 establishes the quantity of California-Arizona Navel oranges that may be shipped to market during the period February 3 through February 9, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 686 (§ 907.986) is effective for the period February 3, 1989, through February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

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

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

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

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

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 31, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 2 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is fair.

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

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days

after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel Oranges.

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

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

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

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

2. Section 907.986 is added to read as follows:

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

§ 907.986 Navel Orange Regulation 686.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 3, 1989, through February 9, 1989, are established as follows:

(a) District 1: 1,479,000 cartons;
(b) District 2: 221,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: February 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2687 Filed 2–2–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Reg. 651]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 651 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 265,466 cartons during the period February 5 through February 11, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 651 (§ 910.951) is effective for the period February 5 through February 11, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriquez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on January 31, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is fair.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.951 is added to read as follows:

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

§ 910.951 Lemon Regulation 651.

The quantity of lemons grown in California and Arizona which may be handled during the period February 5, 1989, through February 11, 1989, is established at 265,466 cartons.

Dated: February 1, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-2686 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[FV-88-126FR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Handler Reporting Requirements and Deadlines for Ordering Sample Almond Packages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for California almonds to require handlers of California almonds to: (1) File no later than September 1 of each year ABC Form 42, a handler information sheet, listing the handler's name, address, phone number, ownership or corporate information, and acknowledgement of receipt of almond marketing order program information; and (2) place written orders for sample packages of almonds with the Almond Board of California (Board) no later than February 1 of any crop year (or August 15 of any crop year, when a 40 percent deferment provision contained in the order is used) to receive credit against their assessment obligations for that year. The Board is the agency responsible for local administration of the almond marketing order.

The first change will provide Board management with certain organizational information regarding almond handlers regulated under the order. This information is needed by Board management and the U.S. Department of Agriculture (USDA) to improve compliance under the almond marketing order. The second change will give the Board additional time to arrange for the production of sample packages. Additional time is necessary due to greatly increased handler demand for such packages.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended (order), regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are an estimated 115 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, producers, and accepted users of California almonds may be classified as small entities.

This action amends the rules and regulations established under the marketing order for California almonds to specify requirements for handlers of California almonds. Based on a unanimous recommendation of the Board at its July 20, 1988, meeting, a new § 981.474(e) is added to the Administrative Rules and Regulations, requiring that each handler file no later than September 1 of each year ABC Form 42, a handler information sheet, listing the handler's name, address, telephone number, ownership or corporate information and acknowledgement of receipt of marketing order program information. The type of entity would have to be specified (i.e., a sole proprietorship, a partnership, or a corporation) with the names and addresses of the owner, partners, or corporate officers, as appropriate.

The rationale to require this information sheet is based on the research of the Board's Administrative and Finance Committee and the recommendation of the Board, which anticipates improved compliance operations under the marketing order through the use of these records. It is estimated that the handler information sheet, as recommended by the Board, will take less than five minutes to complete, and thus will present no significant burden to the estimated 115 handlers subject to regulation under the California almond marketing order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions contained in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581-0071.

Under § 981.441(d)(1)(i), handlers may receive credit for distributing sample almond packages purchased from the Board containing one-half ounce or less of almonds, to charitable or educational outlets. The second change adds a new paragraph (F) to § 981.441(d)(1)(i), requiring that handlers place written orders for sample packages with the Board no later than February 1 of any crop year, except to the extent handlers use the deferment provision found in paragraph (b) of § 981.441. Handlers using the deferment provision pursuant to paragraph (b) will be required to place written orders for sample packages with the Board no later than August 15 of any crop year. In order to provide ample time for handlers to place written orders for sample packages with the Board for this crop year, handlers would be required to place written orders no later than March 15, 1989, instead of the February 1 date.

These new deadlines by which handlers must place orders with the Board for sample almond packages are needed because of the greatly increased volume of generic package sales to handlers. Orders need to be placed 16 to 20 weeks in advance in order to provide adequate time to prepare the large volume of packages requested. The deadlines will help ensure an adequate supply of the sample almond packs for use by handlers in promoting California almonds, which may further benefit the industry through subsequently increased sales of almonds in the marketplace.

Due to the addition of the above paragraph (F) to § 981.441(d)(1)(i), the present paragraph (F) will be redesignated as paragraph (G).

Notice of a proposal to add new §§ 981.441(d)(1)(i)(F) and 981.474(e) was published in the September 27, 1988, issue of the Federal Register (53 FR 37586). Comments on the proposed rule were invited from interested persons until October 27, 1988. No comments were received.

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

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

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

Note.—These sections will appear in the annual Code of Federal Regulations.

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

2. Amend § 981.441 by redesignating paragraph (d)(1)(i)(F) as (d)(1)(i)(G) and adding a new paragraph (d)(1)(i)(F) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) Handlers must place written orders for sample packages with the Board no later than February 1 of any crop year except to the extent that handlers use the deferment provision found in paragraph (b) of this section: *Provided*, That for the 1988–89 crop year, handlers must place written orders no later than March 15, 1989. Handlers must place written orders for sample packages with the Board no later than August 15 of any crop year to receive credit for up to 40 percent of their creditable assessment obligations when using the deferment provision pursuant to paragraph (b) of this section.

* * * * *

3. Amend § 981.474 by adding a new paragraph (e) to read as follows:

§ 981.474 Other reports.

* * * * *

(e) *Handler information reports.* Each handler shall file no later than September 1 of each year ABC Form 42, a Handler Information Sheet, listing the handler's name, address, phone number, ownership or corporate information and acknowledging receipt of marketing order program information.

Dated: January 31, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–2591 Filed 2–2–89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Revision of Guaranteed Farmer Program Loan Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published January 13, 1989 (54 FR 1534) to Exhibit E to Subpart B of Part 1980 of its regulations. An error was made which changes the intended implementation of this exhibit. The intended effect of this action is to correct this error.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Randy Tingler, Guaranteed Loan Making Branch, Farmers Home Administration, USDA, Room 5439, Washington, DC 20250. Telephone: (202) 475–4022.

SUPPLEMENTARY INFORMATION: On January 13, 1989, FmHA published a final rule to implement the changes to its regulations necessary to implement the Agricultural Credit Act of 1987. Exhibit E to 7 CFR Part 1980, Subpart B implements the demonstration project between the Farm Credit System and Farmers Home Administration for the purchase of certain Farm Credit System acquired farm land. Errors made in Exhibit E changed the meaning and intent of the exhibit.

The following corrections are made to 54 FR on page 1595 dated January 13, 1989:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—General

Exhibit E to Subpart B—Demonstration Project for Purchase of Certain Farm Credit System Acquired Farm Land

2. Paragraph III E is corrected by adding a new last sentence to read as follows: "Except the reserve requirement as outlined in § 1980.106(b)(17)(iii) of this subpart may be from 0 up to 10 percent."

3. Paragraph IV J is corrected by removing the phrase: "as defined in § 1980.106(b)(17) of this subpart".

Date: January 26, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89–2532 Filed 2–2–89; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 62

Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this rule to establish criteria and procedures for fulfilling its responsibilities associated with acting on requests by low-level radioactive waste generators, or State officials on behalf of those generators, for emergency access to operating, non-Federal or regional, low-level radioactive waste disposal facilities under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985. Grants of emergency access may be necessary if a generator of low-level radioactive waste is denied access to operating low-level radioactive waste disposal facilities and the lack of this access results in a serious and immediate threat to the public health and safety or the common defense and security.

EFFECTIVE DATE: March 6, 1989.

ADDRESS: Copies of comments received on the proposed rule and the regulatory analysis may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Janet Lambert, Division of Engineering, Office of Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3857.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On December 15, 1987, NRC published in the **Federal Register** (52 FR 47587) a proposed new Part 62 to 10 CFR in order to implement its emergency access responsibilities under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99–240, January 15, 1986), "the Act." The proposed Part 62 set forth the criteria and procedures that the Commission intended to use to determine if emergency access to non-Federal and regional low-level waste (LLW) disposal facilities should be granted. The public comment period for the proposed rule expired on February 12, 1988. The NRC received twenty-one (21) comment letters from ten concerned citizens and environmental groups, six State governments, two LLW compact Commissions, two industries and one nuclear information service.

The Act directs the States to develop their own low-level radioactive waste (LLW) disposal facilities or to form Compacts and cooperate in the development of regional LLW disposal facilities so that the new facilities will be available by January 1, 1993. The Act establishes procedures and milestones for the selection and development of the LLW disposal facilities. The Act also establishes a system of incentives for meeting the milestones, and penalties for failing to meet them, which is intended to ensure steady progress toward new facility development.

The major incentive offered by the Act is that the States and regional Compacts that meet the milestones will be allowed to continue to use the existing disposal facilities until their own facilities are available, which is to be no later than January 1, 1993. If unsited States or Compact regions fail to meet key milestones in the Act, the States or Compact Commissions with operating non-Federal or regional LLW disposal facilities are authorized to demand additional fees for wastes accepted for disposal, and ultimately to deny the LLW generators in the delinquent State or Compact region further access to their facilities.

Section 6 of the Act provides that the Nuclear Regulatory Commission (NRC) can determine to grant a generator "emergency access" to non-Federal or regional low-level radioactive waste (LLW) disposal facilities if access to those facilities has been denied and access is necessary in order to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The Act also requires that NRC determine whether the threat can be mitigated by any alternative consistent with the public health and safety, including ceasing the activities that generate the waste. NRC must be able, with the information provided by the requestor, to make both determinations prior to granting emergency access. The purpose of this regulation is to set forth the criteria and procedures that will be used by the Commission to determine if emergency access to a LLW facility should be granted.

II. Legislative Requirements

In addition to directing the NRC to grant emergency access as discussed in the Background section, the Act further directs NRC to designate the operating LLW disposal facility or facilities where the waste will be sent for disposal if NRC determines that the circumstances warrant a grant of emergency access. NRC is required to notify the Governor (or chief executive officer) of the State in which the waste was generated that emergency access has been granted, and to notify the State and Compact which will be receiving the waste that emergency access to their LLW disposal facility is required. The Act limits NRC to 45 days from the time a request is received to determine whether emergency access will be granted and to designate the receiving facility.

The Act provides that NRC can grant emergency access for a period not to exceed 180 days per request. To ensure that emergency access is not abused, the Act allows that only one extension of emergency access, not to exceed 180 days, is to be granted per request. An extension can be approved only if the LLW generator who was originally granted emergency access and the State in which the LLW was generated have diligently, though unsuccessfully, acted during the period of the initial grant to eliminate the need for emergency access.

The Act also provides that requests for emergency access shall contain all information and certifications that NRC requires to make its determination.

"Temporary emergency access" to non-Federal or regional LLW disposal facilities may be granted at the Commission's discretion because of a serious and immediate threat to the public health and safety or the common defense and security, pending a Commission determination as to whether the threat could be mitigated by suitable alternatives. The grant of temporary emergency access expires 45 days after it is granted.

The Act does not require NRC to develop a rule to carry out its section 6 responsibilities. However, NRC is issuing this rule to establish the criteria and procedures that will be used in making the required determinations for emergency access. Although Congress provided NRC the statutory responsibility for implementing section 6 of the Act and gave the Commission authority to decide whether access will be provided, emergency access decisions are likely to be controversial. By setting out the criteria and procedures for making emergency access decisions in a rule that reflects public comment, NRC intends to add predictability to the decisionmaking process and to help ensure that the NRC will be able to make its decisions on emergency access requests within the time allowed by the Act.

III. Legislative History

The legislative history of the Act emphasizes the Congressional intent that emergency access be used only in very limited and rare circumstances and that it was not intended to be used to circumvent other provisions of the Act. Congress believed it was important for the successful implementation of the Act that emergency access not be viewed by the unsited States as an alternative to the pursuit of the development of new LLW disposal capacity. The legislative history indicates that Congress believed that with the various management options available to LLW generators, including, for example, storage or ceasing to generate the waste, that instances where there was no alternative to emergency access would be unlikely. Congress expected that responsible action from the generators and the States/Compacts should resolve most access problems thus precluding the necessity for involving the Federal sector in granting emergency access. Section 6 was included to provide a mechanism for Federal involvement as a vehicle of last resort.

In developing the emergency access rule, NRC tried to be consistent both

with the actual text of section 6 of the Act and with the intent expressed by Congress regarding decisions made pursuant to section 6. The rule sets strict requirements for granting emergency access and should serve to encourage potential requesters to seek other means for resolving the problems created by denial of access to LLW disposal facilities. The rule places the burden on the party requesting emergency access to demonstrate that the criteria in the rule have been met and emergency access is needed. Applicants for emergency access will have to provide clear and convincing evidence that they have exhausted all other options for managing their waste. By establishing strict requirements for approving requests for emergency access, NRC intends to reinforce the idea that problems with LLW disposal are to be worked out to the extent practical among the States, and that emergency access to existing LLW facilities will not automatically be available as an alternative to developing that capacity. NRC believes this interpretation is consistent with a plain reading of the Act and the supporting legislative history.

Section 6(g) of the Act requires the NRC to notify the Compact Commission for the region in which the disposal facility is located of any NRC grant of access "for such approval as may be required under the terms of its compact." The Compact Commission "shall act to approve emergency access not later than fifteen days after receiving notification" from the NRC. The purpose of this provision is to—

- Ensure that the Compact Commission is aware of the NRC's grant of emergency access and the terms of the grant,
- Allow the Compact Commission to implement any administrative procedures necessary to carry out the grant of access, and
- Ensure that the limitations on emergency access set forth in section 6(h) of the Act have not been exceeded.

However, it is clear from the legislative history of the Act that section 6(g) should not be construed as providing the Compact Commission with a veto over the NRC's grant of emergency access. The basic purpose of the section 6 emergency access provision is to ensure that LLW disposal sites that have denied access to certain States under provisions of the Act will be made available to receive waste in situations posing a serious and immediate threat to the public health and safety. A Compact Commission veto would frustrate the purpose of the emergency access provision and would be generally contrary to the legislative framework established in the Act. As emphasized in the House Committee on Interior and Insular Affairs Report on the Act, ratification of a Compact should be conditioned on the Compact's acting in accord with the provisions of the Act. If the Compact refuses to provide, under its own authorities, emergency access under section 6, Congressional ratification of that Compact would be null and void. H.R. REP. No. 314, 99th Cong., 1st Sess., pt. 1, at 2997 (1985).

IV. NRC Approach

In developing this rule, the NRC's approach was to:

1. Ensure that all of the principal provisions of section 6 of the Act are addressed in the regulation.
2. Identify the information and certifications that will have to be submitted with any request for emergency access in order for NRC to make the necessary determinations.
3. Ensure that the criteria and procedures that are established in 10 CFR Part 62 can be implemented within 45 days after NRC receives a request as specified in the Act.
4. Establish criteria and procedures for designating a site to receive the waste that are fair and equitable and that are consistent with the other provisions of the Act, including the limits on the amount of waste that can be disposed of at each operating facility.
5. Establish requirements for granting emergency access that are stringent enough to discourage the unsited States and regions from viewing emergency access as an alternative to diligent pursuit of their own disposal capability, and yet flexible enough to allow NRC to respond appropriately in situations where emergency access is genuinely needed to protect the public health and safety or the common defense and security.

V. Assumptions

NRC made several assumptions in developing this rule.

NRC assumed that the wastes requiring disposal under the emergency access provision will be the result of unusual circumstances. The nature of routine LLW management is such that it is difficult to conceive of situations where denial of access to disposal would create a serious and immediate threat to the public health and safety or the national security. In most cases generators should be able to safely store routinely generated LLW or employ other options for managing the waste without requiring emergency access. Thus, if all the LLW generators in a State were denied access to LLW disposal facilities, NRC would not expect to receive a blanket request for emergency access for all of the LLW generated in that State, or for all of the LLW generated by a particular kind of generator since the need for emergency access would be different in each case.

NRC has also assumed that requests for emergency access will not be made for wastes that would otherwise qualify for disposal by the Department of Energy (DOE) under the unusual volumes provision of the Act (Section 5(c)(5)). This means that NRC does not intend to consider requests for emergency access for wastes generated by commercial nuclear power stations as a result of unusual or unexpected operating, maintenance, repair, or safety activities. Section 5(c)(5) of the Act specifically sets aside 800,000 cu ft of disposal capacity above the regular reactor allocations through 1992 to be used for those wastes. With this space reserved for wastes qualifying for the "unusual volumes allocation," NRC believes emergency access should be reserved for other LLW, until the 800,000 cu ft allocation is exceeded.

NRC considered basing its decisions for granting emergency access solely on quantitative criteria, but decided against that approach. While NRC has identified some of the wastes and the scenarios which would create a need for emergency access, it is unlikely that all possibilities can be predicted or anticipated. Largely, because of the uncertainty associated with identifying all of the circumstances under which emergency access may be required, NRC has avoided establishing criteria with absolute thresholds. Instead, the rule contains a combination of qualitative and quantitative criteria with generic applicability. NRC believes this combination provides maximum flexibility in considering requests for emergency access on a case-by-case basis.

VI. The Final Rule

The final rule contains four Subparts, A, B, C, and D. These Subparts set out the requirements and procedures to be followed in requesting emergency access and in determining whether or not requests should be granted. Each Subpart is summarized and discussed here.

Subpart A—General Provisions

Subpart A contains the purpose and scope of the rule, definitions, instructions for communications with the Commission, and provisions relating to interpretations of the rule. Subpart A states that the rule applies to all persons

as defined by this regulation who have been denied access to existing commercial LLW disposal facilities and who submit a request to the Commission for an emergency access determination under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985. Subpart A also emphasizes that the emergency access rule applies only to those subclasses of LLW for which the States have disposal responsibility under Section 3(1)(a) of the Act.

Subpart B—Request for a Commission Determination

Subpart B specifies the information that must be submitted and the procedures that must be followed by a person seeking a Commission determination on emergency access.

Specifically, Subpart B requires the submission of information on the need for access to LLW disposal sites, the quantity and type of material requiring disposal, impacts on health and safety or common defense and security if emergency access were not granted, and consideration of available alternatives to emergency access. This information will enable the Commission to determine:

(a) Whether a serious and immediate threat to the public health and safety or the common defense and security might exist,

(b) Whether alternatives exist that could mitigate the threat, and

(c) Which non-Federal disposal facility or facilities should provide the required disposal.

In addition, Subpart B also sets forth procedures for the filing and distribution of a request for a Commission determination. It provides for publishing in the **Federal Register** a notice of receipt of a request for emergency access to inform the public that Commission action on the request is pending. Although comment is not required by the Act or the Administrative Procedure Act, Subpart B provides for a 10-day public comment period on the request for emergency access.

In the event that the case for requesting emergency access is to be based totally or in part on the threat posed to the common defense and security, Subpart B specifies that upon receiving such a request, NRC will consult with the Department of Energy (DOE) and or the Department of Defense (DOD) to ascertain the importance to the common defense and security of the activities producing the LLW for which emergency access is requested.

Subpart C—Issuance of a Commission Determination

For the NRC to grant emergency access, the Commission must first conclude that there is a serious and immediate threat to the public health and safety or the common defense and security, and second that there are no available mitigating alternatives. Subpart C sets out the procedures to be followed by the Commission in considering requests for emergency access, for granting extensions of emergency access, and for granting temporary emergency access; establishes the criteria and standards to be used by the Commission in making those determinations; and specifies the procedures to be followed in issuing them.

Subpart C provides that NRC, in determining whether there is a serious and immediate threat to the public health and safety, will consider: (1) The nature and extent of the radiation hazard that would result from the denial of access including consideration of the standards for radiation protection contained in 10 CFR Part 20, any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low-level waste, and any other Commission requirements specifically applicable to the facility or activity which is the subject of the emergency access request and, (2) the extent to which essential services such as medical, therapeutic, diagnostic, or research activities will be disrupted by the denial of emergency access.

In determining whether there is a serious and immediate threat to the common defense and security, Subpart C provides that the Commission will consider whether the activity generating the LLW is necessary to protect the common defense and security and whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security. Subpart C also specifies that the Commission will seek and consider DOD and DOE viewpoints on the importance of the activities responsible for generating the LLW to the common defense and security.

Under Subpart C, if the Commission makes either of the above determinations in the affirmative, then the Commission will consider whether alternatives to emergency access are available to the requestor. The Commission will consider whether the person submitting the request has identified and evaluated the alternatives available which could potentially mitigate the need for emergency access. The Commission will consider whether the person requesting emergency access has considered all factors in the evaluation of alternatives including state-of-the-art technology and the impacts of the alternatives on the public health and safety. For each alternative, the Commission will also consider whether the requestor has demonstrated that the implementation of the alternative is unreasonable because of adverse effects on the public health and safety or the common defense and security, because it is technically or economically beyond the capability of the requestor, or because the alternative could not be implemented in a timely manner.

Of particular concern to Congress was the possibility that ceasing the activity responsible for generating the waste could lead to the cessation or curtailment of essential medical services. Section 62.25 of the rule provides that the Commission will consider the impact on medical services from ceasing the activity in making its determination that there is a serious and immediate threat to the public health and safety. The Commission is also concerned as to whether the implementation of other alternatives may have a disruptive effect on essential medical services. Section 62.12 specifically requests information on these impacts as part of a request for emergency access so they can be considered by the Commission in its overall determination about reasonable alternatives.

According to the procedures set out in Subpart C, the Commission will only make an affirmative determination on granting emergency access if the available alternatives are found to be unreasonable. If an alternative is determined by NRC to be reasonable, then the request for emergency access will be denied.

If the Commission determines that there is a serious and immediate threat to the public health and safety or the common defense and security which cannot be mitigated by any alternative, then the Commission will decide which operating non-Federal LLW disposal facility should receive the LLW approved for emergency access disposal.

Subpart C sets out that in designating a disposal facility or facilities to provide emergency access disposal, the Commission will first consider whether a facility should be excluded from consideration because: (1) The LLW does not meet the license criteria for the

site; (2) the disposal facility meets or exceeds its capacity limitations as set out in the Act; (3) granting emergency access would delay the planned closing of the facility; or (4) the volume of the waste requiring disposal exceeds 20 percent of the total volume of the LLW accepted for disposal at the site in the previous calendar year. If the designation cannot be made on these factors alone, then the Commission will consider the type of waste, previous disposal practices, transportation requirements, radiological effects, site capability for handling the waste, volume of emergency access waste previously accepted at each site, and any other information the Commission deems necessary.

In making a determination regarding a request for an extension of emergency access, Subpart C provides that the Commission will consider whether the circumstances still warrant emergency access and whether the person making the request has diligently acted during the period of the initial grant to eliminate the need for emergency access.

In making a determination that temporary emergency access is necessary, the Commission will have to consider whether the emergency access situation falls within the criteria and examples in the Commission's policy statement on abnormal occurrences, but will not have to reach a determination regarding mitigating alternatives.

Subpart D—Termination of Emergency Access

Subpart D establishes that the NRC may terminate a grant of emergency access if the requestor or the type of waste do not meet the conditions established by NRC pursuant to this part. It also establishes that the Commission may terminate emergency access when it determines that emergency access is no longer necessary to protect the public health and safety or the common defense and security from a serious and immediate threat.

VII. Rationale for Criteria

This rule establishes the criteria for making the emergency access determinations required by the Act. The rationale for these decisions is discussed below:

(a) Determination that a Serious and Immediate Threat Exists

Establishing the criteria to be used in determining that a serious and immediate threat exists to the public health and safety or the common defense and security is key to NRC's decisions to grant emergency access. Neither the Act nor its legislative history provide elaboration regarding Congressional intent for what would constitute "a serious and immediate threat."

(1) To the Public health and safety—

The criteria in this rule for determining whether a serious and immediate threat to the public health and safety exists, address three situations. Section 62.25(b)(i) addresses the situation where the lack of access would result in a radiation hazard at the facility that is generating the LLW. Section 62.25(b)(ii) addresses the situation where the threat to public health and safety would result from disruption of the activity that generates the waste, for example, an essential medical service. Section 62.25(c) addresses the criteria for granting temporary emergency access.

The criteria used in this rule for determining whether a serious and immediate threat to the public health and safety exists is qualitative in nature in order to provide the Commission with the flexibility necessary to consider a wide range of potential factual situations. However, in making this qualitative determination, the criteria require the Commission to consider several existing quantitative standards. These consist of the Commission's standards for radiation protection in 10 CFR Part 20, any standards on the release of radioactive materials to the general environment that are applicable to the facility that generated the LLW, and any other Commission requirements specifically applicable to the facility or activity which is the subject of the emergency access request. This latter category would include license provisions, orders, and similar requirements.

The Congressional concern in enacting section 6 of the Act was to ensure that a serious and immediate threat to the public health and safety did not result from a denial of access. In addressing this concern, the Commission will evaluate the request for emergency access in its entirety, i.e., the threat to public health and safety and the alternatives to emergency access that may be available to mitigate that threat. In other words, in determining what constitutes a serious and immediate threat to public health and safety, the Commission must consider what threat would be unacceptable assuming that no alternatives are available. In the Commission's judgment, any situation that would result in exceeding the occupational dose limits or basic limits of public exposure upon which certain requirements in 10 CFR Part 20 are founded would be an unacceptable threat to the public health and safety, and should be considered for emergency access.

The legislative history of section 6 of the Act does not provide any illustrations of a situation where a serious and immediate threat to the public health and safety would be created at the facility at which the waste is stored, although it is clear that Congress was concerned over the potential radiation hazard that might result at a particular facility that was denied access to LLW disposal. The Commission does not anticipate any situation where the lack of access would create a serious and immediate threat to the public health and safety. However, in order to be able to respond to the unlikely, but still possible, situation where a serious threat to the public health and safety might result, this rule establishes criteria to address this possibility. Under its normal regulatory responsibilities and authority, the Commission would act immediately to prevent or mitigate any threat to the public health and safety, including shutting down the facility. However, there may be circumstances where a potential safety problem would still exist, after the facility was shut down or the activity stopped, if the low level waste could not be disposed of because of denial of access. In this situation, emergency access may be needed. The Commission would emphasize, first, that it is extremely unlikely that a serious and immediate threat to the public health and safety will ever result at the generator's facility from the lack of access to a disposal facility, and, second, if such a situation does exist, the Commission will move immediately to eliminate the threat.

If the Commission does receive a request for emergency access based on the above circumstances, the Commission will evaluate the nature and extent of the radiation hazard. If there is no violation of the Commission's generic or facility-specific radiation protection standards, no serious and immediate threat would exist from the waste itself. This is separate from a finding that a serious and immediate threat to the public health and safety would exist if the activity were forced to shut down.

Section 6(d) of the Act allows the Commission to grant temporary emergency access for a period not to exceed 45 days solely upon a finding of a serious and immediate threat to the public health and safety. In order to grant temporary emergency access, the Commission is not required to evaluate

the availability of alternatives to emergency access that would mitigate the threat. The Commission believes that grants of temporary emergency access should be reserved for the most serious threat to public health and safety, and has accordingly established criteria for granting temporary emergency access that require the consideration of more serious events. For purposes of granting temporary emergency access under § 62.23, the Commission will consider the criteria and examples contained in the Commission's Policy Statement (45 FR 10950, February 24, 1977) for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the purview of section 208 of the Energy Reorganization Act of 1974. This provision requires the Commission to keep Congress and the public informed of unscheduled incidents or events which it considers significant from the standpoint of public health and safety. Under the criteria established in the Commission's policy statement, an event will be considered an abnormal occurrence if it involves a major reduction in the degree of protection provided to public health and safety. Such an event could include—

a. Moderate exposure to, or release of, radioactive material;

b. Major degradation of safety related equipment; or

c. Major deficiencies in design, construction, use of, or management controls for licensed facilities or activities.

In deciding whether to grant temporary emergency access, the Commission will evaluate whether the emergency access situation falls within the criteria in the Commission's policy statement on abnormal occurrences.

(2) To the common defense and security—

Although NRC is required by the Act to determine that there is either a serious and immediate threat "to the public health and safety," or to "the common defense and security," realistically NRC cannot make the latter judgement without some information from DOD and DOE which will assist NRC in identifying those situations involving the denial of access to LLW disposal which constitute a serious and immediate threat to the national defense and security, or the importance of a particular LLW generator's activities in maintaining those objectives. While NRC has the Congressional mandate for this determination, the staff believe it necessary to consider DOD and DOE information as part of the decisionmaking process.

NRC considered several approaches for involving DOD and DOE in the process of determining whether requests for emergency access should be granted on the basis of a serious and immediate threat to the common defense and security. In the proposed rule NRC decided that the best way to provide such interaction would be to require that requests filed with NRC for emergency access on the basis of a serious and immediate threat to the common defense and security, would have to include appropriate certification from DOE and or DOD substantiating the requestor's claim that such a threat would result if emergency access is not granted. NRC proposed that the necessary certification in the form of a statement of support should be acquired by the requestor prior to applying to NRC for emergency access so the statement of support could be a part of the actual petition.

Discussions with DOD and DOE regarding the proposed arrangement have led NRC to include a modified procedure in the final rule. A generator whose request for emergency access is based in whole or in part on a serious and immediate threat to the common defense and security is no longer required to include a DOD and or DOE statement of support for that claim in the request package submitted to NRC. Rather, NRC will consult with DOD and or DOE directly to ascertain the importance of the activities responsible for generating the LLW to the common defense and security. In reaching a determination as to whether emergency access should be granted in order to protect the common defense and security, the NRC will consider whether DOE and or DOD support the generator's claim regarding the strategic importance of the activity.

Negotiations with DOD and DOE regarding this procedure were underway in parallel with the development of the final rule. Letters of intent between the NRC and DOD and DOE that establish the process for obtaining the DOD and DOE recommendations on the importance of the requestor's activities to the common defense and security are expected by the time the rule is published. DOD and DOE staffs are aware of the 45 day response time imposed on NRC to make the emergency access determinations and the agreement will provide for expeditious action by DOD and DOE.

Congress deliberately gave the NRC the responsibility for making the common defense and security determination rather than leaving the determination with DOD or DOE. So while the Commission intends to give the DOD and DOE statements of support and recommendations full consideration in evaluating requests for emergency access, the Commission will not treat them as conclusive.

(b) Determination on Mitigating Alternatives

As directed by section 6 of the Act, even if a situation exists which poses a serious and immediate threat to the public health and safety or the common defense and security, emergency access is not to be granted if alternatives are available to mitigate the threat in a manner consistent with the public health and safety. Requestors for emergency access are required to demonstrate that they have explored the alternatives available and that the only course of action remaining is emergency access. Only after this has been demonstrated to NRC will the Agency proceed with a grant of emergency access.

Alternatives which, at a minimum, a requestor will have to evaluate are set out in section 6(c)(1)(B) of the Act. They include (1) storage of LLW at the site of generation or in a storage facility, (2) obtaining access to a disposal facility by voluntary agreement, (3) purchasing disposal capacity available for assignment pursuant to section 5(c) of the Act, and (4) ceasing the activities that generate the LLW.

While section 6(c)(1)(B) of the Act sets these out as possible alternatives which a generator must consider before requesting emergency access, NRC has identified other possible alternatives to emergency access which should be considered, as appropriate, in any requests for emergency access. These additional alternatives are discussed below.

Section 5(c)(5) of the Act, "Unusual Volumes," provides owners and operators of commercial nuclear reactors with special access to disposal in the event that unusual or unexpected operating, maintenance, repair or safety activities produce quantities of waste which cannot be otherwise managed or disposed of under the Act. NRC does not consider that Congress intended that disposal under the emergency access provision was to apply to the section 5(c)(5) wastes unless the capacity required for disposals under the unusual volume provision would exceed the 800,000 cubic feet allocated for those purposes. Thus, NRC has taken the position in this rule that as long as unusual volumes disposal capacity is available for LLW which qualifies for such disposal, emergency access should not be requested. Applications for emergency access for wastes which NRC determines would otherwise be

eligible for disposal under the unusual volumes provision, will be denied.

Another alternative applies only to Federal or defense related generators of LLW. NRC will expect that generators of LLW falling into either of these categories will attempt to arrange for disposal at a Federal LLW disposal facility prior to requesting access to non-Federal facilities under the emergency access provision.

The Commission fully intends that the States and Compacts whose generators have been denied access to LLW disposal will share in the responsibility for identifying and providing alternatives to emergency access. NRC's expectation is that the States and appropriate Compacts, as well as the generator, will each exhaust their options before emergency access will be requested. A request for emergency access is to include a discussion of the consideration given to any alternatives available to the requestor. To NRC, this includes State/Compact options as well as those available to the individual generator. NRC expects that any request would address the alternatives explored by each of these, and the actions taken.

For all the alternatives that are considered, NRC is requiring detailed information from the requestor regarding the decision process leading to a request for emergency access. The requestor will be expected to: (1) Demonstrate that all pertinent alternatives have been considered; (2) provide a detailed analysis comparing all of the alternatives considered; (3) demonstrate that consideration has been given to combining alternatives in some way or in some sequence either to avoid the need for emergency access, or to resolve the threat, even on a temporary basis, until other arrangements can be made; (4) evaluate the costs, economic feasibility, and benefits to the public health and safety of the potential alternatives, and (5) incorporate the results into the request.

(c) Designation of Site

In deciding which of the operating, non-Federal or regional LLW disposal facilities will receive the LLW requiring emergency access, NRC will determine which of the disposal facilities would qualify under the limitations set out in section 6(h) of the Act. According to those limitations, a site would be excluded from receiving emergency access waste if (1) the LLW does not meet the license criteria for the site; (2) the disposal facility meets or exceeds its capacity limitations as set out in the Act; (3) granting emergency access would delay the planned closing of the facility; or (4) the volume of the waste requiring disposal exceeds 20 percent of the total volume of the LLW accepted for disposal at the site in the previous calendar year.

If NRC cannot designate a site using the limitations in the Act alone, the Commission will consider other factors including the type of waste, previous disposal practices, transportation requirements, radiological effects of the waste, the capability for handling the waste at each site, the volume of emergency access waste previously accepted by each site, and any other information that would be necessary in order to come to a site designation decision.

Within the requirements of the above criteria, the NRC will, to the extent practical, attempt to distribute the waste as equitably as possible among the available operating, non-Federal or regional LLW disposal facilities. To the extent practicable, NRC intends to rotate the designation of the receiving site, and, for the three currently operating facilities, to allocate emergency access disposal in proportion to the volume limitations established in the Act. In most cases, NRC would expect that the designation of a single site will minimize handling of and exposure to the waste and best serve the interest of protecting the public health and safety. However, if the volume of waste requiring emergency access disposal is large, or if there are other unusual or extenuating circumstances, NRC will evaluate the advantages and disadvantages of designating more than one site to receive waste from the same requestor.

In addition to the above, NRC will also consider how much waste has been designated for emergency access disposal to each site to date (both for the year and overall), and whether the serious and immediate threat posed could best be mitigated by designating one site or more to receive the waste.

In order for NRC to make the most equitable site designation decisions, the Agency will have to be well informed regarding the status of disposal capacity for each of the commercially operating waste disposal facilities. NRC is currently in the process of developing a system to provide this information.

It should be noted that in setting out the site designation provision for section 5, Congress assumed there would always be a site deemed appropriate to receive the emergency access waste. However, this may not be the case if all sites are eliminated by application of the limitations provision set forth in the Act. It is not clear what options Congress intended NRC to consider if all sites are deemed inappropriate to receive the LLW. This may have to be addressed by Congress at some time in the future.

(d) Volume Reduction Determination

Section 6(i) of the Act requires that any LLW delivered for disposal as a result of NRC's decision to grant emergency access "should be reduced in volume to the maximum extent practicable." NRC will evaluate the extent to which volume reduction methods or techniques will be or have been applied to the wastes granted emergency access in order to arrive at a finding in regards to this provision.

NRC may receive a request for emergency access where the application of volume reduction techniques may be sufficient to mitigate the threat posed to the public health and safety. As a result, NRC plans to evaluate the extent to which waste has been reduced in volume as a part of its mandated evaluation of the alternatives considered by the generator. From that evaluation, the NRC could reach a finding on whether the waste has been reduced in a manner consistent with section 6(i).

As is so for the other determinations NRC will have to make pursuant to section 6, volume reduction determinations will be made on a case-by-case basis. The optimal level of volume reduction will vary with the waste, the conditions under which it is being processed or stored, the administrative options available, and whether volume reduction processing creates new wastes requiring treatment or disposal. In evaluating whether the wastes proposed for emergency access have been reduced in volume to the maximum extent practicable, NRC will consider the characteristics of the wastes (including: Physical properties, chemical properties, radioactivity, pathogenicity, infectiousness, and toxicity, pyrophoricity, and explosive potential); condition of current container; potential for contaminating the disposal site; the technologies or combination of technologies available for treatment of the waste (including incinerators; evaporators-crystallizers; fluidized bed dryers; thin-film evaporators; extruders evaporators; and Compactors); the suitability of volume reduction equipment to the circumstances (specific activity considerations, actual volume reduction factors, generation of secondary wastes, equipment contamination, effluent releases, worker exposure, and equipment availability); and the administrative controls which could be applied.

VIII. Terms and Conditions for Emergency Access Disposal

LLW granted emergency access disposal pursuant to this rule is subject to the general requirements for LLW disposal as established in the Act, as well as those requirements which specifically address emergency access. This means that LLW granted emergency access shall be processed, treated and disposed of in a manner consistent with any other LLW which is eligible for disposal at operating non-federal or regional LLW disposal facilities under the Act. The disposal of waste by grant of emergency access should not preclude the implementation of any specific conditions, regulations, requirements, fees, surcharges or taxes prescribed by the disposal facility that may be in effect at the time of the Commission's determination to grant emergency access. However, while generators whose LLW is granted emergency access are subject to the special fees and surcharges specified in the Act for emergency access disposal, they should not otherwise be subject to fees or requirements that are not customarily charged or imposed for routine LLW disposal.

IX. Analysis of Public Comments

The Commission received twenty-one (21) comment letters for the proposed rule. Ten (10) of the comment letters came from concerned citizens, six (6) from the governments of potentially affected States, two (2) from low-level waste compacts, two (2) from the industry and one (1) from a nuclear information service. A detailed analysis of each of the comments was prepared and used to revise the proposed rule. The major comments are discussed here. Copies of the comment letters and the detailed analysis of comments are available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

In general, commentors expressed support for NRC's issuance of a rule for its emergency access decisions and indicated changes that would improve it from their perspective. Only one commentor, representing a lobbying group, expressed opposition to the issuance of the rule. That commentor indicated that the rule should be withdrawn because granting emergency access would infringe on the States' right to manage their LLW. The Act established the statutory framework for the management of LLW including the allocation of management responsibility between the Federal government and the States. The emergency access rule merely implements part of the existing statutory framework, so the rule itself does not infringe on the rights of the States.

Clarification of LLW Eligible for Emergency Access

By far the most common concern expressed by commentors was that emergency access would be used to force operating non-Federal or regional LLW disposal facilities to accept LLW they are either clearly not responsible for under the Act, or have specifically chosen to exclude from their facility. Fourteen of the commentors in almost half of the comments expressed concern that emergency access would be granted to wastes that were not typically to be considered eligible for disposal at non-Federal or regional LLW disposal facilities. Specifically, the commentors stated that Federal wastes, particularly those generated by DOE and DOD, or wastes that are classified as greater-than-Class-C, should not be granted emergency access. Many of the commentors indicated that States and Compacts are not designing their facilities to provide safe disposal for these types of LLWs. Most of the commentors who expressed concern about which wastes would be granted emergency access were concerned that LLWs determined to be ineligible for routine disposal under the Act, could gain access to disposal at State or regional facilities under the emergency access provision.

Throughout the development of Part 62, the NRC assumed that its mandate was to grant emergency access only to LLW that would otherwise be eligible for routine disposal at State or regional LLW disposal facilities according to the terms and conditions set out in the Act. More specifically, the NRC believes that only those LLWs designated by Section 3(a)(1) of the Act to be the disposal responsibility of the States could be eligible for a grant of emergency access disposal.

Under Subsection 3(a)(1)(A), the States are mandated to provide disposal for commercially generated LLW classified as A, B and C. They are not required to provide disposal for greater-than-Class-C wastes. Thus, the NRC would expect to deny any request for emergency access received for greater-than-Class-C waste. The same is true for the Federally generated LLW which is excluded from State disposal responsibility under section 3(a)(1)(B). Under that subsection, the States are assigned the responsibility for disposing of "LLW generated by the Federal government except that which is owned or generated by DOE, by the Navy as a result of decommissioning of vessels, or as a result of any research, development, testing, or production of any atomic weapons." NRC does not expect to grant emergency access to any wastes that are exempted from State responsibility by section 3(a)(1)(B).

The NRC has no intentions of granting emergency access to LLW which are ineligible for LLW disposal under section 3(a)(1) of the Act. However, the Commission did not state its intentions in the proposed rule. The Commission assumed that it would be clear that the limitations established in the Act for routine LLW disposal would also apply for disposal resulting from a grant of emergency access. Apparently, that was not the case. To clarify the NRC's understanding and intent regarding the scope of wastes which the NRC considers to be potentially eligible for emergency access, the NRC added a new provision, (c) to § 62.1, "Purpose and Scope" of the final rule. The new provision states that "The regulations in this Part apply only to the LLW's which the States have disposal responsibility for pursuant to section 3(a)(1) of the Act." The NRC believes the addition of this clarification to the final rule should resolve any questions regarding a particular LLW's eligibility for emergency access consideration as well as the Commission's intended application of the final rule.

Reciprocal Access

Several of the commentors pointed out that the proposed rule omitted any reference to, or discussion of, section 6(f) of the Act, which addresses reciprocal access. Section 6(f) provides that the Regional Compact or State receiving the emergency access waste is entitled to reciprocal access at any subsequent facility that serves the Compact region or State in which the emergency access waste was generated. It further provides that the Regional Compact or State that receives the emergency access waste shall designate, for reciprocal access, "an equal volume of Low-level radioactive waste having similar characteristics to that provided emergency access."

Most of the States and Regional Compact Commissions who submitted comments on the proposed Part 62 indicated that reciprocal access should be addressed in the final rule. Most of the commentors who raised reciprocal access concerns believed the NRC should broker reciprocal access arrangements to ensure that reciprocal access will be available to a State or Compact whose LLW disposal facility is designated to receive emergency access

waste. Several of them emphasized that the reciprocal access provision of the Act is a significant one that cannot be ignored in the NRC process of granting emergency access and designating a disposal facility. They stated that reciprocal access is of particular concern because a receiving Regional Compact or State has virtually no leverage or role to play in the emergency access process and a guarantee of reciprocal access would make the situation more acceptable. They indicated reciprocity is an integral part of section 6 and should be part of the rule.

One commentor indicated that even if the NRC did not wish to be involved in brokering the arrangements, it "must ensure that the right to reciprocal access is recognized and its implications are considered." The commentor indicated that a formal reciprocal access acknowledgement should be extracted from the Compact Region or State in which the emergency access waste was generated before any determination for granting emergency access is made. They indicated that such an acknowledgement should be required by the NRC as part of the contents of a request for emergency access (§ 62.12) and should include some indication of when the reciprocal access would be provided. The acknowledgement could then be included as part of the § 62.22 notification provided to the receiving state and, if appropriate, the Compact Commission."

The NRC recognizes that the commitment to reciprocal access is an integral part of the emergency access process, particularly for the States with the operating LLW disposal facilities which will be designated by NRC to receive emergency access waste. Staff considered reciprocal access during the development of the proposed rule. At that time, the NRC made a decision not to address reciprocal access as part of the rule on emergency access. As NRC staff read section 6(f), arranging for reciprocal access is an obligation between States/Compacts unrelated to the Commission's responsibility to protect public health and safety and the common defense and security and thus is outside the scope of NRC's responsibility to implement section 6. Thus, Staff believed it would be inappropriate for the NRC to assume the role of enforcing reciprocal access arrangements.

The NRC reconsidered its position on reciprocal access in light of the comments received on the proposed rule, but made no changes to the final rule The NRC's mandate under section 6 is to grant requests for emergency access in order to protect the public health and safety and the common defense and security from a serious and immediate threat. If the NRC were to require a formal promise of reciprocal access as a necessary condition for considering a request for emergency access, under certain circumstances, actions necessary to protect the public health and safety could be delayed or compromised. Thus, the NRC continues to believe that an enforcement role regarding reciprocal access is inappropriate for the NRC. The Commission also believes that any role regarding reciprocal access, even of a brokering nature, could be in conflict with the Commission's basic mandate to make emergency access decisions. The NRC maintains that arranging for reciprocal access in response to grants of emergency access is the responsibility of the States and Compacts involved. The NRC believes that the promise of reciprocal access desired by the commentors could be initiated during the 15 day period required by the Act under section 6(g) for the receiving Compact Commission's approval of the NRC's LLW disposal facility designation.

As noted above, section 6(f) entitles any Compact or State that provides emergency access to a disposal facility within its borders to reciprocal access to any subsequently operating disposal facility that serves the State or compact region in which the LLW granted emergency access was generated. The Commission anticipates that any Compact or State that provides emergency access would take action to enforce this statutory right if the State or Compact in which the emergency access waste was generated does not accept an equal volume of low-level radioactive waste having similar characteristics at some future date.

Compact Approval of Grants of Emergency Access

Three of the commentors representing States or Compact Commissions indicated that the NRC had been remiss in not including a provision in the proposed rule which would require the NRC to seek approval for its decision to grant emergency access from the Compact Commission of the region in which the designated site is located. The commentors also wanted the rule to state that "no grant of emergency access under this Part shall be effective prior to 15 days from receipt of a request for approval from the Commission," in order to establish that Compact Commission approval would be necessary before the NRC's decision would be considered final. The resolution of the issue raised by these comments is fundamental to the successful implementation of Congressional intent for the emergency access provision of the Act.

The basis for these comments is the language in section 6(g) of the Act. It states that "any grant of access under this Section shall be submitted to the Compact Commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its Compact." The commentors interpretation of this provision is that Congress intended for the Compact Commission of the designated site to have the final say regarding the acceptance of emergency access wastes. They believe Congress intended that a receiving Compact Commission could reject the NRC's emergency access determination—essentially that Congress intended the compacts to have the power to veto the NRC's decision. The commentors wanted the NRC to acknowledge this interpretation of section 6(g) by incorporating a veto/approval provision in the final rule.

While the commentors were correct in noting that the proposed rule did not include a specific mechanism for implementing the section 6(g) provision of the Amendments Act, the NRC's position on this issue was addressed in Section III, Legislative History of the Supplementary Information portion of the proposed rule and is reiterated in the same section of the final.

Section 6(g) of the Act requires the NRC to notify the Compact Commission for the region in which the disposal facility is located of any NRC grant of access "for such approval as may be required under the terms of the Compact." However, section 6(g) also requires that the Compact Commission "shall act to approve emergency access not later than 15 days after receiving notification from the NRC." NRC believes the purpose of this provision is to (1) ensure that the Compact Commission is aware of the NRC's grant of emergency access and the terms of the grant; (2) allow the Compact Commission to implement any administrative procedures necessary to carry out the grant of access, and (3) ensure that the limitations on emergency access set forth in section 6(h) of the Act have not been exceeded.

Contrary to what several of the commentors believe, the NRC believes that disapproval is not really an option for the Regional Compact Commission in which the designated emergency access disposal facility would be

located. This position is derived from the legislative history for both section 6 of the Act and the Omnibus Low-Level Radioactive Waste Interstate Compact Act which was passed by Congress as part of the Act. It is clear from the legislative history that the basic purpose of the section 6 emergency access provision is to ensure that LLW disposal sites which have denied disposal access to certain States under provisions of the Act will be made available to receive LLW in situations posing a serious and immediate threat to the public health and safety. A Compact Commission veto of the NRC's decision would frustrate the purpose of the emergency access provision and would be generally contrary to the legislative framework established in the Act. As emphasized in the House Committee on Interior and Insular Affairs Report on the Act, ratification of a Compact should be conditioned on the Compact's acting in accord with the provisions of the Act. If the Compact refuses to provide, under its own authorities, emergency access under section 6, Congressional ratification of that Compact would be null and void. (H.R. Rep. No. 314, 99th Cong., 1st Sess., pt. 1, at 2997 (1985).)

While disapproval may not be an option under the Act, clearly the Act intended the receiving Compact Commission to be fully informed regarding the emergency access decision made by the NRC. The Commission believes the Notification procedures under § 62.22 of the proposed rule provided the Compact Commission of the designated disposal facility with information consistent with the specifications in the Act. Section 62.22 of the proposed rule provided that the NRC will notify the Compact Commission of the State in which the designated disposal facility is located that emergency access is required. It further provides that "the notifications must set forth the reasons that emergency access was granted and specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate and serious threat to the public health and safety or the common defense and security.

In response to this comment, the NRC has made a change to the final rule. New language has been added to § 62.22 which states that the Commission will make notification of the final determination in writing to the appropriate Compact Commission "for such approval as is specified as necessary in Section 6(g) of the Act."

Applicable Terms and Conditions for Emergency Access

A number of the commentors expressed concern that LLW granted emergency access to disposal by the NRC should be required to meet any conditions of the site designated, as well as any fees, or taxes prescribed by that facility. Other commentors stated that LLWs granted emergency access disposal should not have to pay any special fees, beyond those specifically mandated by the Act. In both cases the commentors wanted assurances incorporated into the rule that in making emergency access site designation determinations, the NRC would protect both the health and safety interests and the financial interests of either the disposal facility designated to receive the LLW, or the person requesting emergency access. In addition, they wanted assurances included in the rule that the NRC would consider the fees, taxes, etc. in designating a site to receive any waste granted emergency access.

The NRC's response to these concerns is simple, and is much like the earlier discussion about the response to comments concerning which wastes are eligible for emergency access. As previously stated, the Commission believes that Congress intended emergency access only to be granted for waste which would routinely qualify for LLW disposal under the terms of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act). To the Commission, it is quite clear from section 6(h) of the Act that Congress intended that the LLW granted emergency access would meet all of the general requirements and regulations of the disposal facility designated to receive the wastes by the NRC. Section 6(h) states that "No State shall be required to provide emergency access or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility, * * *."

To ensure that the designated site is suitably matched to the LLW granted emergency access, the NRC included a provision in the proposed rule which stated that a LLW disposal site will be excluded from consideration to receive emergency access waste if the waste does not meet the criteria established by the license or licensee agreement for the facility § 62.26(b)(1). The license or licensee agreements incorporate the regulations and requirements that affect each particular facility. Taken with the other information in § 62.26, which the NRC will consider before designating a site, the Commission believes § 62.26 as it appeared in the proposed rule adequately addresses the NRC's responsibility to designate a site which does not preclude "the implementation of any specific regulations, and requirements at the designated disposal facilities."

Regarding fees, taxes and other conditions that several commentors believed the NRC should consider in designating a site, the NRC believes that Congress intended for generators who are granted emergency access to pay all the normal LLW disposal fees as well as the additional fees or surcharges specifically applicable to emergency access waste and established under section 5 of the Act. However, the Commission does not agree that such information can or should be used by the NRC in making its site designation decision.

The Commission recognizes the importance of conditions to ensure the implementation of emergency access decisions once they are made by the Commission. In response to the comments, the NRC added a new Section "VIII" to the Supplementary Information portion of the final rule titled, "Terms and Conditions for Emergency Access Disposal." It sets out the responsibilities regarding the disposition of emergency access for both the generator of the LLW granted emergency access and the operating disposal site or sites which have been designated to receive the waste. The new section reaffirms the NRC's understanding of Congressional intent that whatever conditions or terms normally apply to LLW disposal apply for emergency access, except where specifically stated otherwise in the Act.

Conditions of Termination

Four of the commentors suggested the addition of a new section or subsection to the rule to address the conditions under which emergency access could be terminated. The Commission agrees that terms and conditions should be established in the final rule for termination of grants of emergency access. The NRC has added a new Subpart D to the final rule which incorporates some of the suggested conditions for termination as recommended by the commentors. The Subpart is entitled, "Termination of Emergency Access." This new Subpart D is discussed under Section VI.(D) of the Supplementary Information for this rule. It establishes that the Commission may terminate a grant of emergency access if an applicant has failed to

comply with the conditions established by the NRC pursuant to this Part. It also establishes that the Commission may terminate a grant of emergency access if it determines that emergency access is no longer needed.

Response to Specific Request for Comments

In the proposed rule, the NRC specifically requested comments on certain parts or assumptions made by the NRC. Under Section VIII of the proposed rule, the NRC expressed an interest in receiving comments on—

(1) What scenarios are envisioned where emergency access would be required?

(2) What are the potential problems with the NRC's approach to determining an immediate and serious threat to the public health and safety?

(3) What are the potential problems with the arrangement proposed for making the determination of serious and immediate threat to the common defense and security?

(4) What are the potential difficulties with the proposed approach for designating the receiving site? and

(5) What should the NRC do if no site is found to be suitable for waste requiring emergency access?

Two of the commentors specifically addressed this request for comments, offering partial responses to some of the questions. One of the commentors offered possible scenarios for emergency access and both of the commentors suggested that a Federal facility should be developed to accommodate emergency access wastes. The comments did not reveal any new perspectives for the NRC to consider so the final rule was not affected by the comments received.

In the proposed rule, the NRC specifically requested comments on the initial regulatory flexibility analysis from small businesses, small organizations, and small jurisdictions in order to determine if the final regulations should be modified such that less stringent requirements could be imposed on small entities while still adequately protecting the public health and safety. None of the comments received on the proposed rule addressed the impact of the regulation on small entities or the adequacy of the NRC's regulatory flexibility analysis. As a result, it was not necessary to change the final rule to accommodate the special needs of small business.

X. Finding of No Significant Environmental Impact: Availability

This rule establishes criteria and procedures for a Commission determination under section 6 of the Act that emergency access to an operating non-Federal LLW disposal facility is necessary to avert a serious and immediate threat to the public health and safety or the common defense and security. For the most part, the final rule is an administrative action which serves to codify the criteria and procedures in the Act. The adoption of such implementing criteria and procedures by promulgation of a final rule does not have an environmental effect.

Therefore, the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The environmental assessment forming the basis for this determination is contained in the regulatory analysis prepared for this regulation. The availability of the regulatory analysis is noted in Section XIII of this rule.

XI. Paperwork Reduction Act Statement

The final rule adds information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget Approval Number 3150–0143.

Public reporting burden for this collection of information is estimated to average 680 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch, Division of Information Support Services/IRM, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150–0143), Office of Management and Budget, Washington, DC 20503.

XII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection, copying for a fee, at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. Single copies of the analysis may be obtained from Janet Lambert, Nuclear Regulatory Commission, NLS–260, Washington, DC 20555, telephone (301) 492–3857.

XIII. Regulatory Flexibility Certification

NRC is using this final rule to implement the statutory requirements for granting emergency access to non-Federal or regional LLW disposal facilities under section 6 of the Act. Based upon the information available and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities.

The rule has the potential to affect any generator of LLW as well as any existing LLW disposal facility. None of the LLW disposal facilities would be considered to be a small entity. The generators of LLW are nuclear power plants, medical and academic facilities, industrial licensees, research and development facilities, radiopharmaceutical manufacturers, fuel fabrication facilities, and government licensees. Of these categories, all but the power plants, fuel fabrication facilities, and government licensees could potentially include small entities.

Although these categories may contain a "substantial number of small entities," the Commission does not believe that there will be a significant economic impact to these generators because the Commission does not anticipate that many generators will be affected by the rule. In order for the requirements of the rule to be imposed on a generator, the generator must initiate the action by requesting a grant of emergency access from NRC. This would occur only because the generator has been denied access to LLW disposal. The impact of the recordkeeping requirements on any affected licensees should be minimal since the information that must be provided if a generator requests emergency access would most likely be collected and assembled as part of any process to decide a course of action if necessary access to LLW disposal was not going to be available.

The Commission is required by statute to make emergency access determinations. Since a grant of emergency access is intended to correct the problems LLW generators may encounter because of lack of access to LLW disposal, the provision of emergency access will benefit any generator of LLW, including small entities.

Establishing criteria and procedures for requesting and granting emergency access through a rule will also benefit small and large generators. This Part provides guidance to the generator on what information will be required for making requests for emergency access and provides an orderly framework for making those requests. Also, the rule will enable generators to better plan to avoid LLW disposal access problems, thus providing the certainty required for economic growth and development.

XIV. Backfit Statement

The provisions of 10 CFR 50.109 on Backfitting do not apply to this rulemaking because this regulation is not applicable to production and utilization facilities licensed under 10 CFR Part 50.

List of Subjects in 10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive waste policy amendments act of 1985, Low-level radioactive waste treatment and disposal, Nuclear materials, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, and the Low-Level Radioactive Waste Policy Amendments Act of 1985, the NRC is adopting a new 10 CFR Part 62.

1. A new Part 62 is added to 10 CFR to read as follows:

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

Subpart A—General Provisions

Sec.

Subpart B—Request for a Commission Determination

Subpart C—Issuance of a Commission Determination

Subpart D—Termination of Emergency Access

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 949, 950, 951, as amended. (42 U.S.C. 2111, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857. (42 U.S.C. 2021c, 2021d, 2021e, 2021f).

Subpart A—General Provisions

§ 62.1 Purpose and scope.

(a) The regulations in this part establish for specific low-level radioactive waste:

(1) Criteria and procedures for granting emergency access under section 6 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021) to any non-Federal or regional low-level radioactive waste (LLW) disposal facility or to any non-Federal disposal facility within a State that is not a member of a Compact, and

(2) The terms and conditions upon which the Commission will grant this emergency access.

(b) The regulations in this part apply to all persons as defined by this regulation, who have been denied access to existing regional or non-Federal low-level radioactive waste disposal facilities and who submit a request to the Commission for a determination pursuant to this part.

(c) The regulations in this part apply only to the LLW that the States have the responsibility to dispose of pursuant to section 3(1)(a) of the Act.

§ 62.2 Definitions.

As used in this part:

"Act" means the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240).

"Agreement State" means a State that—

(1) Has entered into an agreement with the Nuclear Regulatory Commission under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021); and

(2) Has authority to regulate the disposal of low-level radioactive waste under such agreement.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Compact" means a Compact entered into by two or more States pursuant to the Low-Level Radioactive Waste Policy Amendments Act of 1985.

"Compact Commission" means the regional commission, committee, or board established in a Compact to administer such Compact.

"Disposal" means the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws, or by an Agreement State if such isolation occurs in this Agreement State.

"Emergency access" means access to an operating non-Federal or regional low-level radioactive waste disposal facility or facilities for a period not to exceed 180 days, which is granted by NRC to a generator of low-level radioactive waste who has been denied the use of those facilities.

"Extension of emergency access" means an extension of the access that had been previously granted by NRC to an operating non-Federal or regional low-level radioactive waste disposal facility or facilities for a period not to exceed 180 days.

"Low-level radioactive waste" (LLW) means radioactive material that—

(1) Is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section IIe(2) of the Atomic Energy Act of 1954, (42 U.S.C. 2014(e)(2))); and (2) the NRC, consistent with existing law and in accordance with paragraph (a), classifies as low-level radioactive waste.

"Non-Federal disposal facility" means a low-level radioactive waste disposal facility that is commercially operated or is operated by a State.

"Person" means any individual, corporation, partnership, firm, association, trust, State, public or private institution, group or agency who is an NRC or NRC Agreement State licensed generator of low-level radioactive waste within the scope of § 62.1(c) of this part; any Governor (or for any "State" without a Governor, the chief executive officer of the "State") on behalf of any NRC or NRC Agreement State licensed generator or generators of low-level radioactive waste within the scope of § 62.1(c) of this part located in his or her "State"; or their duly

authorized representative, legal successor, or agent.

"Regional disposal facility" means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact.

"State" means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Temporary emergency access" means access that is granted at NRC's discretion under § 62.23 of this part upon determining that access is necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. Such access expires 45 days after the granting and cannot be extended.

§ 62.3 Communications.

Except where otherwise specified, each communication and report concerning the regulations in this part should be addressed to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be delivered in person to the Commission's offices at 2120 L Street NW., Washington, DC, or 11555 Rockville Pike, Rockville, Maryland.

§ 62.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be considered binding on the Commission.

§ 62.5 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant an exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

§ 62.8 Information collection requirements: OMB Approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0143.

(b) The approved information collection requirements contained in this part appear in §§ 62.11, 62.12, 62.13, 62.14, and 62.15.

Subpart B—Request for a Commission Determination

§ 62.11 Filing and distribution of a determination request.

(a) The person submitting a request for a Commission determination shall file a signed original and nine copies of the request with the Commission at the address specified in § 62.3 of this part, with a copy also provided to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter. The request must be signed by the person requesting the determination or the person's authorized representative under oath or affirmation.

(b) Upon receipt of a request for a determination, the Secretary of the Commission will cause to be published in the **Federal Register** a notice acknowledging receipt of the request which will require that public comment on the request be submitted within 10 days of the date of the notice. A copy of the request will be made available for inspection or copying in the Commission's Public Document Room, Washington, DC. The Secretary of the Commission will also transmit a copy of the request to the U.S. Department of Energy, to the Governors of the States of the Compact region where the waste is generated, to the Governors of the States with operating non-Federal low-level radioactive waste disposal facilities, to the Compact Commissions with operating regional low-level radioactive waste disposal facilities, and to the Governors of the States in the Compact Commissions with operating disposal facilities.

(c) Upon receipt of a request for a determination based on a serious and immediate threat to the common defense and security, the Commission will notify DOD and/or DOE and provide a copy of the request as needed for their consideration.

(d) Fees applicable to a request for a Commission determination under this part will be determined in accordance with the procedures set forth for special projects under category 12 of § 170.31 of this chapter.

(e) In the event that the allocations or limitations established in section 5(b) or 6(h) of the Act are met at all operating non-Federal or regional LLW disposal facilities, the Commission may suspend the processing or acceptance of requests for emergency access determinations until additional LLW disposal capacity is authorized by Congress.

§ 62.12 Contents of a request for emergency access: General information.

A request for a Commission determination under this part must include the following information for each generator to which the request applies:

(a) Name and address of the person making the request;

(b) Name and address of the person(s) or company(ies) generating the low-level radioactive waste for which the determination is sought;

(c) A statement indicating whether the generator is basing the request on the grounds of a serious and immediate threat to the public health and safety or the common defense and security;

(d) Certification that the radioactive waste for which emergency access is requested is low-level radioactive waste within § 62.1(c) of this part;

(e) The low-level waste generation facility(ies) producing the waste for which the request is being made;

(f) A description of the activity that generated the waste;

(g) Name of the disposal facility or facilities which had been receiving the waste stream of concern before the generator was denied access;

(h) A description of the low-level radioactive waste for which emergency access is requested, including—

(1) The characteristics and composition of the waste, including, but not limited to—

(i) Type of waste (e.g. solidified oil, scintillation fluid, failed equipment);

(ii) Principal chemical composition;

(iii) Physical state (solid, liquid, gas);

(iv) Type of solidification media; and

(v) Concentrations and percentages of any hazardous or toxic chemicals, chelating agents, or infectious or biological agents associated with the waste;

(2) The radiological characteristics of the waste such as—

(i) The classification of the waste in accordance with 61.55;

(ii) A list of the radionuclides present or potentially present in the waste, their concentration or contamination levels, and total quantity;

(iii) Distribution of the radionuclides within the waste (surface or volume distribution);

(iv) Amount of transuranics (nanocuries/gram);

(3) The minimum volume of the waste requiring emergency access to eliminate the threat to the public health and safety or the common defense and security;

(4) The time duration for which emergency access is requested (not to exceed 180 days);

(5) Type of disposal container or packaging (55 gallon drum, box, liner, etc.); and

(6) Description of the volume reduction and waste minimization techniques applied to the waste which assure that it is reduced to the maximum extent practicable, and the actual reduction in volume that occurred;

(i) Basis for requesting the determination set out in this part, including—

(1) The circumstances that led to the denial of access to existing low-level radioactive waste disposal facilities;

(2) A description of the situation that is responsible for creating the serious and immediate threat to the public health and safety or the common defense and security, including the date when the need for emergency access was identified;

(3) A chronology and description of the actions taken by the person requesting emergency access to prevent the need for making such a request, including consideration of all alternatives set forth in § 62.13 of this part, and any supporting documentation as appropriate;

(4) An explanation of the impacts of the waste on the public health and safety or the common defense and security if emergency access is not granted, and the basis for concluding that these impacts constitute a serious and immediate threat to the public health and safety or the common defense and security. The impacts to the public health and safety or the common defense and security should also be addressed if the generator's services, including research activities, were to be curtailed, either for a limited period of time or indefinitely;

(5) Other consequences if emergency access is not granted;

(j) Steps taken by the person requesting emergency access to correct the situation requiring emergency access and the person's plans to eliminate the need for additional or future emergency access requests;

(k) Documentation certifying that access has been denied;

(l) Documentation that the waste for which emergency access is requested could not otherwise qualify for disposal pursuant to the Unusual Volumes provision (Section 5(c)(5) of the Act) or is not simultaneously under consideration by the Department of Energy (DOE) for access through the Unusual Volumes allocation;

(m) Date by which access is required;

(n) Any other information which the Commission should consider in making its determination.

§ 62.13 Contents of a request for emergency access: Alternatives.

(a) A request for emergency access under this part must include information on alternatives to emergency access. The request shall include a discussion of the consideration given to any alternatives, including, but not limited to, the following:

(1) Storage of low-level radioactive waste at the site of generation;

(2) Storage of low-level radioactive waste in a licensed storage facility;

(3) Obtaining access to a disposal facility by voluntary agreement;

(4) Purchasing disposal capacity available for assignment pursuant to the Act;

(5) Requesting disposal at a Federal low-level radioactive waste disposal facility in the case of a Federal or defense related generator of LLW;

(6) Reducing the volume of the waste;

(7) Ceasing activities that generate low-level radioactive waste; and

(8) Other alternatives identified under paragraph (b) of this section.

(b) The request must identify all of the alternatives to emergency access considered, including any that would require State or Compact action, or any others that are not specified in paragraph (a) of this section. The request should also include a description of the process used to identify the alternatives, a description of the factors that were considered in identifying and evaluating them, a chronology of actions taken to identify and implement alternatives during the process, and a discussion of any actions that were considered, but not implemented.

(c) The evaluation of each alternative must consider:

(1) Its potential for mitigating the serious and immediate threat to public health and safety or the common defense and security posed by lack of access to disposal;

(2) The adverse effects on public health and safety and the common defense and security, if any, of implementing each alternative, including the curtailment or cessation of any essential services affecting the public health and safety or the common defense and security;

(3) The technical and economic feasibility of each alternative including the person's financial capability to implement the alternatives;

(4) Any other pertinent societal costs and benefits;

(5) Impacts to the environment;

(6) Any legal impediments to implementation of each alternative, including whether the alternatives will comply with applicable NRC and NRC Agreement States regulatory requirements; and

(7) The time required to develop and implement each alternative.

(d) The request must include the basis for:

(1) Rejecting each alternative; and

(2) Concluding that no alternative is available.

§ 62.14 Contents of a request for an extension of emergency access.

A request for an extension of emergency access must include:

(a) Updates of the information required in §§ 62.12 and 62.13; and

(b) Documentation that the generator of the low-level radioactive waste granted emergency access and the State in which the low-level radioactive waste was generated have diligently, though unsuccessfully, acted during the period of the initial grant to eliminate the need for emergency access. Documentation must include:

(1) An identification of additional alternatives that have been evaluated during the period of the initial grant, and

(2) A discussion of any reevaluation of previously considered alternatives, including verification of continued attempts to gain access to a disposal facility by voluntary agreement.

§ 62.15 Additional information.

(a) The Commission may require additional information from a person making a request for a Commission determination under this part concerning any portion of the request.

(b) The Commission shall deny a request for a Commission determination under this part if the person making the request fails to respond to a request for additional information under paragraph (a) of this section within ten (10) days from the date of the request for additional information, or any other time that the Commission may specify. This denial will not prejudice the right of the person making the request to file another request for a Commission determination under this part.

§ 62.16 Withdrawal of a determination request.

(a) A person may withdraw a request for a Commission determination under this part without prejudice at any time prior to the issuance of an initial determination under § 62.21 of this part.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the withdrawal of a request for a Commission determination under this part.

§ 62.17 Elimination of repetition.

In any request under this part, the person making the request may incorporate by reference information contained in a previous application, Statement, or report filed with the Commission provided that these references are updated, clear, and specific.

§ 62.18 Denial of request.

If a request for a determination is based on circumstances that are too remote and speculative to allow an informed determination, the Commission may deny the request.

Subpart C—Issuance of a Commission Determination

§ 62.21 Determination for granting emergency access.

(a) Not later than (45) days after the receipt of a request for a Commission determination under this part from any generator of low-level radioactive waste, or any Governor on behalf of any generator or generators located in his or her State, the Commission shall determine whether—

(1) Emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a Compact for specific low-level radioactive waste is necessary because of an immediate and serious threat—

(i) To the public health and safety or

(ii) The common defense and security; and

(2) The threat cannot be mitigated by any alternative consistent with the public health and safety, including those identified in § 62.13.

(b) In making a determination under this section, the Commission shall be guided by the criteria set forth in § 62.25 of this part.

(c) A determination under this section must be in writing and contain a full explanation of the facts upon which the determination is based and the reasons for granting or denying the request. An affirmative determination must designate an appropriate non-Federal or regional LLW disposal facility or facilities for the disposal of wastes, specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to eliminate the immediate threat to public health and safety or the common defense and security. It may also contain conditions upon which the determination is dependent.

§ 62.22 Notice of issuance of a determination.

(a) Upon the issuance of a Commission determination the Secretary of the Commission will notify in writing the following persons of the final determination: The person making the request, the Governor of the State in which the low-level radioactive waste requiring emergency access was generated, the Governor of the State in which the designated disposal facility is located, and if pertinent, the appropriate Compact Commission for such approval as is specified as necessary in section 6(g) of the Act. For the Governor of the State in which the designated disposal facility is located and for the appropriate Compact Commission, the notification must set forth the reasons that emergency access was granted and specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate and serious threat to public health and safety or the common defense and security. For the Governor of the State in which the low-level waste was generated, the notification must indicate that no extension of emergency access will be granted under § 62.24 of this part absent diligent State and generator action during the period of the initial grant.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the issuance of the determination.

(c) The Secretary of the Commission will make a copy of the final determination available for inspection in the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

§ 62.23 Determination for granting temporary emergency access.

(a) The Commission may grant temporary emergency access to an appropriate non-Federal or regional disposal facility or facilities provided that the determination required under § 62.21(a)(1) of this part is made;

(b) The notification procedures under § 62.22 of this part are complied with; and

(c) The temporary emergency access duration will not exceed forty-five (45) days.

§ 62.24 Extension of emergency access.

(a) After the receipt of a request from any generator of low-level waste, or any Governor on behalf of any generator or generators in his or her State, for an extension of emergency access that was initially granted under § 62.21, the Commission shall make an initial determination of whether—

(1) Emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security;

(2) The threat cannot be mitigated by any alternative that is consistent with public health and safety; and

(3) The generator of low-level waste and the State have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access.

(b) After making a determination pursuant to paragraph (a) of this section, the requirements specified in §§ 62.21(c) and 62.22 of this part, must be followed.

§ 62.25 Criteria for a Commission determination.

(a) In making the determination required by § 62.21(a) of this part, the Commission will determine whether the circumstances described in the request for emergency access create a serious and immediate threat to the public health and safety or the common defense and security.

(b) In making the determination that a serious and immediate threat exists to the public health and safety, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) The nature and extent of the radiation hazard that would result from the denial of emergency access, including consideration of—

(i) The standards for radiation protection contained in Part 20 of this chapter;

(ii) Any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low level waste; and

(iii) Any other Commission requirements specifically applicable to the facility or activity that is the subject of the emergency access request; and

(2) The extent to which essential services affecting the public health and safety (such as medical, therapeutic, diagnostic, or research activities) will be disrupted by the denial of emergency access.

(c) For purposes of granting temporary emergency access under § 62.23 of this part, the Commission will consider the criteria contained in the Commission's Policy Statement (45 FR 10950, February 24, 1977) for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the

purview of section 208 of the Energy Reorganization Act of 1974.

(d) In making the determination that a serious and immediate threat to the common defense and security exists, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) Whether the activity generating the wastes is necessary to the protection of the common defense and security, and

(2) Whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security.

The Commission will consider the views of the Department of Defense (DOD) and or the Department of Energy (DOE) regarding the importance of the activities responsible for generating the LLW to the common defense and security, when evaluating requests based all, or in part, on a serious and immediate threat to the common defense and security.

(e) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider whether the person submitting the request—

(1) Has identified and evaluated any alternative that could mitigate the need for emergency access; and

(2) Has considered all pertinent factors in its evaluation of alternatives including state-of-the-art technology and impacts on public health and safety.

(f) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider implementation of an alternative to be unreasonable if:

(1) It adversely affects public health and safety, the environment, or the common defense and security; or

(2) It results in a significant curtailment or cessation of essential services, affecting public health and safety or the common defense and security; or

(3) It is beyond the technical and economic capabilities of the person requesting emergency access; or

(4) Implementation of the alternative would conflict with applicable State or local or Federal laws and regulations; or

(5) it cannot be implemented in a timely manner.

(g) The Commission shall make an affirmative determination under § 62.21(a) of this part only if all of the alternatives that were considered are found to be unreasonable.

(h) As part of its mandated evaluation of the alternatives that were considered by the generator, the Commission shall consider the characteristics of the wastes (including: physical properties, chemical properties, radioactivity, pathogenicity, infectiousness, and toxicity, pyrophoricity, and explosive potential); condition of current container; potential for contaminating the disposal site; the technologies or combination of technologies available for treatment of the waste (including incinerators; evaporators-crystallizers; fluidized bed dryers; thin-film evaporators; extruders, evaporators; and Compactors); the suitability of volume reduction equipment to the circumstances (specific activity considerations, actual volume reduction factors, generation of secondary wastes, equipment contamination, effluent releases, worker exposure, and equipment availability); and the administrative controls which could be applied, in making a determination whether waste to be delivered for disposal under this part has been reduced in volume to the maximum extent practicable using available technology.

§ 62.26 Criteria for designating a disposal facility.

(a) The Commission shall designate an appropriate non-Federal or regional disposal facility if an affirmative determination is made pursuant to §§ 62.21, 62.23, or 62.24 of this part.

(b) The Commission will exclude a disposal facility from consideration if:

(1) The low-level radioactive wastes of the generator do not meet the criteria established by the license agreement or the license agreement of the facility; or

(2) The disposal facility is in excess of its approved capacity; or

(3) Granting emergency access would delay the closing of the disposal facility pursuant to plans established before the receipt of the request for emergency access; or

(4) The volume of waste requiring emergency access exceeds 20 percent of the total volume of low-level radioactive waste accepted for disposal at the facility during the previous calendar year.

(c) If, after applying the exclusionary criteria in paragraph (b) of this section, more than one disposal facility is identified as appropriate for designation, the Commission will then consider additional factors in designating a facility or facilities including—

(1) Type of waste and its characteristics,

(2) Previous disposal practices,

(3) Transportation

(4) Radiological effects,

(5) Site capability for handling waste,

(6) The volume of emergency access waste previously accepted by each site both for the particular year and overall, and

(7) Any other considerations deemed appropriate by the Commission.

(d) The Commission, in making its designation, will also consider any information submitted by the operating non-Federal or regional LLW disposal sites, or any information submitted by the public in response to a Federal Register notice requesting comment, as provided in paragraph (b) of § 62.11 of this part.

Subpart D—Termination of Emergency Access

§ 62.31 Termination of emergency access.

(a) The Commission may terminate a grant of emergency access when emergency access is no longer necessary to eliminate an immediate threat to public health and safety or the common defense and security.

(b) The Commission may terminate a grant of emergency access if an applicant has provided inaccurate information in its application for emergency access or if the applicant has failed to comply with this part or any conditions set by the Commission pursuant to this part.

Dated at Rockville, MD, this 31st day of January, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-2552 Filed 2-2-89; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 201 and 381

[Docket No. RM88-28-000; Order No. 506-A]

Revision of Filing Fees for Natural Gas Rate and Tariff Filings

Issued January 30, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is clarifying and issuing as final regulations on filing fees for natural gas rate and tariff filings made pursuant to §§ 381.204 and 381.205 adopted in an interim rule, Order No. 506 (53 FR 44182 (November 2, 1988)). Under the regulations, the Commission will not charge a filing fee for rate and tariff

filings made in response to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by the pipeline. Also, the regulations provide a sixty percent categorical reduction for rate and tariff filing fees made by natural gas companies other than major natural gas companies pursuant to §§ 381.204 and 381.205. The Commission is adopting this rule partially in response to the U.S. Court of Appeals' decision and remand in *Raton Gas Transmission Co.* v. *FERC.*

EFFECTIVE DATE: January 30, 1989.

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

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

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

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

I. Introduction

The Federal Energy Regulatory Commission (Commission) is clarifying and issuing as final regulations on filing fees for natural gas rate and tariff filings made pursuant to §§ 381.204 and 381.205 adopted in an interim rule, Order No. 506.[1] Under the regulations, the Commission will not charge a filing fee for rate and tariff filings made in response to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by the pipeline. Also, the regulations provide a sixty percent categorical reduction for rate and tariff filing fees made by natural gas companies other than major natural gas companies [2] pursuant to §§ 381.204 and 381.205.[3] The Commission is adopting this rule partially in response to the U.S. Court of Appeals' decision and remand in *Raton Gas Transmission Co. v. FERC (Raton).*[4]

II. Background

On July 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit remanded *Raton.* The case involved an attempt by Raton to obtain relief from a fee charged by the Commission for processing a six-page "'Purchased Gas Adjustment" (PGA) filing made by Raton pursuant to § 154.38 of the Commission's regulations.[5] The Court noted that the Independent Offices Appropriation Act of 1952 (IOAA) requires fees assessed for agency service to be cost-justified and fair, and questioned whether the Commission's current fees for PGA filings continue to be cost-justified. The Court also questioned whether the uniform application of the fees to all pipelines may be substantially unfair to smaller pipelines. The Court required the Commission to reconsider its decision to charge Raton the full fee and to supply a fuller explanation of its result. The Court also suggested that the Commission may want to reevaluate the situation to determine whether it is time to devise a new fee schedule better assuring fairness of the fees charged to small pipelines.[6]

In response to the Court's mandate in *Raton,* and in consideration of its experience implementing filing fees for gas rate filings during the four years since the present fee structure was adopted in Order No. 361,[7] the Commission issued Order No. 506, an interim rule which: (1) Eliminated all filing fees for gas rate and tariff filings that respond to a specific order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline; and (2) provided a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies pursuant to §§ 381.204 and 381.205.[8]

The Commission explained in Order No. 506 that its experience in implementing the fees schedule adopted in Order No. 361 indicated that compliance filings do not take a significant amount of time to process. The time-consuming analysis was performed in processing the original rate filing; the compliance filing merely implemented the result of that analysis. Additionally, the Commission noted that compliance filing fees generate numerous complaints and waiver requests and, in fact, discourage natural gas companies from making compliance filings. The Commission concluded that eliminating filing fees for compliance filings would largely end these complaints and would encourage companies to make these filings. This revision was made effective prospectively from October 27, 1988, the issuance date of the order.

Responding to the Court's remand in *Raton,* the Commission decided that a reduction in fees for nonmajor natural gas companies [9] to less than full cost

[1] Revision of Filing Fees for Natural Gas Rate and Tariff Filings, Interim Rule, 53 FR 44182 (Nov. 2, 1988), III FERC S'ats. & Regs. ¶ 30,836 (Oct. 27, 1988).

[2] The term "major" is defined in Part 201, General Instructions, of the Commission's accounting regulations, to mean each natural gas company as defined in the Natural Gas Act whose combined gas sold for resale and gas transported or stored for a fee exceeds 50 million Mcf at 14.73 psi (60° F) in each of the three previous calendar years. The term "nonmajor" is defined in Part 201, General Instructions, of the Commission's accounting regulations, as including natural gas companies that are not classified as a "major company" and that had total gas sales of volume transactions exceeding 200,000 Mcf at 14.73 psi (60° F) in each of the three previous calendar years. *See* Uniform System of Accounts Prescribed for Natural Gas Companies, General Instructions, 18 CFR Part 201, General Instructions (1988). *See also* the discussion, *infra,* clarifying the term "nonmajor" as defined in Part 201.

[3] 18 CFR 381.204 and 381.205 (1988). Section 381.204 establishes the fee for a tariff filing for general changes in rates and for changes other than rates. Section 381.205 establishes the fee for tariff filings that track certain costs.

[4] 852 F.2d 612 (DC Cir. 1988). The sixty percent categorical reduction in gas rate filing fees for nonmajor pipelines is in response to the Court's remand in *Raton.* That change, as well as the elimination of filing fees for certain gas rate and tariff compliance filings (which is peripherally related to the issues in Raton) have been under internal consideration for several years.

[5] *See* 18 CFR 154.38 (1986). On November 10, 1987, the Commission revised its Purchased Gas Adjustment regulations in Order No. 483, 52 FR 43854 (Nov. 17, 1987); III FERC Stats. & Regs. ¶ 30,778 (1987), codified at 18 CFR 154.301–154.310 (1988).

[6] 852 F.2d at 619.

[7] 49 FR 5083 (Feb. 10, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,543 (Feb. 6, 1984).

[8] *See* note 3.

[9] Raton Gas Transmission Company is a nonmajor natural gas company within the meaning of Part 201 of the Commission's regulations. *See* 18 CFR Part 201, General Instructions (1988).

recovery was necessary in order to prevent a disproportionate economic impact on nonmajor pipelines.[10] The Commission concluded that a categorical reduction of sixty percent of the fees for rate and tariff filings made by nonmajor natural gas companies pursuant to §§ 381.204 and 381.205 would be appropriate. The Commission also stated that the sixty-percent categorical reduction was a policy judgment representing its best estimate of the magnitude of reduction necessary to avoid a disproportionate economic impact on nonmajor companies.[11] In Order No. 506, the Commission specifically applied the sixty-percent categorical reduction to Raton's tariff filing at issue in the *Raton* decision. Additionally, the interim rule applied the sixty-percent categorical reduction retroactively to any rate or tariff filing made by nonmajor companies on or after July 29, 1988, the date of the Court's decision in *Raton*.

The Commission amended its regulations in Order No. 506 on an interim basis because it believed that a prompt response to the Court's remand in *Raton* would alleviate the industry's uncertainty about the status of the Commission's gas rate fees schedule as it applies to smaller natural gas companies. The Commission also sought comments on its changes.

III. Discussion

Seven natural gas companies filed comments.[12] The commenters generally support the Commission's actions in Order No. 506. In addition, the majority of the commenters request that the Commission apply the sixty-percent categorical reduction to all filing fees paid by nonmajor natural gas companies.[13] Alabama-Tennessee requests that the Commission also address an alleged lack of fairness in the Commission's treatment of major and nonmajor natural gas companies in assessing annual charges.[14] The Commission declines at this time to apply the sixty-percent categorical reduction to all other filing fees made by nonmajor natural gas companies. An evaluation of the Commission's entire filing fees structure is beyond the scope of this rulemaking docket and would unduly delay final action to correct the inequities that were brought to our attention in *Raton*. The Commission may address further revisions in the filing fees structure in the future.

The Commission also believes that it would be more appropriate to address Alabama-Tennessee's concerns in the context of the annual charges rulemaking proceeding.[15] The annual charges rule is currently under review in the U.S. Court of Appeals for the District of Columbia Circuit in *Interstate Natural Gas Association of America v. FERC*, No. 87–1570, and in the U.S. Supreme Court in *Burnley v. Mid-America Pipeline Co.*, No. 87–2098. Thus, it would be inappropriate to address the concerns raised in the comments in this docket until the court review of the annual charges rule has been resolved.

Pelican Interstate Gas System (Pelican) requests that the Commission clarify the term "nonmajor" as defined in Part 201, General Instructions of the Commission's accounting regulations and as applied in the interim rule. Pelican argues that the definition contains a typographical error and that it should read "total gas sales *or* volume transactions exceeding 200,000 Mcf." The Commission's regulations currently read "total gas sales *of* volume transactions exceeding 200,000 Mcf."[16]

The Commission agrees and is revising the definition of the term "nonmajor" in Part 201, General Instructions of its accounting regulations to correct this typographical error. This will make the definition consistent with Order No. 390, the rule that promulgated these definitions.[17]

Pelican also claims that the definition of nonmajor and exempt natural gas companies appears to exclude the smallest natural gas companies (*i.e.*, those companies that are not major companies and have total volumes of 200,000 Mcf or less in each of the three previous calendar years). Pelican argues that excluding the smallest natural gas companies from the benefits of reduced fees is inconsistent with the Commission's stated policy to reduce the filing fee burden on small pipelines.

Order No. 390 exempted from the accounting, filing, and reporting requirements of Part 201 those gas companies that have gas sales or volume transactions at or below the 200,000 Mcf level used to define "nonmajor" gas companies. Therefore, those companies do not fall within the definition of "nonmajor" in Part 201. However, these smallest companies do make filings that require fees under §§ 381.204 and 381.205, and using the term "nonmajor" to define those eligible for the categorical reduction would exclude them from the benefits of reduced fees. This was not our intent in adopting the interim rule. Accordingly, in the final rule, we adopt a definition that applies the categorical reduction to natural gas companies other than "major" natural gas companies as defined in Rule 201.

IV. Effective Date

This final rule is effective January 30, 1989. This will ensure that there is no gap in the transition from an interim rule to a final rule.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[18] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities.

The revised fees adopted in the rule may have a significant impact on a substantial number of small entities. In effect, the Commission's rule will lessen the economic impact of its fees on small natural gas companies. The Commission believes this rule will have a beneficial impact on small entities rather than a

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[10] The Commission cited as precedent Order No. 361, 49 FR 5083 (Feb. 10, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,543 (Feb. 6, 1984) and Order No. 395, 49 FR 35348 (Sept. 7, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,592 (Aug. 31, 1984).

[11] Unlike the reallocation of rate filing fees to eliminate the fees for compliance filings, the sixty-percent categorical reduction for nonmajor companies is not based on reevaluation of the cost of processing particular types of filings. Rather, it is based on potential hardship to the small companies. The Commission's experience is that the average time required to process the rate filings of nonmajor companies is not significantly lower than the average time required to process the rate filings of major companies. Hence, there will be no change in the rate filing fees for major pipelines (although the effect of the sixty-percent categorical reduction for nonmajor companies will be reflected in the amount of money to be recovered through the Commission's annual charges).

[12] Alabama-Tennessee Natural Gas Company; Carnegie Natural Gas Company; Eastern Shore Natural Gas Company; Lone Star Gas Company; Paiute Pipeline Company; Pelican Interstate Gas Systems; and Raton Gas Transmission Company.

[13] *See, e.g.*, Carnegie Natural Gas Company; Eastern Shore Natural Gas Company; Lone Star Gas Company; Paiute Pipeline Company; and Raton Gas Transmission Company.

[14] Annual charges under the Omnibus Budget Reconciliation Act of 1986, Order No. 472, 52 FR 21263 (June 5, 1987); III FERC Stats. & Regs. ¶ 30,746 (May 29, 1987); *clarified*, 52 FR 23650 (June 24, 1987); III FERC Stats. & Regs. ¶ 30,750 (June 17, 1987); *reh'g granted in part and denied in part*, 52 FR 36013 (Sept. 25, 1987); III FERC Stats. & Regs. ¶ 30,767 (Sept. 16, 1987).

[15] In its comments, Raton Gas Transmission Company requested that a differential in the annual fees be made between short haul and long haul natural gas pipelines. The Commission believes this proposal also should be addressed in the annual charges rulemaking docket and not in this rule.

[16] *See* note 2.

[17] Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform Systems of Accounts, Form Nos. 1, 1–F, 2 and 2–A and Related Regulations, Order No. 390, 49 FR 32496 (Aug. 14, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,586 (Aug. 3, 1984).

[18] 5 U.S.C. 601–612 (1982).

negative impact. The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities".

VI. Environmental Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[19] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[20]

List of Subjects

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 201 and 381, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Linwood A. Watston, Jr.,

Acting Secretary.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

1. The authority citation for Part 201 continues to read as follows:

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

2. In Part 201, under "General Instructions," paragraph (1)(A), the term *Nonmajor* is revised to read as follows:

General Instructions

1. *Classification of utilities.*

A. * * *

* * * * *

Nonmajor—Natural gas companies that are not classified as a "major company" (as defined above), and had total gas sales or volume transactions exceeding 200,000 Mcf at 14.73 psi (60 °F) in each of the three previous calendar years.

* * * * *

PART 381—FEES

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

4. Section 381.204 is revised to read as follows:

§ 381.204 Pipeline tariff filings for general changes in rates and for changes other than in rates.

(a) Except as provided in paragraphs (b) and (c), the fee established for a tariff filing for general changes in rates and for changes other than rates is $4,320.

(b) *Categorical reduction.* Effective July 29, 1988, with respect to natural gas companies other than major natural gas companies, as defined in Part 201, General Instructions, of this chapter, the fee established for a tariff filing for general changes in rates and for changes other than rates is $1,720.

(c) There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

5. Section 381.205 is revised to read as follows:

§ 381.205 Pipeline tariff filings that track certain costs.

(a) *General rule.* Except as provided in paragraphs (b) and (c), the fees established for tariff filings that track costs are:

(1) $4,440 for an annual filing under § 154.305;

(2) $910 for a quarterly filing under § 154.308;

(3) $910 for an interim adjustment filing under § 154.309; and

(4) $910 for any other tariff filing that tracks costs.

(b) *Categorical reduction.* Effective July 29, 1988, with respect to natural gas companies other than major natural gas companies, as defined in Part 201, General Instructions, of this chapter, the fees established for tariff filings that track costs are:

(1) $1,770 for an annual filing under § 154.305;

(2) $360 for a quarterly filing under § 154.308;

(3) $360 for an interim adjustment filing under § 154.309; and

(4) $360 for any other tariff filing that tracks costs.

(c) There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

[FR Doc. 89–2583 Filed 2–2–89; 8:45 am]

BILLING CODE 6717–01–M

[19] 52 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 381).

[20] *See* 18 CFR 380.4(a)(1) (1988).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 122 and 178

[T.D. 89–24]

Customs Regulations Amendments Concerning Overflight Exemptions for Private Aircraft

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth amendments to the Customs Regulations that modify the overflight exemption program for private aircraft. The regulations provide for more stringent controls of the overflight program by requiring: Additional information on applications for overflight exemptions; overflight aircraft to operate at minimum altitudes which will facilitate tracking by radar; and overflight aircraft to be equipped with altitude reporting transponders. These regulations will simplify the tracking and sorting of general aviation aircraft, reduce the possibility of air-drop or touch-and-go smuggling activities by overflight aircraft and generally improve our drug interdiction efforts.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Ross or Sam McLinn, Office of Passenger Enforcement and Facilitation (202–566–5607).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs effort to combat the problem of drug smuggling by air, the Customs Regulations were amended in 1975 to add a new § 6.14 (19 CFR 6.14), that provided in part that private aircraft arriving in the U.S. via the

U.S.-Mexican border must provide a notice of intended arrival with Customs (T.D. 75–201, 40 FR 33203). The section further provided that these private aircraft must land at any one of the designated airports near the U.S.-Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

In our diligence to fight the national epidemic of illegal drugs, Customs amended § 6.14, Customs Regulations, several times since 1975. Amendments included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83–192; 48 FR 41381); expanding coverage by modifying the definition of private aircraft (T.D. 84–236; 49 FR 46885); and extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S. Virgin Islands, increasing from 15 minutes to one hour the minimum time required for notice to be given prior to penetrating U.S. air space, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86–72; 51 FR 10004).

More recently Customs amended § 6.14(g) by removing San Diego International Airport (Lindbergh Field) from the list of designated airports. Customs discovered that smugglers were taking advantage of Lindbergh Field's location 15 miles from the U.S.-Mexican border to engage in smuggling after crossing the border, but before reporting for inspection at Lindbergh Field. (T.D. 86–146; 51 FR 27836).

On March 30, 1987, Customs again amended § 6.14 by publishing in the **Federal Register** (51 FR 10047) T.D. 87–42 which set forth interim amendments modifying the overflight exemption program contained in paragraph (f). These exemptions allow private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S. to overfly a Customs designated airport along the southern border and proceed to another, typically more interior, airport where Customs inspectional services are available.

Customs was of the opinion that the existing overflight exemption program constituted an unnecessary loophole in our drug interdiction efforts. The principal source of cocaine and cocaine products is South America, and the principal mode of transportation used to smuggle such contraband into the U.S. is general aviation aircraft. By enhancing the overflight exemption program, Customs sought to tighten control over air traffic coming from the direction of major drug source countries and thereby increase our effectiveness in combating the epidemic of illegal drugs afflicting the U.S. When aircraft are allowed to bypass Customs inspection at or very near the border, smugglers have excessive opportunity to engage in illegal activities between the border and more interior inspectional sites.

Smugglers can take advantage of an overflight exemption and engage in "touch and go" or air drop smuggling of illegal drugs and contraband. "Touch and go" smuggling involves aircraft crossing the U.S. border and landing and quickly unloading illegal drugs or contraband before flying to the airport at which they will report for inspection. Air drop smuggling involves flying very low over some point between the border or coastline and the airport at which they will report for inspection, pushing illegal drugs or contraband out of the aircraft to be retrieved on the ground or sea, and continuing on to the airport.

The interim amendments to the overflight exemption program consisted of several changes:

(1) The application procedure for overflight exemptions was modified to allow only U.S.-based companies or individuals to apply. This was considered necessary to enable Customs to thoroughly investigate the background of all applicants as Customs only has access to detailed information on those that are U.S.-based.

(2) Each general overflight application was required to be accompanied by individual applications from each pilot or crewmember intended to participate in the overflight.

(3) Applications were only considered from applicants flying aircraft equipped with mode C transponders able to conduct overflights at a minimum altitude of 12,500 feet mean sea level. These transponders enable accurate radar identification and tracking of overflight aircraft.

These modifications of the overflight exemption program were designed to benefit Customs in four principal ways. (1) Tracking of general aviation aircraft was simplified by requiring those crossing the southern border to make an initial landing for inspection at the designated airports before proceeding to their destination. (2) Parties holding an overflight exemption would no longer have a potential advantage in smuggling through the use of their overflight exemptions to air-drop illegal drugs and contraband or to "touch-and-go" before reporting for Customs inspection. (3) Customs would be able to concentrate its specialized aircraft inspection resources at the designated airports. (4) Customs would save a considerable number of man-hours per year now spent processing overflight exemption applications since the modified overflight program would result in fewer applications. The time saved by Customs officers in not processing applications could be reallocated to interdicting narcotics smugglers.

Comments on the interim amendments were solicited for consideration before any final determination was to be made concerning the modifications to the overflight exemption program. It should be noted that the interim amendments, originally set forth in § 6.14(f), Customs Regulations (19 CFR 6.14(f)), in T.D. 87–42 now appear in § 122.25, Customs Regulations (19 CFR 122.25), pursuant to a revision of the Customs Regulations relating to air commerce, published in the **Federal Register** (53 FR 9292) as T.D. 88–12 on March 22, 1988.

Discussion of Comments

Several commenters offered support for the changes to the overflight exemption program and expressed backing of our drug interdiction efforts. Other comments and Customs responses follow.

Comment: Three law firms representing Mexican firms expressed dissatisfaction with the inability of a foreign based/registered aircraft to obtain an overflight exemption. They felt Customs was discriminating against these types of aircraft.

Response: The interim regulations provided that only U.S.-based companies or individuals could apply for overflight exemptions because Customs ability to perform background investigations of applicants to assure the validity of an overflight exemption is greatly enhanced when the records are U.S.-based. However, it has come to our attention that the interim rule may not be consistent with U.S. obligations under the Chicago Convention on International Civil Aviation in that it may discriminate against non-U.S.-based applicants. Accordingly, the final regulation (§ 122.25(a)) will be changed to allow any company or individual, regardless of where it is based, to apply for an overflight exemption. However, each applicant, regardless of nationality or registration, must demonstrate fully its fitness to receive an exemption.

Comment: One respondent complained that the granting of an overflight exemption should be based on the previous records of crew and passengers, not on a cost estimate to the operator. Further, transponders should

be employed to track aircraft operating under an overflight exemption.

Response: Overflight exemption applications are not judged solely on a cost estimate to the operator. Several pieces of information are reviewed and judged collectively when evaluating an application. Some of these include: The previous history of the applicant, pilot(s), and passenger(s); the number of foreign arrivals in the past year; aircraft country of registration; and the ability of an aircraft to fly at a certain altitude operating under Instrument Flight Rules (IFR).

Aircraft which utilize an overflight exemption must be equipped with an operating mode C transponder throughout the duration of their flights.

Comment: Another commenter complained of the overflight exemption application procedure and stated that this only adds to the restrictions currently in place against pilots.

Response: Customs must be assured that the applicant will use the privilege of an overflight exemption in a responsible manner. Detailed information is required to help insure that this privilege will not be abused.

Comment: A complaint was received which stated that those aircraft which have been granted an overflight exemption are not the ones on which Customs should be concentrating its efforts.

Response: By granting an overflight exemption to those entities and aircraft meeting application guidelines, Customs will be better able to eliminate and sort overflight aircraft from those posing a greater threat of being involved in some type of criminal activity.

Comment: Two commenters noted the lack of guidelines in handling applications for air ambulance aircraft.

Response: Customs does not intend for the stringency of its regulations to unnecessarily delay people needing medical care from getting into the U.S. to receive their treatment. Therefore, the final regulations will provide in § 122.25(a) that air ambulance type operations and other flights involving the non-emergency transport of persons for medical treatment in the U.S. may be granted single overflight exemptions. Applicants must provide, if possible, all the necessary information normally required for an overflight exemption. If time permits, Customs shall be notified at least 24 hours prior to departure. If this cannot be accomplished, Customs will accept the overflight exemption application up to departure time. In cases of extreme medical emergency, Customs will except overflight exemption requests in flight through a Federal Aviation Administration Flight Service Station.

Comment: Two commenters questioned whether Customs will take into account problems such as poor weather and heavy air traffic when an overflight exemption is granted.

Response: Pilots of private aircraft operating under an overflight exemption may, at times, be directed to divert to an alternate airport by the FAA. Customs will accept this as long as the pilot was directed to divert by the FAA or was forced to divert because of circumstances beyond the pilot's control.

Comment: It was noted that instrument flight plans may be filed with other authorities than the Federal Aviation Administration for international flights.

Response: Customs agrees. Accordingly, the words "or equivalent foreign aviation authority" are added to § 122.25(d)(3) to reflect the international nature of overflights.

Determination

After consideration of all the comments received in response to publication of the interim regulations, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications discussed.

Executive Order 12291

This is not a major rule as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a signifiant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0153. The estimated average burden associated with the collection(s) of information in this final rule is 18 minutes per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestion for reducing this burden should be directed to the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for U.S. Customs.

List of Subjects

19 CFR Part 122

Customs duties and inspection, Imports, Air Carriers, Aircraft, Airports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Parts 122 and 178, Customs Regulations (19 CFR Parts 122 and 178) are amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1433, 1436, 1456, 1590, 1594, 1624, 1644; 49 U.S.C. App. 1509.

2. Section 122.25 is revised to read as follows:

§ 122.25 Exemption for special landing requirements.

(a) *Request.* Any company or individual in the U.S. that has operational control over an aircraft required to give advance notice of arrival under § 122.23 may request an exemption from the landing requirements in § 122.24. Single overflight exemptions may be granted to entities involved in air ambulance type operations when emergency situations arise and in cases involving the non-emergency transport of persons seeking medical treatment in the U.S. All approvals of requests for overflight exemptions and the granting of authority to be exempted from the landing requirements are at the discretion of the district director. Exemptions may allow aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall continue to follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the district director at the airport at which majority of Customs overflight processing is desired by the applicant. Except for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., the requests shall be signed by an officer of the company or by the requesting individual and be notarized or witnessed by a Customs officer. The requests shall be submitted:

(1) At least 30 days before the anticipated first arrival, if the request is for an exemption covering a number of flights over a period of one year, or

(2) At least 15 days before the anticipated arrival, if the request is for a single flight, or

(3) In cases involving air ambulance operations when emergency situations arise and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., if time permits, at least 24 hours prior to departure. If this cannot be accomplished, Customs will allow receipt of the overflight exemption application up to departure time. In cases of extreme medical emergency, Customs will accept overflight exemption requests in flight through a Federal Aviation Administration Flight Service Station.

(c) *Content of request.* All requests for exemption from special landing requirements, with the exception of those for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., shall include the following information. Requests for exemptions for air ambulance operations and other flights involving the non-emergency transport of persons for medical treatment in the U.S. shall include the following information except for paragraphs (c)(5) and (c)(6) of this section:

(1) Aircraft registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(2) Identification information for each aircraft including class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(3) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(4) Name and address of the applicant operating the aircraft, if the applicant is a business entity, the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers (if available), and dates of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, include the name, address, Social Security number (if available), and date of birth of the owner if an individual, or the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(5) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number (if available), Federal Aviation Administration certificate number (if applicable), and place and date of birth;

(6) A statement from the individual signing the appliation that the pilot(s) and crewmember(s) responding to paragraph (c)(5) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (c)(5) of this section is accurate;

(7) Names, addresses, Social Security numbers (if applicable), and dates of birth for all usual or anticipated passengers. An approved passenger must be on board to utilize the overflight exemptions.

Note.—Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66, 1433, 1459 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law-abiding persons will be granted permission to land at interior airports in the U.S. without first landing at one of the airports designated in § 122.24. The SSN will be made available to Customs personnel on a need-to-know basis. Failure to provide the SSN may result in a delay in processing of the application;

(8) Description of the usual or anticipated baggage or cargo if known, or the actual baggage or cargo;

(9) Description of the applicant's usual business activity;

(10) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports;

(11) Foreign place or places from which flight(s) will usually originate; and

(12) Reasons for request for overflight exemption.

(d) *Procedure following exemption.* (1) If a private aircraft is granted an exemption from the landing requirements as provided in this section, the aircraft commander shall notify Customs at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coast north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as the U.S.-Mexican border between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(2) The notice shall be given to a designated airport specified in § 122.24. The notice may be furnished directly to Customs by telephone, radio or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to §§ 122.23 and 122.24 is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration or equivalent foreign aviation authority prior to the commencement of the overflight.

(4) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirements must:

(i) Notify Customs of a change of Federal Aviation Administration or other (foreign) registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (c)(5) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the new pilot or crewmember and approved by Customs before commencement of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (c)(10) of this section. The request must be directed to the district director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for

additional landing privileges as well as a copy of the letter from Customs approving each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(5) The notification specified in paragraph (d)(4) of this section must be given to Customs within 5 working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(e) *Inspection of aircraft having or requesting overflight exemption.* Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of an overflight. Inspections may be conducted during the review of an initial application or at any time during the term of an overflight exemption.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

2. Section 178.2 is amended by removing "§ 6.1a", "6.12a", and "§ 6.14" under the column headed "19 CFR Section" and the corresponding entries under the columns headed "Description" and "OMB control No."

3. Section 178.2 is further amended by inserting "Part 122" in numerical order under the column headed "19 CFR Section", inserting in the corresponding column headed "Description" the words "Air commerce regulations" and in the corresponding column headed "OMB control No." the number "1515–0153".

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved January 11, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89–2576 Filed 2–2–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nystatin, Neomycin, Thiostrepton, and Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Biomed Laboratories. The NADA provides for the use of nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment on dogs and cats for the treatment of acute and chronic otitis, interdigital cysts, dermatologic disorders, and for dogs for the treatment of anal gland infections.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Biomed Laboratories, 438 West Arrow Highway, San Dimas, CA 91773, has filed NADA 140–810 which provides for the use of a nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment on dogs and cats for the treatment of acute and chronic otitis of varied etiologies, interdigital cysts, anal gland infections in dogs, and for the management of dermatologic disorders characterized by inflammation and dry or exudative dermatitis, particularly those caused, complicated, or threatened by bacterial or candidal (*Candida albicans*) infections. It is also of value in eczematous dermatitis, contact dermatitis, and seborrheic dermatitis, and as an adjunct in the treatment of dermatitis due to parasitic infestation. The NADA is approved and 21 CFR 524.1600a is amended in paragraph (b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(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 in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 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.

§ 524.1600a [Amended]

2. Section 524.1600a *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment* is amended in paragraph (b) by removing the phrase "See Nos. 025463 and 053501" and adding in its place "See Nos. 025463, 051259, and 053501".

Dated: January 24, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–2568 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs Not Subject to Certification; Formalin Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Argent Chemical Laboratories, providing for safe and effective use of formalin solution (aqueous solution of formaldehyde gas) to control external protozoa and monogenetic trematodes on salmon, trout, catfish, largemouth bass, and bluegill and to control fungi on salmon, trout, and esocid eggs.

EFFECTIVE DATE: February 3, 1989.

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

SUPPLEMENTARY INFORMATION: Argent Chemical Laboratories, 8702 152d Ave. NE., Redmond, WA 98052, has filed NADA 140–831 which provides for addition of formalin solution (aqueous solution of 37 percent by weight of formaldehyde gas) to: (1) Tanks, raceways, and earthen ponds to control the protozoa *Ichthyophthirius* spp., *Chilodonella* spp., *Costia* spp., *Scyphidia* spp., *Epistylis* spp., and *Trichodina* spp.; and the monogenetic trematodes *Cleidodiscus* spp., *Gyrodactylus* spp., and *Dactylogyrus* spp. on salmon, trout, catfish, largemouth bass, and bluegill; and (2) incubation tanks to control fungi of the family Saprolegniaceae on salmon, trout, and esocid eggs. The NADA is approved and the regulations are amended in 21 CFR 529.1030(b) to reflect this approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(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 in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 529 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.

§ 529.1030 [Amended]

2. Section 529.1030 *Formalin solution* is amended in paragraph (b) by revising the phrase "See No. 049968" to read "See Nos. 049968 and 051212".

Dated: January 24, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–2567 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 89–004]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators or regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between October 1, 1988 and December 31, 1988 and have since been terminated. Also included are several zones established earlier, but inadvertently omitted from the published list.

ADDRESS: The complete text of any temporary regulation may be examined at, and is available on request from Executive Secretary, Marine Safety Council (G–LRA–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267–1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard by law must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness. The following regulations were placed in effect temporarily during the period October 1, 1988 through December 31, 1988 unless otherwise indicated.

Docket number and location	Type	Date
1–88–093—Triboro Bridge, East River, NY	Safety zone	15 Sep. 88
1–88–085—East River, New York Harbor, NY	Security zone	26 Sep. 88
1–88–083—East River, New York Harbor, NY	Security zone	3 Oct. 88
1–88–084—East River, New York Harbor, NY	Security zone	4 Oct. 88
1–88–89—Hempstead Harbor, Long Island Sound, NY	Safety zone	8 Oct. 88
1–88–095—Kill Van Kull, NY, NJ	Safety zone	8 Oct. 88
COTP Boston, MA, Reg. 88–92—Boston Inner Harbor, Boston, MA	Safety zone	9 Oct. 88

Docket number and location	Type	Date
1-88-090—Hudson River, New York, NY	Safety zone	16 Oct. 88
1-88-096—East River, New York, NY	Safety zone	18 Oct. 88
1-88-091—East River, New York, NY	Safety zone	23 Oct. 88
1-88-097—Beach Channel, Jamaica Bay, New York, NY	Safety zone	27 Oct. 88
1-88-101—Arthur Kill, Staten Island, NY	Safety zone	23 Nov. 88
1-88-102—New York Harbor, NY	Security zone	7 Dec. 88
1-88-103—East River, New York, NY	Safety zone	7 Dec. 88
1-88-104—East River, New York Harbor, NY	Security zone	7 Dec. 88
1-88-105—East River, New York, NY	Safety zone	31 Dec. 88
COTP Providence, RI, Reg. 88-107—New Bedford Harbor, MA	Safety zone	31 Dec. 88
COTP St. Louis, MO, Reg. 88-07—St. Louis, MO, Upper Mississippi River, Mile 160.5 to Mile 160.7.	Safety zone	8 Jun. 88
COTP Huntington, WV, Reg. 88-07—Kanawha River, Mile 57.0 to Mile 59.0.	Safety zone	4 Jul. 88
COTP St. Louis, MO, Reg. 88-08—St. Louis, MO, Upper Mississippi River, Mile 125.0.	Safety zone	27 Jul. 88
COTP St. Louis, MO, Reg. 88-09—St. Genevieve, MO, Upper Mississippi River, Mile 126.0.	Safety zone	27 Jul. 88
COTP St. Louis, MO, Reg. 88-10—St. Louis, MO, Missouri River, Mile 0.0 to Mile 0.5.	Safety zone	31 Jul. 88
COTP St. Louis, MO, Reg. 88-11—St. Louis, MO, Upper Mississippi River, Mile 166.0 to Mile 168.6.	Safety zone	3 Aug. 88
COTP Paducah, KY, Reg. 88-04—Ohio River, Mile 962.6 to Mile 975	Safety zone	9 Aug. 88
COTP Memphis, TN, Reg. 88-16—Lower Mississippi River, Memphis Harbor, Wolf River Chute.	Safety zone	15 Aug. 88
COTP Louisville, KY, Reg. 88-11—Louisville, KY	Safety zone	19 Aug. 88
COTP St. Louis, MO, Reg. 88-12—St. Louis, MO, Upper Mississippi River, Mile 180.6.	Safety zone	23 Aug. 88
COTP Pittsburgh, PA, Reg. 88-05—Monongahela River from Mile 34.0 to Mile 34.4.	Safety zone	25 Aug. 88
2-88-07—New Richmond Riverfest	Special local regulation	27 Aug. 88
COTP Memphis, TN, Reg. 88-18—Lower Mississippi River Mile 595	Safety zone	31 Aug. 88
COTP Louisville, KY, Reg. 88-13—Louisville, KY	Safety zone	4 Sep. 88
COTP St. Louis, MO, Reg. 88-13—St. Louis, MO, Upper Mississippi River, Mile 179.2 to Mile 180.0.	Safety zone	4 Sep. 88
COTP Huntington, WV, Reg. 88-12—Ohio River, Mile 355.0 to Mile 357.5.	Safety zone	4 Sep. 88
COTP Louisville, KY, Reg. 88-12—Louisville, KY	Safety zone	9 Sep. 88
2-88-06—USDBA/Florence, AL, World Finals	Special local regulation	10 Sep. 88
2-88-09—Ohio River, Mile 170.8 to Mile 171.9	Safety zone	10 Sep. 88
2-88-08—Ohio River Sternwheel Festival	Special local regulation	11 Sep. 88
COTP St. Louis, MO, Reg. 88-14—St. Louis, MO, Missouri River, Mile 0.0 to Mile 0.5.	Safety zone	20 Sep. 88
COTP Memphis, TN, Reg. 88-19—Mississippi River, Mile 734.8 to Mile 736.7.	Safety zone	24 Sep. 88
COTP Huntington, WV, Reg. 88-13—Kanawha River, Mile 41.7 to Mile 45.5.	Safety zone	25 Sep. 88
COTP Memphis, TN, Reg. 88-20—Mississippi River, Memphis Harbor, McKellar Lake.	Safety zone	2 Oct. 88
COTP Louisville, KY, Reg. 88-15—Louisville, Ky	Safety zone	7 Oct. 88
COTP Paducah, KY, Reg. 88-06—Cumberland River, Mile 190.6 to Mile 191.1.	Safety zone	8 Oct. 88
COTP Louisville, KY, Reg. 88-16—Louisville, KY	Safety zone	9 Oct. 88
COTP Huntington, WV, Reg. 88-14—Kanawha River, Mile 41.7 to Mile 45.5.	Safety zone	9 Oct. 88
COTP Louisville, KY, Reg. 88-14—Cincinnati, OH	Safety zone	13 Oct. 88
2-88-10—Tall Stacks Weekend	Special local regulation	14 Oct. 88
COTP St. Louis, MO, Reg. 88-16—St. Louis, MO, Upper Mississippi River, Mile 77.0 to Mile 85.0.	Safety zone	2 Nov. 88
COTP Louisville, KY, Reg. 88-17—Louisville, KY	Safety zone	5 Nov. 88
COTP Memphis, TN, Reg. 88-21—Mississippi River, Memphis Harbor, McKellar Lake.	Safety zone	11 Nov. 88
COTP St. Louis, MO, Reg. 88-18—St. Louis, MO, Upper Mississippi River, Mile 150.6 to Mile 152.1.	Safety zone	29 Nov. 88
COTP St. Louis, MO, Reg. 88-15—St. Louis, MO, Upper Mississippi River, Mile 194.0.	Safety zone	10 Dec. 88
COTP St. Louis, MO, Reg. 88-17—St. Louis, MO, Upper Mississippi River, Mile 0.0 to Mile 185.0.	Safety zone	12 Dec. 88
5-88-72—For Head of the Delaware 12th Annual Ship Shield Regatta, Delaware River, Burlington, NJ.	Special local regulation	1 Oct. 88
COTP Baltimore, MD, Reg. 88-10—Upper Chesapeake Bay and Baltimore Harbor.	Safety zone	6 Oct. 88
COTP Philadelphia, PA, Reg. 88-02—Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6).	Safety zone	14 Nov. 88
COTP Philadelphia, PA, Reg. 88-03—Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6).	Safety zone	17 Nov. 88
COTP Philadelphia, PA, Reg. 88-04—Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6).	Safety zone	22 Nov. 88

Docket number and location	Type	Date
5-88-66—For Holidays in the City Boat Parade and Fireworks Display, Elizabeth River, Norfolk, Va.	Special local regulation	26 Nov. 88
7-88-034—1988 Columbus Day Regatta	Special local regulation	8 Oct. 88
7-88-24—1988 Key West/NPBA Offshore World Series Race	Special local regulation	11 Oct. 88
7-88-25—1988 Key West/NPBA World Series Kila Run	Special local regulation	13 Oct. 88
7-88-033—Holidayfest and Boat Parade	Special local regulation	2 Dec. 88
7-88-039—Christmas Boat Parade	Special local regulation	3 Dec. 88
7-88-040—Winter Reflections on the Bay	Special local regulation	3 Dec. 88
7-88-038—Winterfest Boat Parade	Special local regulation	10 Dec. 88
COTP Port Chs, SC, Reg. 88-165.T0717—Charleston Harbor, Charleston, SC.	Safety zone	10 Dec. 88
7-88-044—Pompano Beach 26th Annual Christmas Boat Parade	Special local regulation	11 Dec. 88
7-88-041—Winter Fantasy on the Waterway	Special local regulation	17 Dec. 88
7-88-042—Great South Florida Rubber Duckie Race	Special local regulation	17 Dec. 88
COTP New Orleans, LA, Reg. 88-05—One-quarter mile above and below the I-10 Jordan River Bridge, Mile 4.5 Jordan River Bay, St. Louis, MS.	Safety zone	23 Aug. 88
COTP New Orleans, LA, Reg. 88-06—Lower Mississippi River Mile 347 to Mile 298.	Safety zone	8 Sep. 88
COTP C. Christi, TX, Reg. 88-11—Brownsvill, Ship Channel, TX	Safety zone	21 Nov. 88
COTP Mobile, AL, Reg. 88-09—In the Waters of Mobile Bay Encompassing a 3,000 yard radius from the Shoreline At Great Point Clear, AL.	Security zone	22 Nov. 88
COTP Mobile, AL, Reg. 88-10—In the Waters of Mobile Bay Encompassing a 5,000 yard radius from the Shoreline At Great Point Clear, AL.	Safety zone	22 Nov. 88
COTP C. Christi, TX, Reg. 88-12—Brownsville Ship Channel, TX	Safety zone	23 Nov. 88
COTP C. Christi, TX, Reg. 88-13—Brownsville Ship Channel, TX	Safety zone	29 Nov. 88
COTP C. Christi, TX, Reg. 88-14—Brownsville Ship Channel, TX	Safety zone	10 Dec. 88
8-88-21—Houston Ship Channel from San Jacinta Monument to Todd Shipyard, Galveston.	Safety zone	13 Dec. 88
COTP Chicago, IL, Reg. 88-02—Lake Michigan Waters Offshore at Chicago Harbor, Burnham Park Harbor, and Chicago River, South Branch, Chicago, IL.	Security zone	30 Sep. 88
COTP Cleveland, OH, Reg. 88-07—Lake Erie	Safety zone	7 Oct. 88
COTP Cleveland, OH, Reg. 88-10—Lake Erie	Safety zone	29 Oct. 88
COTP LA/LB, CA, Reg. 88-22—Ports of Los Angeles/Long Beach, CA	Safety zone	4 Oct. 88
COTP San Diego, CA, Reg. 88-32—San Diego Bay, CA, Pacific Ocean	Safety zone	6 Oct. 88
COTP San Diego, CA, Reg. 88-33—San Diego Bay, CA, Pacific Ocean	Safety zone	7 Oct. 88
COTP San Diego, CA, Reg. 88-34—LaJolla, CA, Pacific Ocean	Security zone	14 Oct. 88
COTP San Francisco, CA, Reg. 88-06—San Francisco Bay, CA	Security zone	15 Oct. 88
COTP LA/LB, CA, Reg. 88-24—Ports of Los Angeles/Long Beach, CA	Safety zone	31 Oct. 88
COTP LA/LB, CA, Reg. 89-01—Ports of Los Angeles/Long Beach, CA	Security zone	7 Nov. 88
11-88-13—Parker Mini-Boat Enduro-Parker, AZ	Special local regulation	19 Nov. 88
COTP San Diego, CA, Reg. 88-35—San Diego Bay, CA, Pacific Ocean	Safety zone	22 Nov. 88
COTP San Diego, CA, Reg. 88-36—San Diego Bay, CA, Pacific Ocean	Safety zone	22 Nov. 88
COTP San Diego, CA, Reg. 88-37—San Diego Bay, CA, Pacific Ocean	Safety zone	28 Nov. 88
COTP San Diego, CA, Reg. 88-38—San Diego Bay, CA, Pacific Ocean	Safety zone	30 Nov. 88
COTP San Diego, CA, Reg. 88-40—Coronado Roads, San Diego, CA, Pacific Ocean.	Safety zone	14 Dec. 88
COTP San Diego, CA, Reg. 88-41—San Diego Bay, CA, Pacific Ocean	Safety zone	20 Dec. 88
13-88-18—Columbia River Cross Channel Swim	Special local regulation	5 Sep. 88
COTP Honolulu, HI, Reg. 88-07—Papawai Point, Maui, HI	Safety zone	2 Dec. 88
COTP Honolulu, HI, Reg. 88-08—Mamala Bay, Oahu, HI	Security zone	15 Dec. 88

Date: January 27, 1989.

Bruce P. Novak,

Executive Secretary, Marine Safety Council.

[FR. Doc. 89-2539 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-14-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is amending its Minimum Guidelines and Requirements for Accessible Design (MGRAD) by deleting §§ 1190.40 through 1190.230 of Subpart D—Technical Provisions and in their stead incorporating by reference (with some exceptions) sections 4.2 through 4.32 and the Appendix of the 1986 edition of the American National Standards Institute Standard ANSI A117.1, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People." This final rule minimizes the differences between MGRAD and UFAS and follows the format that is most widely used in non-federally funded and constructed facilities. It also makes conforming technical amendments and adds provisions to Subpart E, which was reserved when MGRAD was published.

DATES: Effective February 3, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Ruth Hall Lusher, ATBCB, 1111 18th Street, NW., Suite 501, Washington, DC 20036, (202) 653-7848 (v/TDD). This is not a toll-free number. This final rule is available on cassette at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established by section 502 of the Rehabilitation Act of 1973, as amended (Pub. L. 93–112, 29 U.S.C. 792), to insure compliance with standards prescribed pursuant to the Architectural Barriers Act of 1968, as amended (Pub. L. 90–480, 42 U.S.C. 4151–4157) (the Act). The Act is intended to insure that certain buildings financed with Federal funds are designed, constructed, altered, and leased in accordance with standards issued by four Federal agencies to provide ready access to and use of such buildings to physically handicapped people. The four agencies authorized to issue standards for all design, construction, alteration, and leasing subject to the Act are the Department of Defense (DOD) for its buildings and facilities; the Department of Housing and Urban Development (HUD) for residential structures; the U.S. Postal Service (USPS) for its buildings and facilities; and the General Services Administration (GSA) for all other buildings and facilities.

A 1978 amendment to section 502 of the Rehabilitation Act, Pub. L. 95–602, authorized the Board to issue minimum guidelines and requirements (MGRAD) for these standards. The MGRAD now in effect was published on August 20, 1982 (47 FR 33862), and is codified at 36 CFR Part 1190. On August 4, 1984, the four standard-setting agencies issued the Uniform Federal Accessibility Standards (UFAS), which was based on the ANSI format. (47 FR 33862).

Throughout the development of MGRAD, the ATBCB considered the specifications contained in the American National Standards Institute's "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped Persons" (ANSI A117.1–1980 or ANSI). The American National Standards Institute (ANSI) is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's standards for barrier-free design are developed by a committee made up of 52 organizations representing associations of handicapped people, rehabilitation professionals, design professionals, builders, and manufacturers. ANSI's standards are developed using the consensus process. The original ANSI A117.1, adopted in 1961, formed the technical basis for the first accessibility standards adopted by the Federal Government and most State governments. The 1980 edition of that standard was based on research funded by the U.S. Department of Housing and Urban Development. It was generally accepted by the private sector and was recommended for use in State and local building codes by the Council of American Building Officials. Recognizing the widespread application of the ANSI standard and the desirability of uniformity, the ATBCB in MGRAD included provisions that were consistent with the technical specifications of ANSI A117.1–1980 wherever it was deemed appropriate.

In reviewing the ANSI technical requirements during MGRAD development, however, the ATBCB found that in some cases, with regard to some subjects, there was not sufficient research and/or field experience to support a Federal requirement at the time. Those provisions were reserved in MGRAD. The reserved provisions include external door opening force limits; requirements for accessible windows; the use of detectable warnings at locations other than doors leading to hazardous areas; all provisions dealing with signage; and opening time requirements for elevator doors.

Following the publication of MGRAD as a final rule, the four standard-setting agencies under the Act initiated the development of uniform accessibility standards to be used by all Federal agencies. The objective of the effort was to publish uniform standards which would, wherever possible, be consistent with the ANSI A117.1–1980 standard while complying with MGRAD.

In keeping with the agencies' objective to secure uniformity between Federal requirements and those commonly used in the private sector or by state and local governments, the UFAS followed ANSI A117.1–1980 in format. Departures from the ANSI technical provisions were made only where necessary in order to comply with MGRAD, or where the agencies found differing or additional requirements to be appropriate due to the nature of certain buildings and facilities subject to the Act or which were in the interests of improved safety or access for handicapped people.

An integral part of the ANSI process is the requirement for each ANSI standard to be reviewed at five-year intervals and then either reaffirmed or revised. When the ANSI A117.1 review began in 1984, differences between UFAS and the 1980 ANSI standard were prime candidates for revision in the new edition. The provisions that had been reserved in MGRAD were also reviewed to determine whether they should be retained, revised, or deleted in the new ANSI standard. The ANSI Committee found no justification for deleting these requirements, and thus retained all of the provisions that were reserved in MGRAD. However, revisions were made in some of the sections that reflected findings of ATBCB research on MGRAD reserved areas. Many of the features of UFAS not previously in the ANSI standard were adopted in the 1986 ANSI, which was approved by ANSI on February 5, 1986.

In the period since completion of MGRAD, the ATBCB has sponsored research in the areas of detectable warnings, signage and other environmental information systems, alarms, and hand anthropometrics, among other topics, and has participated with the standard-setting agencies in their development of UFAS. ATBCB has also assisted the ANSI A117 Committee in the development of the 1986 edition of that standard. Based on these experiences, as discussed more fully below, the ATBCB is completing the formerly reserved sections of MGRAD. The technical requirements being added to MGRAD are based primarily on the standards now promulgated by ANSI and the four standard-setting agencies, with findings from ATBCB research providing additional information and support.

II. Discussion of the General Comments

The notice of proposed rulemaking initiating this proceeding was published on September 16, 1987 (52 FR 34955) and allowed a period of sixty days for the submission of comments. A total of forty-five comments, including late comments, were received in response to the notice. In addition, fifty comments on the issue of detectable warning surfaces were received in response to the Board's February 11, 1987 notice of proposed rulemaking which addressed leased facilities as well as detectable warning surfaces. (52 FR 4352). These comments on detectable warning surfaces were incorporated into the record of this proceeding in accordance with the Board's decision of July 1987.

Nine comments expressed general support for the proposal including comments by the President's Committee on Employment of the Handicapped, the New York State Advocate for the Disabled, the Southern Building Code Congress International, Inc., the National Easter Seal Society and the Chairman of the ANSI A117.1 Committee.

Six comments expressed general opposition to the proposal. The stated grounds for opposition to the proposal were that it would weaken accessibility

standards, that the ANSI standards which it incorporates into MGRAD are inadequate, and that it is simply "a means of rationalizing poor and inappropriate UFAS provisions". Another questioned the appropriateness of the Board "turn[ing] over its responsibility for defining what constitutes accessible design to ANSI". This comment stated that ANSI, unlike the Board, does not have the goal of maximizing accessibility as its primary goal. Finally, this comment stated that the Board was delegating its rulemaking authority to a private organization and must therefore comply with the Administrative Procedure Act and the Federal Advisory Committee Act.

While as described below, the Board has decided against several of the proposed provisions, the Board has concluded, following careful review of all the comments received in response to the notice of proposed rulemaking, to issue this final rule. The Board disagrees with the assertion that this action weakens accessibility. On the contrary, taking this action achieves several important goals all of which serve to promote accessibility. It completes MGRAD after five years of study and lessons learned in the development of other standards. It makes comparisons and future revisions of UFAS and MGRAD simpler. Finally, it moves significantly closer to the long-standing goal of uniformity in accessibility requirements for both the public and private sectors. This has the benefit of simplifying accessibility compliance by removing duplicative layers of technical specifications that are a confusing and complicating factor for designers and builders as well as lay persons concerned with promoting accessibility.

The Board rejects the assertion that it has in effect delegated its standard setting responsibilities to ANSI such that ANSI should be subject of the requirements of the Administrative Procedures Act and the Advisory Committee Act. The Board's decision to incorporate certain provisions of the ANSI standard into MGRAD has not been a process of uncritical blanket acceptance of the ANSI standard. Not only is it true that not all provisions of the standard have been adopted but some provisions were not even proposed for adoption. Furthermore, the adoption of other provisions has come only with significant exceptions. Further yet, to the extent that ANSI has been adopted, it has occurred in the context of a public rulemaking proceeding with full opportunity for public participation and an administrative decision which is rational and supported on the record of that proceeding. The Board is not in any sense utilizing the ANSI committee as an advisory committee. No advice is being obtained other than through a public rulemaking in full conformity with all applicable legal requirements. The Board is adopting specified provisions of the 1986 ANSI standard. This does not necessarily imply the adoption of future versions of that standard.

Another comment opposing the proposed action stated that before any changes are made to MGRAD, a single national standard for all buildings, whether public or private should be developed. The Board is in agreement with the commenter's basic theme that increased uniformity in accessibility standards is desirable and believes that the final rule advances this objective. However, as recognized by the comment, the jurisdiction of the Architectural Barriers Act is limited and the scope of MGRAD is limited commensurately.

Several comments of a general nature addressed what can be called stylistic matters. A comment from a representative of a Federal Department stated that references to ANSI section numbers without, in every case, full citation to "ANSI A117.1 (1986)" "may be confusing" because citations in the proposal such as "ANSI 4.3" might be mistaken for a reference to an ANSI standard by that number. Some changes have been made in the final rule for purposes of clarity. The introductory text in the regulation clearly identifies the ANSI standard to all readers and it would be needlessly redundant to restate the full citation in every incidence in which a reference to the ANSI standard occurs. Moreover, MGRAD is intended to be the minimum guideline for UFAS. Therefore, it is the four standard setting agencies which will be the primary users of MGRAD. The Board has concluded that the personnel in these agencies responsible for standard setting activities are sufficiently familiar with ANSI and MGRAD to prevent any confusion in this regard.

A representative of another Federal agency urged that for ease of use and prevention of confusion, UFAS incorporate the language of ANSI provisions into it rather than merely referencing ANSI section numbers. The Board considers this comment to be well taken and notes that UFAS is a self-contained document. The Board urges the standard setting agencies to assure that UFAS continues to be an entirely self-contained document for ease of use by persons interested in compliance with the ABA.

Another comment asserted that incorporation of portions of the ANSI Standard effectively substitutes "standard" language for mandatory "regulatory" language in such a manner as to leave doubt about its compulsory nature. The comment stated that the ANSI language does not indicate that the provisions of the standard are mandatory. As noted above, MGRAD is intended to be the minimum guideline for UFAS. The standard-setting agencies are well aware of the legal effect of MGRAD so that further clarification is unnecessary. Moreover, the 1986 edition of the ANSI standard is phrased in regulatory language by virtue of its use of the word "shall" throughout its provisions. In the event that UFAS, the "regulatory" standard under the ABA, ultimately uses the same or substantially the same language as ANSI, the regulatory effect of the standard is made clear by section 1 of UFAS ("Purpose") as well as by the ABA itself.

The remaining comments in the rulemaking docket pertain to particular provisions of the proposed rule and are discussed in the following sections.

III. Section-By-Section Analysis

A section-by-section description of the amendments, the comments received on the proposed amendments (where applicable) and the Board's response follows:

A. Section 1190.2, Applicability

This section is amended by deleting paragraph (e), which describes the reserved status of Subpart E, Special Building and Facility Types, and places certain requirements on the Department of Housing and Urban Development until such time as the subpart is completed. Because this rulemaking completes the housing requirements (*See*, e.g., new § 1190.31(u)) and removes the "reserved" status of the subpart, paragraph (e) is no longer necessary or appropriate.

B. Section 1190.3, Definitions

This final rule substitutes the ANSI definitions of "adaptability," "common use," and "physically handicapped person" for those now appearing in MGRAD. In the case of the first two terms, the ANSI definitions are more clear and are consistent with the intent of MGRAD definitions. The ANSI definition of "physically handicapped person" is the same definition used in UFAS. It was accepted by the ATBCB when UFAS was developed as being

appropriate for purposes of standards issued under the Architectural Barriers Act, which relate strictly to accessibility and usability of buildings and facilities. By incorporating this definition, uniformity in defining the term among all three documents is achieved.

In addition, this final rule adds definitions for several terms that are used in the ANSI A117.1 standard but were not used in MGRAD. These terms are "detectable," "detectable warning," "dwelling unit," "housing," "marked crossing," "service entrance," and "sleeping accommodations." The definition for "tactile warning," a term that is no longer used, is deleted in this final rule.

C. Sections 1190.7, 1190.8, and 1190.9 and Subpart B

The final rule makes a technical correction by deleting section numbers unused in the current MGRAD and redesignates the remaining sections accordingly. Thus § 1190.9, Severability, is redesignated as § 1190.7, and Subpart C, Scope, is redesignated as Subpart B.

D. Subpart C—Scope

This subpart is redesignated as Subpart B and is amended wherever reference is made to sections of the current Subpart D—Technical Provisions. Those references are replaced by incorporating the appropriate references to corresponding provisions of the ANSI A117.1–1986 standard.

In addition, some new provisions are added to incorporate requirements currently found in Subpart D—Technical Provisions that are not included in the ANSI standard. These provisions have been added to this section when the requirements were considered to be a scoping rather than a technical provision. (The ANSI standard contains no scoping provisions, but rather relies on the adopting authority to establish those requirements.)

Amendments to Subpart C are made in each of its three sections, § 1190.31, Accessible buildings and facilities: New construction; § 1190.32, Accessible buildings and facilities: Additions, and § 1190.33, Accessible buildings and facilities: Alterations.

(1) Egress

Section 1190.31(a)(2) is amended by the final rule to incorporate a provision now found in § 1190.50(h), Egress (and in UFAS 4.3.10) which requires more than one accessible means of egress wherever fire code provisions require more than one means of egress from any space or room. Two of the three comments on this issue, including one from a paralyzed veterans organization, stated that the proposal was infeasible due to engineering and cost considerations and should not be interpreted to require two elevators as a means of vertical access. Another commenter from the National Park Service said that the proposal did not go far enough. For example, according to the comment, designers often fail to provide more than one accessible entrance and those that are provided are separate from those used by able-bodied persons.

Signs in multi-storied buildings direct people to use stairs in emergencies but fail to provide directions for disabled persons. Visual alarms are not provided for hearing impaired persons. Although several comments maintain that the proposal is infeasible, in fact the provision has been in effect for a number of years without apparent difficulty. Furthermore, elevators are not routes of egress; consequently the provision does not require multiple elevators. It does provide that an accessible place of refuge meets the requirement for an accessible means of egress. In response to the National Park Service comment, the Board points out that visual alarms are already addressed in MGRAD (See § 1190.180). Furthermore, the Board is conducting research on emergency egress and visual alarms which may lead to more definitive specifications.

(2) Platform Lifts

The Final Rule makes an addition to § 1190.31(g) which notes that platform lifts should facilitate unassisted entry and exit from the lift. This provision is under § 1190.110 in the current MGRAD.

(3) Detectable Warnings

Section 1190.31(j) was reserved when MGRAD was published. Subsequently, the ATBCB funded research on detectable tactile surface treatments. However, the findings from this study did not support mandatory Federal requirements in this area. Therefore the ATBCB proposed not to require detectable warnings, other than knurled surfaces on hardware of doors leading to hazardous areas. However, in recognition of the desire of some designers and builders to provide detectable warnings the Board proposed amendments to MGRAD that would refer users to ANSI 4.27. This proposal was contained both in the September 16, 1987 NPRM and, as noted previously, in an earlier notice of proposed rulemaking of February 11, 1987. (52 FR 4352). Comments from the February notice were incorporated into the record of this proceeding.

With the exception of one comment simply stating that this proposal did not go far enough on the issue, the September NPRM elicited no comments on this issue. However, fifty-two comments addressed proposed § 1190.190 on detectable warning surfaces in response to the February notice.

a. Comments Favoring Proposed Action. One comment filed by a visually impaired commenter supported the proposed action on the basis that sufficient cues are already present in the physical environment to enable him to avoid danger. He stated that most visually impaired people who travel require longer canes and more rigorous mobility training. The comment stated that blind people should be given the tools to make their own way rather than having their way made for them. It also noted that detectable warnings can be dangerous to people with other disabilities such as persons who use crutches.

Another commenter who supported the proposed action asserted that he was communicating the views of a state chapter of the National Federation of the Blind. The commenter stated that detectable warnings are unnecessary and counterproductive and enclosed a paper to that effect written for a class. Moreover, according to the paper, detectable warnings create and perpetuate misconceptions and attitudinal barriers about visually impaired people to the effect that they are less competent than sighted individuals, and draw public attention away from what the commenter asserted are the real problems of the blind (inadequate training, discrimination, high unemployment and less-than-minimum wages) to "illusory problems of physical accessibility."

A state chapter of a national advocacy organization expressed general approval of the proposed action. A state advocacy office commented in favor of the proposed action stating that the reference to ANSI will assist interested designers or builders in obtaining necessary information and that any subsequent construction with these surfaces will aid visually impaired persons.

b. Comments in Support of More Definitive Action. Twenty-eight visually impaired individuals filed identical comments opposing the proposed action and stating the importance of detectable warnings on transit platforms, curb cuts, and unenclosed stairways. These comments stated that detectable warnings should be required and that further research should be done so that

adequate specifications for such warnings can be developed. Four visually impaired individuals filed identical comments stating that detectable warnings enable visually impaired individuals to travel more safely and requested that the proposed action be reconsidered. A visually impaired person commented that detectable warnings are critical to the safety of visually impaired and blind people. Therefore, MGRAD's provisions on the subject should be mandatory and not advisory. This comment stated that further research should be done if available information is inconclusive, but in the meantime, the MGRAD section should remain reserved.

A Ph.D. "orientation and mobility specialist" commented that the ANSI requirements that would be referenced under the proposal are not appropriate. According to the comment, more suitable and useful designs and materials have been tested and shown to be effective. The comment requested reconsideration of the proposal in light of this information.

Eighteen individuals signed a comment recommending the use of the Pathfinder Tactile Tiles and Edge Protection System. The comment stated that although widespread installation of the tiles would be costly, it would enable greater numbers of visually impaired people to enter the workforce.

A statewide organization of visually impaired people recommended the use of Astro-turf as a warning surface.

One state's advocacy office noted that the issue of detectable warnings is a difficult one and noted that the proposal would leave it up to the designer or builder to choose whether to use warning surfaces.

In separate comments, four advocacy offices of the same state filed comments in opposition to the proposed action. They maintained that warning surfaces are necessary for subway platforms, bus platforms, stairways and curb cuts. These comments stated that the fact that ATBCB-sponsored research has not identified the optimally discriminable material does not mean that warning surfaces are not useful. Several of these comments called for the immediate promulgation of research-based guidelines for detectable warnings and recommended the use of the Pathfinder system assertedly used successfully in the Bay Area Rapid Transit (BART) System.

A comment from the psychology department of a college opposed the proposed deletion of the reserved section. The comment stated that research conducted by the college demonstrated the detectability of two surfaces not tested in the ATBCB sponsored research. Further, according to the comment, the history of use of these surfaces in the BART system demonstrates them to have no adverse effect on people with other disabilities. The comment stated that referring MGRAD readers to the ANSI standard or the ATBCB report on *Detectable Surface Treatments* (DST) is inadequate. In support of this assertion, the comment stated that there are warning systems meeting ANSI which have been shown by both research and experience in use to be undetectable. Further, the DST report's recommendation that warning surfaces may consist of any common walkway material will result in a "plethora of common materials having varied assigned meanings." It is the ATBCB's responsibility, according to the comment, to fund the necessary research to support specifications for detectable warnings.

A comment from a transit authority opposed the proposed action stating that the ANSI provision on detectable warnings is inadequate. It urged the ATBCB to consider UMTA sponsored research by Boston College on the warning systems used in the BART System. The comment urged the Board to evaluate the ANSI standard on the basis of experience in use as well a test results and issue generic specifications based on experience with products in actual use.

A comment received from a city government urged the Board to retain its current MGRAD provisions on this subject. A late filed comment from another city urged the promulgation of uniform standards on detectable warning systems as quickly as possible and with the involvement of visually impaired people in the standards development process.

A comment from a manufacturing company called for the standardization of warning systems as a means of promoting safety and minimizing liability expenses.

A manufacturer of tactile warning systems commented that the ANSI standards are inadequate and the proposed MGRAD note will give it further legitimacy and "justify [a] detectable (sic) warning that will meet the standard without meeting the need." The comment urged the Board to concentrate its efforts with regard to detectable warnings on high risk situations such as platforms, doorways and stairwells, and leave the realm of academic research to make decisions based on real-life experience. It noted that the warning system used in the BART system was developed after the ATBCB sponsored research concluded that no acceptable system existed.

c. Response to the Comments. The Board considers the overwhelming support for detectable warnings expressed on the record of this proceeding to validate the general thrust of its proposal to provide encouragement and guidance to designers and builders who wish to incorporate detectable warnings into their work. While there may be negative aspects associated with these warnings as noted by the commenters opposed to mandatory detectable warnings, the overwhelming sense of the record is that they should be required as soon as possible, particularly on transit platforms. However, as indicated by the preamble to the final rule, the available data does not support the imposition of definitive requirements at the present time. The Board has considered the additional data submitted to the record, much of which is anecdotal or endorsed specific commercial products, and remains convinced that the action being taken in this final rule is the maximum that can be supported at the present time, particularly in light of the concerns raised on the record about possible detrimental effects on persons with other types of handicaps. Given the absence of data to support a definitive standard on the issue, the proposed action, referencing the ANSI standard in MGRAD for guidance and offering additional technical assistance through the Board Staff, is the best available direction that can be provided to the public at this time. Any deficiencies in ANSI can, to some degree, be compensated for by advice from the Board staff which will include other cues not currently addressed by ANSI such as sound and resiliency. The Board is currently undertaking additional research on this issue which will evaluate a range of detectable surfaces to determine which permutations of materials are more or less detectable and under what circumstances.

The findings from this research will be considered by the Board for future rulemaking.

d. Signage. Section 1190.31(p), Signage, was reserved in response to comments on an early MGRAD rulemaking that included provisions on signage. The ATBCB has funded two research projects in this area since that time, one specifically on signage and the second on signage and other information systems for low-vision persons. UFAS included the signage requirements of the 1980 ANSI standard because it was considered essential to provide standards for signage in Federal

buildings while the ATBCB continued its consideration of the issue. The 1986 ANSI standard incorporated the principal undisputed findings from the ATBCB signage research. This final rule adopts the technical provisions of the 1986 ANSI and provides scoping requirements consistent with the intent of UFAS requirements. Several comments were submitted by designers and industry groups unhappy that they had not received individualized notifications of the NPRM. These comments did not present substantive comments on the proposed provision. A briefing on the proposal was held at the request of one of the principal industry groups interested in the matter. The group questioned whether tactile signs are actually used by visually impaired persons. In the Board's experience, visually impaired persons do use tactile signage; particularly room numbers of classrooms and tactile floor indicators on elevator door jambs.

e. Housing and Health Care Facility Scoping. A new § 1190.31(u) is added to provide scoping requirements for housing. No housing provisions were included in MGRAD when it was published in 1982; the rulemaking noted that housing was among the special building and facility types that would be the subject of later rulemakings to complete the reserved Subpart E. UFAS adopted the ANSI requirements for dwelling units, with some amendments, along with scoping provisions for housing. This rulemaking adds in subsection (u), scoping provisions for housing varying from those in UFAS and references the technical specifications in the 1986 ANSI, which incorporate the UFAS amendments to the 1980 standard. The Assistant Attorney General, Civil Rights Division, filed a comment noting that the Department of Housing and Urban Development (HUD) was in the process of developing a final regulation implementing section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to prohibit discrimination in programs receiving financial assistance from HUD. The comment said that the final HUD rule might be different in some respects, including possibly some scoping and definition provisions, from MGRAD and UFAS. The comment noted the importance of consistency between MGRAD and the section 504 regulations due to their overlapping coverage and expressed the intent to suggest appropriate harmonizing modifications to the relevant MGRAD provisions. In response to this comment, alterations have been made to harmonize this rule with the HUD section 504 rule published on June 2, 1988. (53 FR 20216). Specifically, the definition of "multifamily dwelling" has been modified, with the term renamed "multifamily housing"; and the Board has deleted provisions that would, based on a local needs assessment, allow deviations from the requirement that five percent of the dwelling units or sleeping accommodations in a project be accessible.

A veteran's group commented that the proposed 5% scoping provision for adaptable housing was too low and that other jurisdictions have enacted higher percentages. The comment suggested a requirement for 100% adaptable housing in elevator buildings and 25% adaptable units in non-elevator buildings. After review of this issue the Board has decided to retain the 5% provision to avoid inconsistency with the HUD section 504 regulations.

A new § 1190.31(v), would be added to provide scoping requirements for health care facilities. This is one of the special building and facility types for which Subpart E was reserved.

E. Section 1190.32

Amendments have also been made to § 1190.32, Accessible buildings and facilities: Additions, and § 1190.33, Accessible buildings and facilities: Alterations. Conforming amendments would be made to § 1190.32 to reference corresponding ANSI provisions where MGRAD section numbers are now cited. Also, the reserved "Signage" paragraph would be deleted. Signage in additions to existing buildings would comply with the same requirements as in new construction.

F. Section 1190.33

Similar amendments have been made in § 1190.33, Accessible buildings and facilities: Alterations. Additional amendments have been made to § 1190.33 to provide special technical provisions for certain situations in alteration projects. These amendments are consistent with provisions now in effect in UFAS. Specifically, the rule permits:

(a) Omitting the requirement for an automatic elevator door reopening device where an existing elevator has a safety door edge. This exception is found at § 1190.100(c)(3)(i) in the current MGRAD.

(b) Reducing the minimum car dimensions to 4' x 4' where it is structurally impracticable to comply with the elevator car size required for new construction projects. This exception currently is found at § 1190.100(d)(1)(i) in MGRAD.

(c) Adding one accessible "unisex" toilet per floor, adjacent to existing toilet facilities, where it is structurally impracticable to make existing toilet facilities for each sex accessible. This exception is found at § 1190.150(a)(1) in MGRAD now in effect.

(d) Providing special technical provisions for stair hand rails and door features in alterations projects.

(e) Providing certain exceptions for assembly areas.

These proposals stimulated a number of comments. Three comments were submitted in opposition to the proposal to permit elevator car floor dimensions of less than 4' x 4' under limited circumstances. Two comments objected on the grounds that wheelchair users would not be able to face the elevator controls. It appears possible that the commenters did not understand the limited nature of the exception or the fact that this provision has existed elsewhere in MGRAD for years without difficulties. The Board has issued this provision of the final rule as proposed but emphasizes that it applies only where larger elevator car sizes are structurally impracticable and, in the rare cases in which the exception does apply, authorizes the minimum necessary reduction in car floor area.

G. Subpart D—Technical Provisions

This subpart is redesignated as Subpart C and is amended to incorporate 4.2 through 4.32 and the Appendix of ANSI A117.1–1986 in lieu of the corresponding technical provisions now found in MGRAD 1190.40 through 1190.240.

Incorporation of the ANSI provisions completes the reserved MGRAD sections. These are: (1) All provisions related to signage requirements, now found at MGRAD §§ 1190.60(f), 1190.100(e)(2), 1190.100(h)(2)(iii), 1190.100(j)(2), 1190.150(d), and 1190.200; (2) all provisions related to detectable warnings, now found at MGRAD 1190.70(e)(9), 1190.80(f), and 1190.190; (3) MGRAD 1190.140, Windows; (4) MGRAD 1190.100(e)(2), elevator door open-time requirement, and (5) MGRAD 1190.130(h)(2)(i), exterior door opening force requirement.

Most ANSI provisions are identical in effect and intent with the corresponding MGRAD provisions. However, as noted in the notice of proposed rulemaking, in some instances the Board has deemed it appropriate to make exceptions in MGRAD to the ANSI provisions. These exceptions, which are consistent with UFAS, are:

(1) MGRAD § 1190.100 (d)(3)(iv) and (f)(1)(iv) and UFAS 4.10.3 and 4.10.12,

require elevator car control and hall call buttons to be either raised or flush. ANSI permits recessed, raised, or flush buttons. The ATBCB has concluded that problems with recessed buttons are sufficient to outweigh any asserted justification for their use. See §§ 1190.31(f), 1190.31(u)(1)(i) and 1190.33(a)(3). For example, persons with upper limb amputations or any disability that would require use of a fist or elbow to activate the button cannot use a recessed button.

(2) Paragraphs 4.7.7 Warning Textures and 4.7.12 Uncurbed Intersections of ANSI 4.7 Curb Ramps require detectable warning surfaces at curb ramps and uncurbed intersections. As discussed earlier, this final rule does not propose to require detectable warnings at any location and therefore is making an exception to these provisions.

(3) MGRAD § 1190.150(f)(5)(i) and UFAS 4.21.6 permit the installation of a fixed shower head in lieu of a hand held shower head in unmonitored facilities where vandalism is a consideration. ANSI provides advisory language to this effect in its Appendix. Although the ATBCB has in this final rule adopted the ANSI Appendix as well as the technical provisions, in order to avoid any potential questions about the validity of the fixed-shower-head exception in UFAS, this provision is specifically listed in this rulemaking as an exception to the ANSI technical provisions. See § 1190.3(k).

(4) MGRAD § 1190.150(f)(7) and UFAS 4.21.7 permit a maximum height of ½ inch (13 mm) for curbs in shower stalls that are 36 inches by 36 inches (915 mm by 915 mm). ANSI permits a 4-inch curb height, the standard height for curbs in prefabricated shower stalls. This final rule contains an exception which retains the requirement for the lower curb because it increases accessibility for people with paralysis of the legs who cannot lift their legs over a 4-inch curb when transferring.

(5) UFAS 4.30.6 specifies mounting heights and locations for interior signage. (There is no corresponding provision in MGRAD because all signage requirements are reserved.) This requirement is not included in ANSI provisions on signage that are incorporated by this rulemaking. The ATBCB has concluded that the UFAS requirement is appropriate and useful in assuring that tactile signage can be located by people with impaired vision. In addition to the ANSI technical provisions, this final rule specifies that such signage be mounted between 54 inches and 66 inches above the floor on the latch side of the door.

(6) UFAS 4.33.3 contains an exception to the ANSI requirements on placement of wheelchair locations in assembly areas. This final rule includes a provision which parallels the UFAS provision and provides an exception to the ANSI provisions. MGRAD, UFAS, and ANSI all require dispersal of wheelchair locations throughout the seating area of a facility such as an auditorium or a theatre. The exception to MGRAD made by this final rule (§ 1190.31(s)(1)) permits clustered wheelchair seating in bleachers and other areas with sight lines requiring slopes greater than 5 percent, or to permit equivalent positions on levels with accessible egress. There was considerable opposition to this proposal among the commenters and no support for it. It seems likely that the commenters misunderstood the limited scope of the exception. The opposition was based on perceived limitations of choice for wheelchair users in terms of seat price, location and the ability to sit with friends and family. The inability of friends and family to sit with wheelchair users to provide assistance in the event of emergency, and the prospect of unassisted wheelchair users blocking the egress of each other and other patrons was seen as a hazardous condition. In response to the commenter's concerns, the Board points out that this is a narrowly limited exception to the general rule of dispersed seating which by its express terms makes provision for egress needs. Moreover, the identical provision has been in effect in UFAS for several years with no complaints having been received. In all likelihood, it is the limited scope of the provision which has prevented complaints from arising.

The remaining differences between the ANSI and MGRAD specifications, and the ATBCB determination on each, are as follows:

(1) MGRAD § 1190.50(i)(3)(iv) permits carpet tile to have a maximum combined thickness of pile, cushion and backing of ½ inch. The section recommends that carpet meet this requirement but permits carpet to have a pile height up to ½ inch, exclusive of the thickness of pad or backing. The restriction on carpet tile thickness was incorporated in UFAS due to the MGRAD requirement. The 1980 ANSI, in paragraph 4.5.3, permits a maximum pile height of ½ inch and does not distinguish between carpet and carpet tile. In developing the 1986 standard, the ANSI committee considered the disparity between the standards but did not revise the existing ANSI provision because committee members did not consider it appropriate to place a different requirement on carpet tile than on carpet. The ATBCB has reviewed this issue and concluded that the difference in the MGRAD requirement and the ANSI requirement is not significant, and further agrees that there is no evidence to support continuing the different requirement for carpet tile than for carpet. Therefore the final rule incorporates 4.5.3 as it appears in ANSI.

(2) MGRAD § 1190.60, Parking and passenger loading zones, differs from the corresponding ANSI provisions, 4.6 Parking Spaces and Passenger Loading Zones, in the areas noted below. This final rule incorporates all of the ANSI provisions with the changes noted below.

(a) MGRAD § 1190.60(c)(2)(i) provides advisory specifications for accessible van parking spaces, although such spaces are not required. UFAS 4.6.3 incorporates the same specifications as advisory standards. ANSI refers the user of the A117.1 standard to the appendix for dimensions for accessible van spaces. Since this final rule incorporates the ANSI appendix by reference, the ATBCB does not consider it necessary to restate the advisory specifications elsewhere in MGRAD.

(b) MGRAD § 1190.60(c)(5) requires that accessible parking spaces and access aisles have surface slopes not exceeding 1:48 in all directions. The same requirement is applied to passenger loading zones under § 1190.60(d)(3). UFAS 4.6.3 and 4.6.5 incorporate a similar requirement. The 1986 ANSI standard reviewers considered this specification, but did not incorporate it in section 4.6. ANSI 4.3.7 Slope (under 4.3 Accessible Route) requires that the cross slope of an accessible route can never exceed 1:50, which is essentially the same as the 1:48 MGRAD requirement. Since ANSI 4.6.3 states that the access aisle of a parking space or passenger loading zone is part of the accessible route from the space or zone, the cross slope requirement clearly applies. It is therefore not necessary for the final rule to repeat the requirement in this section.

(c) MGRAD § 1190.60(d)(1) and UFAS 4.6.5 require that the access aisle at accessible passenger loading zones be 5 feet wide, the same width as the access aisle at accessible parking spaces. ANSI 4.6.3 requires a 4-foot-wide access aisle. In the notice of proposed rulemaking, the Board proposed to amend MGRAD to adopt the narrower dimension contained in the ANSI standard. Three comments opposed this proposal on the grounds that the use of side-mounted van lifts would be prevented and the

resultant increased use of rear-mounted lifts would expose wheelchair users to more traffic hazards. Upon further consideration of the safety aspects of the issue, the Board finds these comments convincing and has amended the ANSI provision to retain the five foot access aisle. See § 1190.31(b)(1).

(d) MGRAD § 1190.60(e) and UFAS 4.6.6 require vertical clearances of 114 inches at accessible passenger loading zones and along vehicle access routes to such areas from site entrances. ANSI 4.6.3 requires a vertical clearance of 108 inches. In its notice of proposed rulemaking, the Board proposed to adopt the lower ANSI ceiling. The proposal to reduce the loading zone vertical clearance requirement from 114" to 108" was opposed on the grounds that raised-roof vans could not be accommodated. One commenter stated that the 114" limit should remain the rule with exceptions for lower clearances available in special cases. No comments supported the proposed action. The Board finds these comments convincing and has amended the ANSI provision to retain the 114" clearance requirement. See § 1190.31(b)(1).

(3) MGRAD § 1190.70, Ramps and curbs, provides at paragraph (e), Curb ramps, that flared sides are required if any part of a path crosses any part of a curb ramp not protected by guardrails. UFAS includes this requirement at 4.7.5. ANSI 4.7.5 requires that curb ramps located where pedestrians must walk across them shall have flared sides. Since handrails or guardrails are not, in fact, generally used nor desirable for curb ramps (where they could impede pedestrian movement), the ANSI approach of requiring flared sides is a more satisfactory solution and is therefore incorporated into MGRAD through this amendment.

(4) MGRAD § 1190.90, Handrails, differs from the corresponding ANSI provisions 4.8.5, 4.9.4 and 4.26 in the areas noted below. This proposal would incorporate all of the ANSI provisions without change.

(a) MGRAD § 1190.90, Handrails, requires, as did the 1980 ANSI standard, that handrails be no more than 1½ inch in outside diameter. Subsequently, ANSI received comments from industry spokesmen noting that pipes used for handrails are generally designated by inside diameter sizes, and that the typical pipe size specified is the 1½ inch pipe which has an outside diameter of 1.9 inches. This final rule incorporates the ANSI provision into MGRAD.

(b) MGRAD § 1190.90, Handrails, includes in paragraph (e) requirements on load-bearing capacity of handrails and specifies that handrails shall not rotate within their fittings. The 1986 ANSI did not incorporate these requirements because they were deemed to be safety issues covered appropriately by sections of building codes dealing with handrail safety requirements. The ATBCB concurs in this determination and this final rule deletes these requirements from MGRAD.

(c) MGRAD § 1190.90, Handrails, also requires in paragraph (f) that ends of handrails be returned smoothly to wall, floor or post. UFAS incorporated this requirement at 4.8.5 (for rails at ramps) and 4.9.4 (for rails at stairs). ANSI 4.9.4 includes a requirement that stairway handrail extensions must comply with 4.4, Protruding Objects, which would provide the same protection afforded by the MGRAD requirement. The Board considered the ANSI provisions on handrails to be sufficient despite the absence therein of explicit prohibitions on protruding ends and proposed to adopt it. One comment stated that designers may not draw the inference that this prohibition in another section of the ANSI standard requires handrail ends to return smoothly. The Board has re-examined this matter in light of the comment and issued the rule as proposed. In addition to the prohibition in ANSI 4.4, which is sufficient to guard against the anticipated danger, building code safety provisions require that handrail ends return to wall or post. Consequently, an explicit requirement in the handrail provision of ANSI would be doubly redundant not only of other provisions of the ANSI standard, but of existing building code provisions. It is anticipated that UFAS will continue to provide the more explicit requirement in both sections and the Board may recommend that ANSI consider adopting consistent language at its next revision.

(5) MGRAD § 1190.100, Elevators, contains five specifications that differ somewhat from the ANSI provisions in 4.10, Elevators. MGRAD also reserves the provision on elevator door timing for which ANSI provides a requirement at 4.10.8. The final rule's provision regarding one of these provisions for elevator car controls and hall call buttons, was noted above. In addition, this final rule adopts the ANSI 4.10.8 requirement for a three-second open time for elevator doors.

The other differences are as follows:

(a) MGRAD provisions explicitly require that objects mounted beneath lobby call buttons shall not project into the elevator lobby by more than 4 inches. The ANSI Committee considered adding this requirement to 4.10 but determined that the provisions of 4.25, Operating Controls and Mechanisms, and 4.4, Protruding Objects, precluded such placement and therefore an explicit statement in 4.10 was redundant. The ATBCB accepted this reasoning, and proposed to adopt the ANSI provision. One comment stated that these provisions would not prohibit the placement of an ashtray under the call button. The Board has re-examined the issue in light of the comment and concludes that ANSI 4.4 and 4.25.2 would indeed address this problem. ANSI 4.25.2, which requires clear floor space around controls, and 4.4 address objects protruding more than 4". The final rule is unchanged with regard to this proposal.

(b) MGRAD § 1190.100(d)(3)(ii) requires that car control buttons be mounted no higher than 48 inches above the floor, unless that height causes a substantial increase in cost, in which case special provisions apply. The ANSI committee considered this approach to be inappropriate for a technical specification and determined that where the number of floors or other factors mandated higher buttons (up to the 54-inch maximum), then the elevator car should be required to permit side

approach. The ATBCB agrees that this is an appropriate way to assure accessibility of elevator controls and this final rule incorporates this provision into MGRAD. The same consideration applies to mounting height of emergency communication equipment (ANSI 4.10.14, MGRAD § 1190.100(j)(1)).

(c) MGRAD § 1190.100(f)(1)(i) requires that hall call buttons be mounted with centerlines 48 inches above the floor. ANSI 4.10.3 specifies a mounting height of 42 inches. This difference is not considered by the Board to be significant and, in any event, the lower height specified by ANSI should increase ease of access. Therefore, the final rule adopts the ANSI specifications.

(6) MGRAD § 1190.130(a)(3) states that revolving doors and turnstiles are not accessible and therefore shall not be the only means of access at any accessible entrance or on any accessible route, and further requires that an accessible door be provided adjacent to the revolving door or turnstile and be designed to facilitate the same use pattern. The ANSI Committee reviewed the turnstile/revolving door issue and found that accessible turnstiles and revolving doors are now available on the market. For that reason, ANSI 4.13.2 was revised in 1986 to permit revolving doors or turnstiles that meet all the requirements for accessible doors and to prohibit inaccessible turnstiles or revolving doors as the only means of passage at an accessible entrance or along an accessible route. The final rule incorporates this approach into MGRAD. Additional language in MGRAD § 1190.130(a)(3) which is no longer necessary since the ANSI provision clearly requires an accessible door at any accessible entrance has been deleted. The further requirement that the adjacent door be subject to the same use patterns as the inaccessible revolving door or turnstile is required by MGRAD in the definition of "accessible" at § 1190.3, which states that, "accessible elements and spaces of a building or facility including doors provided adjacent to a turnstile or a revolving door, shall be subject to the same use patterns as other elements and spaces of the building or facility."

(7) MGRAD § 1190.130(f) requires that no door hardware be mounted higher than 48 inches above the floor. ANSI 4.13.9 provides that all door operating hardware be mounted within the reach ranges specified in 4.2. The ANSI provision recognizes that there may be door operating hardware other than door opening devices (e.g., special safety locks) that may be mounted at other than standard doorknob heights, and would assure that no such devices are mounted outside acceptable ranges for lower as well as higher reaches. The final rule amends MGRAD to adopt this provision.

(8) MGRAD § 1190.150(e)(2)(ii) and UFAS 4.17 require that toilet stalls in new construction be 60" wide. Both provisions include an exception which permits alternate stall sizes with widths of 48" or 36" in alteration projects if it is structurally impracticable to provide the 60" stall. ANSI 4.17 permits stalls of all three sizes in new construction, although the 60" stall is specified as the "standard" stall and the more narrow stalls are designated "alternate stalls." After careful review of the issue, the ATBCB proposed to adopt ANSI and permit the use of the more narrow stalls because of earlier comments it had received to the effect that the 36" wide stall is the most usable for people with some disabilities (for example, for crutch or cane users) who need support on both sides when moving to or rising from a seated position. In its notice of proposed rulemaking the Board solicited comment on how best to accommodate the needs of all users in establishing the dimensions of accessible toilet stalls.

This was the aspect of the September proposal which generated the greatest number of comments, all of which were opposed to the proposed action. Twenty-five comments opposed the proposed action. Many commenters stated that the smaller stalls would make side transfers, the only form of transfer possible for many of the commenters, impossible. It was also pointed out that the smaller sizes do not accommodate mechanized wheelchairs or the presence of attendants. Concern was expressed that other agencies would follow the lead of the Federal government on this issue. The proposal would also reduce employment and consumer opportunities, according to the comments. A number of the comments considered the proposal to be discriminatory. Many of the comments recommended the use of movable grab bars or a requirement that one of the standard stalls in a toilet room be equipped with grab bars for crutch users in lieu of eliminating the requirement for the 60" stall which is the only stall that will accommodate some users.

Despite the express invitation for comment on the point, no comments were filed in support of the proposed action on the grounds that it would assist persons using crutches or other users. In addition, a cost impact analysis of the proposed action prepared for the Board under contract concluded that the proposed amendment would not result in significant savings.

The Board has found the comments convincing and has amended the ANSI provision to provide that 60" wide stalls must be provided. See § 1190.31(k). The Board does not consider that it has sufficient information at the present time to require grab bars in normal size toilets or to require movable grab bars. However, the Board notes that there is an appropriate role for the 36" wide stall in certain cases and that many persons with handicaps are able to use these facilities. The Board encourages the placement of the narrower accessible stalls in large toilet rooms where there is already a 60" wide stall present to serve the needs of additional users. In making this recommendation, the Board emphasizes that a 60" wide stall must also be present for those users who cannot use any other stalls.

(9) MGRAD § 1190.180(c) permits visual alarms with a flash frequency "less than 5 [Hertz] Hz." The ANSI standard, at 4.26.3, requires a flashing frequency of approximately 1 Hertz. The ANSI provision was designed to avoid the possibility of triggering seizures for

individuals sensitive to rapidly flashing lights. The final rule incorporates the ANSI requirement into MGRAD.

(10) MGRAD § 1190.210 specifies requirements for telephones. Equivalent requirements are provided in ANSI section 4.29. The ANSI provisions include a requirement not found in MGRAD for signage indicating the location of telecommunications devices for deaf persons where such equipment is provided. The ATBCB considers this to be an appropriate requirement that will benefit hearing-impaired people without imposing a significant burden on the provider, and therefore the final rule incorporates it into MGRAD.

H. Subpart E—Special Building or Facility Types or Elements

The final provision of this final rule completes the reserved MGRAD subpart on special building or facility types—Subpart E in the current MGRAD, redesignated Subpart D by the final rule. In MGRAD as currently in effect, § 1190.2(e) explains that Subpart E is reserved for future development of minimum guidelines and requirements for special building and facility types, specifically including housing. However, in incorporating ANSI by reference, MGRAD like UFAS incorporates dwelling unit specifications in the basic technical provisions. Therefore the final rule completes the reserved subpart by incorporating sections 5 through 9 of the UFAS. These sections provide specifications for restaurants, cafeterias, health care facilities, mercantile facilities, libraries and postal facilities. The ATBCB participated with the standard-setting agencies in developing these specifications and approved them before their publication as final standards.

As need arises for specifications on other special building or facility types, the ATBCB may issue additional guidelines under this subpart. These recommendations will be considered for future rulemaking.

IV. Comments On Other Provisions of MGRAD

A. Scoping Provisions for Toilet Stalls

One comment stated that improved scoping provisions for accessible stalls are needed for large facilities such as auditoriums and coliseums. MGRAD § 1190.3l(k) currently provides that at least one accessible fixture of each type provided must be present in public and common use restrooms. The comment suggested that 20% of the stalls in toilet rooms of large facilities be required to be accessible. Another comment urged "further study" on the issue of scope noting that ANSI lacks scoping provisions. This comment also called for accessibility of all restrooms in public buildings whether intended for the public or not.

While this issue is worthy of examination, the Board has concluded that the scanty evidence in the rulemaking record does not provide the basis for meaningful evaluation of the existing provisions or, if warranted, to establish the proper level at which to set a new requirement. In the coming year the Board will undertake a systematic examination of scoping in State, local and foreign codes. Necessary changes in scoping provisions, if any, will be considered by the Board at that time.

With respect to the comment on making public and private restrooms accessible, the Board points out that MGRAD currently requires all newly constructed restrooms to be accessible or adaptable. (See § 1190.31(k)). Specifically, all common use restrooms (see definition in § 1190.3) must be accessible whether "public" or "private". Restrooms assigned to individuals need not be accessible if not needed; but they must be adaptable for future users who may need them.

In addition, as described above, the Board is encouraging the installation of 36" accessible stalls in addition to the required 60" stall present in large toilet rooms to encourage the provision of more than one accessible stall.

B. Water Fountain or Cooler Dimensions

A manufacturer of water fountains and coolers, responded to the NPRM by reiterating a request it had previously made to the ATBCB staff for amendment to UFAS Figure 27(a). That figure includes a maximum 6" dimension restricting the degree by which the bottom of water fountain cabinets may protrude. The MGRAD drawing on this issue (Figure 16.1) is apparently erroneous showing the dimension as a *minimum*. In 1981 the commenter demonstrated its product to the ATBCB Technical Committee to apparent favorable response, according to the comment. On April 5, 1985 Board staff mistakenly informed the commenter that an error had been made in the UFAS drawing which showed the dimension as a maximum as does ANSI.

A maximum dimension, as specified in UFAS and ANSI, is necessary to assure ankle clearance for wheelchair users. Although the comment is correct that the technical committee responded favorably to the company's demonstration of the foundation, the favorable response was to the *concept* of a foundation with a cooler underneath provided there was adequate floor clearance. The drawing in MGRAD was intended to reflect acceptance of this concept while utilizing standard clearance dimensions used throughout MGRAD. Under this final rule, MGRAD incorporates ANSI 4.15 which includes the 6" maximum dimension in Figure 27a.

V. Other Information

This final rule has been submitted to the Office of Management and Budget and reviewed under procedures established in Executive Order 12291. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Regulations. This rulemaking would not establish significant new Federal requirements, but rather is adopting language used in existing standards which has the same effect and intent as the provisions being replaced. Where new provisions are adopted to complete reserved sections, Federal requirements in those areas already exist in the Uniform Federal Accessibility Standards, with only minor exceptions which would have minimal cost impact.

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the proposal will not have any significant impact on the environment.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 36 CFR Part 1190

Buildings, Handicapped, Leasing, Transportation. Incorporation by reference.

Accordingly, 36 CFR Part 1190 is amended as set forth below.

By vote of the Board on May 11, 1988.

William J. Tangye,

Chair, Architectural and Transportation Barriers Compliance Board.

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

1. The authority citation for 36 CFR Part 1190 is revised to read as follows:

Authority: Sec. 502(b), Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 602, 92 Stat. 2982, and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1801).

§ 1190.2 [Amended]

2. Section 1190.2 is amended by removing paragraph (e).

3. Section 1190.3 is amended by:

a. Revising the definition of "Adaptability" to read:

§ 1190.3 Definitions.

* * * * *

"Adaptability" means the capability of certain building spaces and elements, such as kitchen counters, sinks and grab bars, to be altered or added to so as to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability.

* * * * *

b. Revising the definition of "Common use areas" to read:

* * * * *

"Common use areas" means those interior and exterior rooms, spaces or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants).

* * * * *

c. Revising the definition of "Physically handicapped person" to read:

* * * * *

"Physically handicapped person" means an individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, which results in a functional limitation in access to and use of a building or facility.

* * * * *

d. Adding the following definitions:

1. After the definition of "Curb ramp" and before the definition of "Egress," insert—

* * * * *

"Detectable" means perceptible by one or more of the senses.

"Detectable warning" means a standardized surface texture applied to or built into walking surfaces or other elements to warn visually impaired people of hazards in the path of travel.

"Dwelling unit" means a single unit of residence that provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like.

A single family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

* * * * *

2. After the definition of "Guidelines and requirements" and before the definition of "Operable part", insert—

* * * * *

"Housing" means a building, facility, or portion thereof, excluding inpatient health care facilities, that contains one or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one-family and two-family dwellings, multifamily dwellings, group homes, hotels, motels, dormitories, and mobile homes.

"Marked crossing" means a crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

"Multifamily housing" means a project containing five or more dwelling units.

* * * * *

3. After the definition of "Section 502 of the Rehabilitation Act" and before the definition of "Shall," insert,

* * * * *

"Service entrance" means an entrance intended primarily for delivery or service.

* * * * *

4. After the definition of "Site improvements" and before the definition of "Space," insert,

* * * * *

"Sleeping accommodations" means rooms in which people sleep (for example, dormitory and hotel or motel guest rooms).

* * * * *

e. Removing the definition "Tactile warning".

§§ 1190.7 and 1190.8 [Removed]

§§ 1190.9 [Redesignated as new § 1190.7]

4. Remove §§ 1190.7 and 1190.8, and redesignate § 1190.9 as new § 1190.7.

Subpart C [Redesignated as Subpart B]

5. Remove "Subpart B [Reserved]" and redesignate Subpart C, consisting of §§ 1190.30 through 1190.34, as Subpart B.

§ 1190.31 [Amended]

6. Amend § 1190.31 Accessible buildings and facilities: New construction, as follows:

a. The introductory text is revised to read:

§ 1190.31 Accessible buildings and facilities: New construction.

Except as otherwise provided in this part, all new construction of buildings and facilities shall comply with the minimum requirements set forth below. The citations beginning with "ANSI" in the provisions which follow refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. Copies may be inspected at the office of the U.S. Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

* * * * *

b. Section 1190.31(a) is revised to read:

* * * * *

(a) Accessible route. At least one accessible route shall comply with ANSI A117.1–1986, section 4.3, Accessible Routes (Incorporated by reference, see § 1190.31(a).)

(1) Required accessible route(s) shall connect an accessible building entrance with:

(i) Transportation facilities located within the property line of a given site, including passenger loading zones, public transportation facilities, taxi stands, and parking;

(ii) Public streets and sidewalks;

(iii) Other accessible buildings, facilities, elements, and spaces that are on the same site; and

(iv) All accessible spaces, rooms, and elements within the building or facility.

(2) Where fire code provisions require more than one means of egress from any space or room, then more than one accessible means of egress complying with ANSI A117.1–1986, section 4.3.10 shall be provided for handicapped people and shall be arranged so as to be readily accessible from all accessible rooms and spaces (Incorporated by reference, see § 1190.3l(a).)

* * * * *

c. Section 1190.31(b) is amended by:

1. Removing "§ 1190.60, Parking and passenger loading zones", wherever it appears and inserting in lieu thereof, "ANSI A117.1–1986 section 4.6 Parking Spaces and Passenger Loading Zones (Incorporated by reference, see § 1190.31(a))";

2. Adding the following after the table in § 1190.31(b)(1): "Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (60 mm) long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp

complying with ANSI A117.1–1986, section 4.7 shall be provided. A minimum vertical clearance of 114 in (3.45 m) shall be provided at accessible passenger loading zones and along vehicle access routes to such areas from site entrances."; and

3. Removing the reference to § 1190.60(c)(2)(a) in the last sentence of § 1190.31(b)(1).

d. Section 1190.31(c) is amended by:

1. Removing "§ 1190.70, Ramps and curb ramps."; and

2. Inserting in lieu thereof "ANSI A117.1–1986, section 4.7 Curb Ramps or 4.8 Ramps, as appropriate (Incorporated by reference, see § 1190.31(a).)"

e. Section 1190.31(d) is amended by removing "§ 1190.80, Stairs." and inserting in lieu thereof "ANSI A117.1–1986, section 4.9, Stairs." (Incorporated by reference, see § 1190.31(a).)"

f. Section 1190.31(e) is amended by removing the text which follows "as required in" and inserting in lieu thereof, "ANSI A117.1–1986, sections 4.8 Ramps and 4.9 Stairs, respectively. (Incorporated by reference, see § 1190.31(a).)"

g. Section 1190.31(f) is amended by:

1. Removing "§ 1190.100, Elevators" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.10, Elevators (incorporated by reference, see § 1190.31(a))";

2. Adding a new sentence at the end of the introductory text of paragraph (f) which reads: "All elevator control buttons shall be at least ¾ in (19mm) in their smallest dimension. They shall be raised or flush."; and

3. Removing "§ 1190.70 Ramps and curb ramps, and § 1190.110, Platform lifts" in paragraph (f)(2) and inserting in lieu thereof, "ANSI A117.1–1986, section 4.8 Ramps and ANSI A117.1–1986, section 4.11 Platform Lifts (incorporated by reference, see § 1190.31(a))".

h. Section 1190.31(g) is amended by removing "§ 1190.100, Platform lifts" and inserting in lieu thereof "ANSI A117.1–1986, section 4.11 Platform Lifts (incorporated by reference, see § 1190.31(a)), and should facilitate unassisted entry and exit from the lift."

i. Section 1190.31(h) is amended by removing "§ 1190.120, Entrances" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.14, Entrances (incorporated by reference, see § 1190.31(a))".

j. Section 1190.31(i) is amended by:

1. Removing "§ 1190.130, Doors" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.13, Doors (incorporated by reference, see § 1190.31(a))"; and

2. Removing "§ 1190.50(h), Egress" in paragraph (i)(3) and inserting in lieu thereof "ANSI A117.1–1986, section 4.3.10, Egress (incorporated by reference, see § 1190.31(a))".

k. Section 1190.31(j) is added to read as follows:

(j) *Windows.* If operable windows are provided, they shall comply with ANSI A117.1–1986, section 4.12 Windows. (Incorporated by reference, see § 1190.31(a).)"

l. Section 1190.31(k) is revised to read as follows:

* * * * *

(k) *Toilet and bathing facilities.* If toilet and bathing facilities are provided, then each public and common use toilet room shall comply with ANSI A117.1–1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms (incorporated by reference, see paragraph (a) of this section. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathing facility shall comply with ANSI A117.1–1986, section 4.22. In each such facility where any of the fixtures and accessories specified in ANSI A117.1–1986, section 4.16, Water Closets; ANSI A117.1–1986, section 4.17, Toilet Stalls; ANSI A117.1–1986, section 4.18, Urinals; ANSI A117.1–1986, section 4.19, Lavatories, Sinks and Mirrors; ANSI A117.1–1986, section 4.20, Bathtubs; and ANSI A117.1–1986, section 4.21, Shower Stalls, are provided, at least one accessible fixture and accessory of each type provided shall comply with the provisions in the subsection applicable to that fixture or accessory. The size and arrangement of toilet stalls shall comply with ANSI Fig. 30(a). Toilet stalls with a minimum depth of 56 in (1420 mm) (see ANSI Fig. 30(a)) shall have wall-mounted closets. If the depth of toilet stalls is increased at least 3 in (75 mm), then a floor mounted water closet may be used. Arrangements shown for toilet stalls may be reversed to allow either a left-hand or right-hand approach. Installation of a fixed shower head may be permitted in lieu of an adjustable height or hand-held shower head in unmonitored facilities where vandalism is a concern. Curbs in shower stalls that are 36 in by 36 in (915 mm by 915 mm) shall have a maximum height of ½ in (13 mm). Bathrooms in dwelling units required to be accessible shall comply with ANSI A117.1–1986, section 4.32.4, Bathrooms. For special use situations, refer to Subpart E, Special Building or Facility Types or Elements.

m. Section 1190.31(l) is amended by removing "§ 1190.160, Drinking fountains and water coolers," and "§ 1190.160" the other two times it appears, and inserting in lieu thereof "ANSI A117.1–1986, section 4.15, Drinking Fountains and Water Coolers," (incorporated by reference, see § 1190.31(a))," and "ANSI A117.1–1986, section 4.15" respectively.

n. Section 1190.31(m) is amended by removing "§ 1190.170, Controls and operating mechanisms" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.25, Controls and Operating Mechanisms. (Incorporated by reference, see § 1190.31(a).)"

o. Section 1190.31(n) is amended by:

1. Removing "§ 1190.180, Alarms" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.26, Alarms (incorporated by reference, see § 1190.31(a))"; and

2. Adding at the end of the paragraph the following:

* * * * *

(n) * * * In facilities with sleeping accommodations, the sleeping accommodations required to be accessible shall have an alarm system complying with ANSI A117.1–1986, section 4.26.4, Auxiliary Alarms. Emergency warning systems in health care facilities may be modified to suit standard health care alarm design practice.

* * * * *

p. Section 1190.31(o) is revised to read:

* * * * *

(o) *Detectable warnings.* Detectable warnings complying with ANSI A117.1–1986, section 4.27.3, Tactile Warnings on Doors to Hazardous Areas (incorporated by reference, see § 1190.31(a)), shall be provided on the hardware of all doors leading to hazardous areas. Such warnings shall not be used at emergency exit doors. Detectable warnings are not required at locations other than doors to hazardous areas by this part. If detectable warnings are provided, the specifications at ANSI A117.1–1986, section 4.27 may be used as guidance. Note—The ATBCB has funded research in the area of detectable tactile surface treatments. The research findings were inconclusive and, therefore, recommended no mandatory requirements at this time. Further information is being developed through additional research on detectable materials and fact-finding on current applications, particularly on transit platforms. Technical assistance materials including information about additional detectable cues (sound and resiliency) not discussed in ANSI are available from the ATBCB, 1111 18th Street, NW, Suite 501, Washington, DC 20036, (202) 653–7834 (voice or TDD).

* * * * *

q. Section 1190.31(p) is revised to read as follows:

* * * * *

(p) *Signage.* Signage shall comply with ANSI A117.1–1986, section 4.28, Signage (incorporated by reference, see § 1190.31(a)). Permanent signage that identifies rooms and spaces shall also comply with ANSI A117.1–1986, section 4.28.4. Exception: The provisions of ANSI A117.1–1986, section 4.28.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification complies with ANSI A117.1–1986, section 4.28.4.

* * * * *

r. Section 1190.31(q) is amended by removing "§ 1190.210, Telephones" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.29, Telephones (incorporated by reference, see § 1190.31(a))".

s. Section 1190.31(r) is amended by removing "§ 1190.220, Seating, tables and work surfaces." and inserting in lieu thereof "ANSI A117.1–1986, section 4.30, Seating, Tables and Work Surfaces. (Incorporated by reference, see § 1190.31(a).)"

t. Section 1190.31(s) is amended by:

1. Removing "§ 1190.230, Assembly areas" and "§ 1190.230" and inserting in lieu thereof "ANSI A117.1–1986, section 4.31, Auditorium and Assembly Areas (incorporated by reference, see 1190.31(a))" and "ANSI A117.1–1986, section 4.31," respectively;

2. Removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof "ANSI A117.1–1986, section 4.3, Accessible Routes"; and

3. Adding the following after the table in § 1190.31(s)(1): "Accessible viewing positions may be clustered in bleachers, balconies, and other areas that have sight lines requiring slopes greater than 5 percent or to permit equivalent accessible viewing positions to be located on levels having accessible egress."

u. Section 1190.31(t) is amended by removing "§ 1190.240, Storage" wherever it appears and inserting in lieu thereof "ANSI A117.1–1986, section 4.23, Storage. (Incorporated by reference, see § 1190.31(a).)"

v. A new § 1190.31(u) is added to read as follows:

* * * * *

(u) *Housing.* Accessible housing shall:

(1) Comply with the requirements of this section as it applies to public use and common use areas and areas where handicapped persons may be employed, except as follows:

(i) Elevators: Where provided, elevators shall comply with ANSI A117.1–1986, section 4.10 (incorporated by reference, see 1190.31(a)). All elevator control buttons shall be at least ¾ in (19 mm) in their smallest dimension. They shall be raised or flush. Elevators or other accessible means of vertical movement are not required in residential facilities when:

(A) No accessible dwelling units are located above or below the accessible grade level; and

(B) At least one of each type of common area and amenity provided for use of residents and visitors is available at the accessible grade level.

(ii) Entrances: Entrances complying with ANSI 4.14 shall be provided as necessary to achieve access to and egress from buildings and facilities. EXCEPTION: In projects consisting of one-to-four family dwellings where accessible entrances would be extraordinarily costly due to site conditions or local code restrictions, accessible entrances are required only to those buildings containing accessible dwelling units.

(iii) Common Areas: At least one of each type of common area and amenity in each project shall be accessible and shall be located on an accessible route to any accessible dwelling unit.

(2) Provide dwelling units or sleeping accommodations complying with ANSI 4.32, Dwelling Units, in accordance with the following table:

Facilities	Application
Hotels, motels, boarding houses.	5 percent of the total units, or at least one, whichever is greater.
Multifamily housing (including apartment houses) Federally assisted.	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.
Federally owned	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.
Dormitories	5 percent of the total, or at least one unit whichever is greater.
One and two family dwelling Federally assisted, rental.	5 percent of the total, or at least one unit, whichever is greater, in multifamily housing projects.
Federally assisted homeownership.	To be determined by home buyer.
Federally owned	5 percent of the total, or at least one unit, whichever is greater in multifamily housing projects.

* * * * *

w. A new § 1190.31(v) is added to read as follows:

* * * * *

(v) *Health care facilities.* Accessible health care facilities shall:

(1) Comply with the requirements of this § 1190.31 as it applies to public use and common use areas and areas where handicapped persons may be employed; and

(2) Provide patient rooms and patient toilet rooms complying with Part 6 of UFAS in accordance with the following table:

Facilities	Application
Long term care facilities (including skilled nursing facilities, intermediate care facilities, bed and care, and nursing homes).	At least 50 percent of patient toilets and bedrooms.
Outpatient facilities	All patient toilets and bedrooms.
Hospital:	
General purpose hospital	At least 10 percent of patient toilets and bedrooms.
Special purpose hospital (hospitals that treat conditions that affect mobility).	All patient toilets and bedrooms.

§ 1190.32 [Amended]

7. Section 1190.32, Accessible buildings and facilities: Additions, is amended as follows:

a. In paragraph (a), by removing "§ 1190.12, Entrances" and inserting in lieu thereof "ANSI A117.1–1986, section 4.14, Entrances. (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a)."

b. In paragraph (b), by removing "§ 1190.50, Walks, floors and accessible routes," and inserting in lieu thereof, "ANSI A117.1–1986, section 4.3, Accessible Route (incorporated by reference, see § 1190.31(a)),".

c. In paragraph (c), by removing "§ 1190.150, Toilet and bathing facilities" and inserting in lieu thereof "ANSI A117.1–1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities and Shower Rooms. (Incorporated by reference, see § 1190.31(a).)"

d. By removing paragraph (f).

§ 1190.33 [Amended]

8. Section 1190.33, Accessible buildings and facilities: Alterations, is amended as follows:

a. At paragraph (a)(1), by changing the period at the end thereof to a comma, and adding, "except as noted in paragraph (a)(2) of this section."

b. By removing paragraph (a)(4), redesignating (a) (2) and (3) as (a) (3) and (4), and adding a new paragraph (a)(2) as follows:

(a) * * *

(2) Exceptions to the requirements for (a)(1) of this section for existing buildings or facilities are:

(i) *Stairs.* Full extension of stair handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(ii) *Elevators.* (A) If a safety door edge is provided in existing automatic elevators, then the automatic door reopening devices may be omitted (see ANSI A117.1–1986 section 4.10.6). (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a).

(B) Where existing shaft or structural elements prohibit strict compliance with ANSI A117.1–1986, section 4.10.9 (incorporated by reference, see § 1190.31(a)), then the minimum floor area dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 48 in by 48 in (1220 mm by 1220 mm).

(iii) *Doors.* (A) Where existing elements prohibit strict compliance with the clearance requirements of ANSI 4.13.5, a projection of 5/8 in (16 mm) maximum will be permitted for the latch side door stop. (The citations beginning with "ANSI" in this section refer to the sections of the American National Standard, ANSI A117.1–1986, "Providing Accessibility and Usability for Physically Handicapped People" by the American National Standards Institute, Inc. which has been approved for incorporation by reference as set forth in § 1190.31(a).)

(B) If existing thresholds measure ¾ in (19 mm) high or less, and are beveled or modified to provide a beveled edge on each side, then they may be retained.

(iv) *Toilet rooms.* Where alterations to existing facilities make strict compliance with ANSI A117.1–1986, sections 4.22 and 4.23 (incorporated by reference, see § 1190.31(a)) structurally impracticable, the addition of one "unisex" toilet per floor containing one water closet complying with ANSI A117.1–1986, section 4.16 and one lavatory complying with ANSI A117.1–1986, section 4.19, located adjacent to existing toilet facilities, will be acceptable in lieu of making existing toilet facilities for each sex accessible.

(v) *Assembly areas.* (A) In alterations where it is structurally impracticable to disperse seating throughout the assembly area, seating may be located in collected areas as structurally feasible. Seating shall adjoin an accessible route that also serves as a means of emergency egress.

(B) In alterations where it is structurally impracticable to alter all performing areas to be on an accessible route, then at least one of each type shall be made accessible.

c. In newly redesignated paragraph (a)(3), by removing "§ 1190.70, Ramps and curb ramps; § 1190.100, Elevators; or § 1190.110, Platform lifts," and inserting in lieu thereof, "ANSI A117.1–1986, section 4.8, Ramps; ANSI A117.1–1986, section 4.10, Elevators; or ANSI A117.1–1986, section 4.11, Platform Lifts (incorporated by reference, see § 1190.31(a))" and by adding the following to the end of that paragraph: "All elevator control buttons shall be at least ¾ in (19 mm) in their smallest dimension. They shall be raised or flush."

d. In paragraph (c)(1), by removing "§ 1190.50, Walks, floors and accessible routes" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.3, Accessible Routes (incorporated by reference, see § 1190.31(a))".

e. In paragraph (c)(2), by removing "§ 1190.120, Entrances" and inserting in lieu thereof, "ANSI A117.1–1986, section 4.14, Entrances (incorporated by reference, see § 1190.31(a).)"

f. In paragraph (c)(3), by removing "§ 1190.150, Toilet and bathing facilities" wherever it appears and inserting in lieu thereof, "ANSI A117.1–1986, section 4.22, Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms (incorporated by reference, see § 1190.31(a))".

g. By revising paragraphs (c)(6) (i) through (vi) and adding (c)(6)(vii) as follows:

* * * * *

(c) * * *

(6) * * *

(i) ANSI A117.1–1986, sections 4.6, Parking Spaces and Passenger Loading Zones, as modified by § 1190.31(s)(1);

(ii) ANSI A117.1–1986, section 4.15, Drinking Fountains and Water Coolers;

(iii) ANSI A117.1–1986, section 4.23, Storage;

(iv) ANSI A117.1–1986, section 4.26, Alarms;

(v) ANSI A117.1–1986, section 4.29, Telephones;

(vi) ANSI A117.1–1986, section 4.30, Seating, Tables and Work Surfaces;

(vii) ANSI 4.31, Auditorium and Assembly Areas, as modified by § 1190.31(s)(1). (Incorporated by reference, see § 1190.31(a).)

* * * * *

Subpart D—[Redesignated as Subpart C and Revised]

9. Subpart D—Technical Provisions, consisting of §§ 1190.40 through 1190.240, is redesignated as Subpart C, consisting of §§ 1190.40 and 1190.50, and is revised to read as follows:

Subpart C—Technical Provisions

Sec.

Subpart C—Technical Provisions

§ 1190.40 Technical specifications.

Features, elements and spaces required to be accessible by § 1190.31, § 1190.32, or § 1190.33 shall meet the technical requirements specified in the provisions of sections 4.2 through 4.32 of ANSI A117.1–1986, "American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People," which is incorporated herein by reference, except as noted herein. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. Copies may be inspected at the office of the U.S. Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

§ 1190.50 Exceptions.

(a) In addition to ANSI A117.1–1986, section 4.10 (incorporated by reference, see § 1190.31(a)), Elevators, the following requirement is added: Hall call buttons provided under ANSI A117.1–1986, section 4.10.3 shall be raised or flush.

(b) Under ANSI A117.1–1986, section 4.7 (incorporated by reference, see § 1190.31(a)), Curb Ramps, and ANSI 117.1–1986, section 4.7.7, Warning Textures, and ANSI 117.1–1986, section 4.7.12, Uncurbed Intersections, shall not apply.

(c) In addition to ANSI A117.1–1986, section 4.28, Signage (incorporated by reference, see § 1190.31(a)) , there is added the requirement that interior tactile signage identifying rooms and spaces be located alongside the door on the latch side and be mounted at a

height between 54 in and 66 in (1370 mm and 1675 mm) above the finished floor.

Subpart E—[Redesignated as Subpart D]

10. Subpart E—Special Building or Facility Types or Elements is redesignated as Subpart D, and § 1190.60 is added to read as follows:

§ 1190.60 Special building or facility types.

The requirements specified in the Uniform Federal Accessibility Standards (UFAS) in sections 5, Restaurants and Cafeterias; 6, Health Care; 7, Mercantile; 8, Libraries; and 9, Postal Facilities, are deemed to satisfy minimum guidelines and requirements of the ATBCB for accessibility standards for those building and facility types.

[FR Doc. 89-2435 Filed 2-2-89; 8:45 am]
BILLING CODE 6820-BP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3495-6]

Approval and Promulgation of Air Quality Implementation Plans; California State Implementation Plan Revision; Six Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's notice takes final action to approve several revisions to the California State Implementation Plan (SIP) consisting of rules adopted by six air pollution control districts: The Bay Area Air Quality Management District (AQMD), the Imperial County Air Pollution Control District (APCD), the Monterey Bay Unified APCD, the South Coast AQMD, the Tulare County APCD, and the Ventura County APCD. California submitted these revisions to EPA on June 9, 1987 and September 1, 1987 for inclusion in the SIP. These submittals generally involve clarifications of existing rules, and either strengthen or retain existing emission control requirements. EPA has reviewed these revisions and has determined that they are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy, and should be approved under section 110 of the Clean Air Act.

DATES: This action will become effective on April 4, 1989, unless notice is received by March 6, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments may be sent to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Air Management Division, State Implementation Plan Section (A-2-3).

Copies of the rules and of EPA's Evaluation Report for each rule are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco. All of the rules are also available at the Air Resources Board address listed below. Rules for specific districts are available at the districts which adopted them. The addresses are given below.

California Air Resources Board, SIP Section, 1131 S Street, Sacramento, CA 95812.
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.
Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243-2801.
Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.
South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.
Tulare County Air Pollution Control District Administration Building, County Civic Center, 2800 West Burrel Street, Visalia, CA 93291.
Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009.
Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, State Implementation Plan Section (A-2-3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7636; FTS 454-7636.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1987 and September 1, 1987 the State of California submitted to EPA a series of revisions to its SIP. This notice addresses some of those revisions. Others are being addressed in separate notices.

A brief description of each of the regulations by submittal date and district is provided below. EPA's evaluation and final action regarding these rules follow the description of the regulations.

Description of Regulations

June 9, 1987 submittal

Bay Area AQMD

Rule 2-1-401.6—Permits, General Requirements, Persons Affected
Rule 2-1-401.7—Permits, General Requirements, Persons Affected

Imperial County APCD

Rule 102—Public Records
Rule 105—Enforcement
Rule 108—Inspections
Rule 110—Stack Monitoring
Rule 113—Circumvention
Rule 115—Legal Application and Incorporation of Other Regulations
Rule 203—Transfer
Rule 204—Applications
Rule 205—Cancellation of Applications
Rule 210—Denial of Applications
Rule 401—Opacity of Emissions
Rule 402—Exceptions
Rule 403—Quantity of Emissions
Rule 420—Livestock Feed Yards
Rule 421—Open Burning—Non Agricultural
Rule 422—Open Burning of Wood Waste
Rule 423—Exceptions

Monterey Bay Unified APCD

Rule 201—Sources Not Requiring Permits

Tulare County APCD

Rule 110—Arrests and Notices to Appear
Rule 202—Exemptions
September 1, 1987

South Coast AQMD

Rule 212—Standards for Approving Permits

Ventura County APCD

Rule 12—Statement by Application Preparer

Evaluation

Under section 110 of the Clean Air Act and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. The majority of the rules addressed in this notice concern general permitting requirements. The remaining rule revisions concern open burning, livestock feed yards, inspections, and opacity regulations. These rules generally involve minor changes which clarify existing rules. Some of these revisions are recodifications, or involve wording changes to add specificity to existing rules. All of the revisions either strengthen or retain existing emission control requirements.

Imperial County APCD Rule 110 contains a minor typographical error involving a reference to the Code of Federal Regulations (CFR). Sections (G)(1) through (G)(6) of this rule refer to

40 CFR Part 51, Appendix P and 40 CFR Part 60, Appendix B. However, section (G)(3) refers to Part 60, Appendix P; the reference should instead be Part 51. In fact, the existing federally approved version of Rule 110 contains this same typographical error. EPA has received a commitment from the Imperial County APCD that this error will be corrected in a future submittal of Rule 110. Since the newly amended rule is, in all other respects, fully approvable, EPA is approving this revised rule under section 110 of the Clean Air Act.

EPA has evaluated the rules listed above and determined that the revisions are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. EPA's detailed evaluation of the submitted rules is available at the Region 9 office in San Francisco.

Final Action

Under section 110 of the Clean Air Act, EPA approves the rule revisions listed above and incorporates them into the California SIP. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective April 4, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. 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. If no such comments are received, the public is advised that this action will be effective April 4, 1989.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Date: December 15, 1988.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart F—California

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraphs (c) (173) and (174) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(173) Revised regulations for the following APCD's were submitted on June 9, 1987 by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area AQMD.

(*1*) New Rules 2–1–401.6 and 2–1–401.7, adopted January 7, 1987.

(B) Imperial County APCD.

(*1*) New or amended Rules 102, 105, 108, 110, 113, 115, 203, 204, 205, 210, 401, 402, 403, 420, 421, 422, and 423, adopted November 19, 1985.

(C) Monterey Bay Unified APCD.

(*1*) Amended Rule 201 (introductory paragraph and subparagraphs (1) through (8.6)), adopted December 17, 1986.

(D) Tulare County APCD.

(*1*) Amended Rules 110 and 202 (introductory paragraph and subparagraphs (a) through (d.7)), adopted May 13, 1986.

(174) Revised regulations for the following APCD's were submitted on September 1, 1987 by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast AQMD.

(*1*) Amended Rule 212, adopted May 1, 1987.

(B) Ventura County APCD.

(*1*) Amended Rule 12, adopted June 16, 1987.

[FR Doc. 89–2520 Filed 2–2–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3501–8]

Approval and Promulgation of Implementing Plans; Ohio

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

ACTION: Final rulemaking.

SUMMARY: In an October 27, 1987, **Federal Register** (52 FR 41310) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is a request by Ohio for monthly averaging for volatile organic compound (VOC) emissions for an architectural aluminum extrusion coating line (K001) at J&S Aluminum Corporation (J&S). This facility is located in Mahoning County, Ohio.

In today's Final Rulemaking, USEPA is disapproving this SIP revision because the State has not adequately documented and demonstrated (1) that the major supplier to J&S was unable to develop acceptable complying coatings and that coatings from other suppliers were tested and found to be unacceptable, and (2) that a monthly averaging period is the shortest averaging time practicable.

EFFECTIVE DATE: This final rulemaking becomes effective on March 6, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses. (It is recommended that you telephone Uylaine E. McMahan, (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 43216.

A copy of today's revision to the Ohio SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On February 28, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a revision to its ozone

SIP requesting monthly averaging for an architectural aluminum extrusion coating line (K001). This operation is located at the J&S facility in Mahoning County, Ohio, a nonattainment area for ozone.[1]

On April 17, 1986, USEPA notified OEPA that the February 28, 1986, submittal requesting monthly averaging for J&S was deficient as stated in USEPA's technical support document (TSD) dated April 3, 1986. OEPA submitted supplemental information on July 2, 1986, and August 18, 1986, to support this revision.

Existing SIP Requirements

Under the existing federally approved SIP, the architectural aluminum extrusion coating line (K001) is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U)(1)(a)(iii) which limits the VOC content of extreme performance coatings to 3.5 pounds of VOC per gallon of coating, minus water. OAC Rule 3745-21-04(C)(28) requires compliance with the limit by December 31, 1982. Compliance is determined on a 24-hour basis. USEPA approved these rules as meeting the reasonably available control technology (RACT)[2] requirement of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Extended Averaging Time Criteria

USEPA's January 20, 1984, policy memorandum, subject "Averaging Times for Compliance With VOC Emission Limits", contains the following criteria for evaluating VOC requests for extended averaging:

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

Criterion 2

The area must not lack an approved SIP, and there must not be any measured violations of the ozone standard. Real reductions in actual emissions must be achieved, consistent with the RACT control level specified in the SIP.

Criterion 3

A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either attainment and maintenance of the ambient standards attainment or the Reasonable Further Progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

Criterion 4

Averaging times must be as short as practicable, and in no case longer than 30 days.

In an October 27, 1987, **Federal Register** (52 FR 41310) notice, USEPA proposed to disapprove a revision to Ohio's ozone SIP, which would allow monthly averaging for J&S Aluminum, for the following reasons:

1. J&S Aluminum did not adequately document that its major supplier was unable to develop acceptable complying coatings and that coatings from other suppliers were tested and found to be unacceptable.

2. J&S Aluminum did not demonstrate that a monthly averaging period is the shortest averaging time practicable.

Comments on this notice of proposed rulemaking were received from J&S Aluminum on December 15, 1987, and from the OEPA on December 30, 1987. These comments and USEPA's response are provided below.

J&S Aluminum Comment: J&S requested monthly averaging so that when it uses noncomplying coatings it will not have to adjust production to meet a daily average. J&S believes that this would be costly, time-consuming and wasteful. Additionally, J&S indicated that 1-week or 2-week averaging period could be considered as a possible alternative.

OEPA Comment: J&S meets the four criteria set down by USEPA in a January 20, 1984, memorandum on "Averaging Times for Compliance with VOC Emission Limits."

Criterion 1—It is not technically and economically feasible for J&S to comply on a daily basis. Discontinuing the use of noncomplying coatings may cause J&S to lose additional customers and possibly close down.

Criterion 2—The Youngstown area has not had any measured violations of the ozone standard for five years. A request for redesignation has been submitted to USEPA.

Criterion 3—The use of long-term averaging will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area.

Criterion 4—Averaging times must be as short as practicable, and in no case longer than 30 days. J&S wishes to average on a 30-day basis. Although it has been complying on 30-day averages and shorter time period averages, J&S business does vary greatly and it could foresee possible times and situations where it might not be able to comply using less than 30-day average.

USEPA Response: J&S has not met all of the criteria contained in the January 20, 1984, policy memorandum. Although the State alleges that it is technically and economically infeasible to meet the SIP limit on a daily basis, this has not been adequately demonstrated. In particular, the State has not demonstrated that complying coatings are unavailable. The State must demonstrate that J&S is not able to reformulate a sufficient number of its non-complying coatings to comply with the SIP limit on a daily basis. Although the State's original submittal contained documentation from only one coating supplier concerning one type of coating for high performance architectural coatings, USEPA has information indicating that a complying formulation for these coatings is not currently available. However, no information was provided concerning the other (non-high performance) coatings used by J&S. Neither the State nor J&S provided any additional information during the public comment period concerning the availability of complying formulation for these coatings.

In addition, the State still has not demonstrated that a 30-day average is as short an averaging time as practicable. In fact, OEPA indicated that J&S has been in compliance using a shorter averaging time.

Finally, a January 20, 1987, memorandum from G.T. Helms, Chief of the Control Programs Operations Branch, provides further guidance concerning long term averaging. This memorandum emphasizes that USEPA views long-term averaging primarily as a remedy for insurmountable recordkeeping problems and that if the rquirements of the June 20, 1984, policy memorandum are not met, "adjustments

[1] OEPA submitted a request to revise the attainment status designation, at 40 CFR 81.336, for Mahoning County from nonattainment to attainment for the ozone national ambient air quality standard (NAAQS). Mahoning County, at this time is designated a nonattainment area. However, there have been no measured violations of the ozone NAAQS from 1982 through 1985.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

should be made in the RACT number, not in the averaging time." J&S has made no demonstration that daily recordkeeping is an insurmountable problem. USEPA will consider rulemaking on alternative RACT for coatings for which a demonstration is made that no acceptable means of compliance is available. Further discussion of the type of demonstration required can be found in the Appendix to the notice of proposed rulemaking for Easco Aluminum published on November 9, 1988 at 53 FR 45285.

Conclusion

USEPA is disapproving this SIP revision for J&S because the deficiencies cited in the notice of proposed rulemaking were not corrected.

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 April 4, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental Offices.

Dated: December 27, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 89-2514 Filed 2-2-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 280

[FRL-UST-3513-1]

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of modification of certification compliance date.

SUMMARY: EPA is modifying the compliance date by which owners and operators of underground storage tanks (USTs) containing petroleum must have certain documentation in order to meet recently promulgated financial responsibility requirements. In connection with these requirements, the Attorney(s) General of the state(s) in which USTs are located must have submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in the regulations is a legally valid and enforceable instrument in that state before a guarantee or safety bond may be used by an owner or operator of an UST in that state to demonstrate financial responsibility. This notice modifies the date when such certifications must have been received from state Attorney(s) General from January 24, 1989, to July 24, 1989, and allows owners and operators to use a guarantee or surety bond to demonstrate financial responsibility during the period from January 24, 1989, to July 24, 1989, even if no state Attorney General's certification has yet been received by the implementing agency in that state.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: Today's notice delays by six months the time when Attorney General certifications will be required before owners or operators of underground storage tanks containing petroleum may use a guarantee or surety bond to demonstrate financial responsibility. The Agency believes that six months is sufficient time to obtain Attorney General certifications. In addition, in the event that Attorney(s) General choose not to provide such certifications, owners and operators will have sufficient time to secure other mechanisms that do meet the provisions of the financial responsibility regulations.

On October 26, 1988, EPA published a final rule establishing financial responsibility requirements for all owners and operators of petroleum USTs (53 FR 43322). That rule requires that by January 24, 1989, all petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration are required to comply with the financial responsibility requirements of 40 CFR Part 280, Subpart H (40 CFR 280.91(a)). Subpart H provides that certain financial mechanisms, which are listed in that subpart, are allowable mechanisms to demonstrate financial responsibility. Section 280.94(b) provides, however, that an owner or operator may use a guarantee or surety bond to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.

Therefore, those owners and operators required to demonstrate financial responsibility by January 24, 1989, would be precluded from using guarantees or surety bonds unless the necessary Attorney General certifications had been obtained. Once the Attorney General of a state has issued a certification, that certification is valid for all owners and operators using a guarantee or surety bond for USTs located in that state. There is no requirement that each individual owner or operator obtain a separate written statement from the Attorney General.

The Agency adopted the requirement for Attorney(s) General certification to ensure that the mechanisms satisfy necessary contractual formalities or requirements of a state's law (53 FR 43322, 43339, Oct. 26, 1988). EPA remains convinced that such review by state Attorney(s) General is desirable and will provide a valuable assessment of the validity and enforceability of the guarantee and surety bond mechanisms under the laws of particular states.

Since publication of the final rule, however, it has become apparent that additional time after January 24, 1989, will be necessary for state implementing agencies to contact their state Attorneys General and for the Attorneys General to conduct their review of the guarantee and surety bond mechanisms and respond in writing to the implementing agencies. EPA has taken steps to expedite and assist the Attorney General certification process by providing sample documents to the state implementing agencies. However, it appears that in fact the necessary reviews cannot reasonably be completed by January 24, 1989.

The Agency therefore is modifying the compliance date in § 280.91(a). Demonstration of financial responsibility by the category of owners subject to § 280.91(a) continues to be

required by January 24, 1989. However, EPA is modifying § 280.91(a) to specify that the compliance date for the certification in § 280.94(b) is July 24, 1989. Between January 24, 1989, and July 24, 1989, owners and operators will be allowed to demonstrate financial responsibility with guarantees or surety bonds even if the state Attorney(s) General of the state(s) in which the USTs are located have not provided written statements that the guarantee or surety bonds are valid and enforceable in that state. After July 24, 1989, such written statements will be necessary before the guarantee and surety bond may be used to demonstrate financial responsibility.

To the extent this is a "rule" under section 553 of the Administrative Procedure Act, EPA believes that there is "good cause" for making this technical modification of the recently promulgated financial responsibility rule without additional public comments. This modification is for a very short time period, does not change any substantive requirements under the rule, and is necessitated by the imminent compliance deadline which the Agency has only recently discovered may be unreasonable in lieu of the status of state Attorney General certifications.

List of Subjects in 40 CFR Part 280

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Surety bonds, Underground storage tanks.

Dated: January 26, 1989.

Jonathan Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following changes are made in FRL–UST–3, 3419–3, the Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements published in the **Federal Register** on October 26, 1988 (50 FR 43322).

PART 280—[AMENDED]

1. The authority citation for Part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h).

§ 280.91 [Amended]

2. Section 280.91(a) is amended by revising "24, 1989." to read "24, 1989, except that compliance with § 280.94(b) is required by: July 24, 1989."

[FR Doc. 89–2273 Filed 2–2–89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BQC–68–F]

Medicaid Program; Refunding of Federal Share of Overpayments Made to Medicaid Providers

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

ACTION: Final regulations.

SUMMARY: This rule amends the Medicaid regulations to specify the requirements and procedures under which States are allowed 60 days following the date of discovery of an overpayment to a Medicaid provider to recover or attempt to recover the overpayment before the Federal share must be credited to HCFA. The Federal Government will share in any overpayments that the State documents it is unable to recover because the debts of the provider have been discharged in bankruptcy or the provider is out of business.

The regulations implement section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

DATE: These regulations are effective on April 4, 1989. States are not required to comply with the information collection and reporting requirements listed in the preamble under the heading "Paperwork Reduction Act" until the Office of Management and Budget approves them.

FOR FURTHER INFORMATION CONTACT: David Greenberg, (301) 966–3278.

SUPPLEMENTARY INFORMATION:

Background

Federal grants to the States are authorized under title XIX (Medicaid) of the Social Security Act (the Act) to provide financial sharing in medical assistance to certain needy individuals. Medicaid programs are financed jointly with Federal and State funds and are administered by the States. A State administers its Medicaid program in accordance with a State Medicaid plan approved by the Administrator of HCFA.

In carrying out the Medicaid program, the State Medicaid agency pays institutional providers of Services (e.g., hospitals and long-term care facilities) and noninstitutional providers of services (e.g., clinics, laboratories, and physicians) for medical assistance furnished to eligible Medicaid recipients. HCFA pays the Federal share of expenditures for the Medicaid program to the State on a quarterly basis according to the percentages described in section 1903 and the formula described in section 1905(b) of the Act. In general, the State estimates its funding requirements prior to the start of each quarter of a fiscal year. HCFA reviews this projection and grants the State a sum to cover the Federal share of estimated allowable payments to be made by the State to providers in accordance with the State plan. This sum is referred to as Federal financial participation (FFP).

Within 30 days after the end of each quarter, each State submits an accounting report (Form HCFA–64, Quarterly Statement of Expenditures) showing its actual expenditures during the quarter that has ended. After deferring the Federal share of questioned expenditures and disallowing the Federal share of unallowable expenditures, HCFA compares allowable FFP to the amount previously advanced to the State for that quarter. Any adjusting of amounts owed HCFA or the State is reflected in a subsequent grant award.

Improper payments occur from time to time in any large claims processing system. Under Medicaid, some improper State payments during a quarter may not be detected by the Federal Government or the State until after the State has submitted its expenditure report for that quarter to HCFA. Consequently, the Federal Government unknowingly participates in overpayments made by the State agency, as these amounts are included in the expenditures reported to HCFA prior to discovery of the overpayments.

Federal laws provide for the recovery of the Federal share of Medicaid overpayments. The Federal Claims Collection Act of 1966 (FCCA), 31 U.S.C. 3711, as amended by the Debt Collection Act of 1982, requires each Federal agency to attempt to collect money owed the Federal Government from claims generated through agency activities. This requirement of the FCCA is implemented in regulations at 45 CFR Parts 30 and 101 through 105. In addition, section 1903(d)(2)(A) of the Social Security Act specifically requires that FFP for Medicaid be reduced or increased to the extent of any overpayment or underpayment that the Secretary determines was made to a State in any prior quarter. Section 1903(d)(3) of the Act provides that the Secretary must consider the pro rata Federal share of the net amount recovered during any quarter by a State to be an overpayment, which must be adjusted under the provisions of section 1903(d)(2) of the Act. Under section

1903(d)(2) of the Act, HCFA adjusts FFP for the quarter in which any overpayment is reported. This offset is contingent upon a State notifying HCFA of an improper payment to a provider, or upon discovery of overpayments through HCFA, HHS, or GAO review and audit processes. Before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (discussed in detail in the next section of this document), if a State reported an overpayment or if an overpayment was discovered in a Federal review, the Federal share of the overpayment amount was subject to immediate refund by the State through the grant award process under the provisions of section 1903 of the Act.

Legislative Changes

Section 9512 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272, enacted on April 7, 1986, amended section 1903(d) of the Social Security Act to change the refund requirements for overpayments made to Medicaid providers. Section 9512 added section 1903(d)(2)(C) to the Act to provide that a State has 60 days from discovery of an overpayment to a person or other entity to recover or attempt to recover that overpayment before the Federal share of the overpayment must be refunded to HCFA through an adjustment in its FFP payment. Sections 1903(d)(2) (C) and (D) of the Act further provide that an adjustment to the FFP payment to the State must be made at the end of the 60-day period, whether or not the overpayment has been recovered by the State, unless the State has been unable to recover the overpayment because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectable from a provider. (We have interpreted "otherwise uncollectable" to mean that the provider is out of business, as explained in detail later in this document.) Section 9512 of COBRA is effective for all overpayments identified for quarters beginning on or after October 1, 1985. These final regulations implement section 9512 of COBRA.

Notice of Proposed Rulemaking

On December 21, 1987, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) to implement section 9512 of COBRA (52 FR 48290). We received six pieces of correspondence from State agencies commenting on the NPRM. A summary of the comments received, our responses, and any changes made in these final regulations as a result of the comments on the proposed regulations are presented later in this document.

Discussion and Provisions of the Regulations

Definition of Overpayment

For purposes of implementing section 9512 of COBRA, we have defined an overpayment in these regulations as the amount which is paid by the State Medicaid agency to a person or other entity in excess of the amount that is proper under section 1902 of the Act and which is required to be refunded to HCFA under section 1903 of the Act. (In this document, "person or other entity" is referred to as a "provider" in accordance with the definition at 42 CFR 400.203 of the Medicaid regulations.) Some examples of situations that may constitute overpayments are: Duplicate payments; payments for noncovered services; payments to the wrong provider; and payments at incorrect rates.

Situations involving excessive provider reimbursement attributable to rate-setting methods or aggregate payments that are higher than the Medicare upper payment limit also may be considered overpayments. However, determining whether an amount paid to an institutional provider under any rate-setting system is considered an overpayment for which the Federal share must be refunded according to these regulations depends on the manner in which the State pursues recovery of the excess amounts. If an overpayment to an institutional provider for a prior year's reported costs is discovered and the State recovers that overpayment solely through a reduction in the provider's per diem rate for a subsequent year, that overpayment is not subject to the requirements of these regulations. In this case, no refund of the Federal share explicitly related to the original overpayment is required. Because overpayments recovered solely by reducing a current year per diem rate are not subject to the refund requirements of these regulations, refund of the Federal share does not occur until the State claims expenditures at the reduced rate. However, if, in addition to or instead of reducing the current per diem rate, the State chooses to recover any excess amounts perviously paid by a lump sum repayment, by an installment repayment plan, or by withholding a portion of future payments to the provider, an overpayment subject to these regulations exists and the Federal share of that amount must be refunded according to the provisions of sections 1903(d) (2) and (3) of the Act. Therefore, we will consider excessive provider payments attributable to rate-setting systems as overpayments subject to these regulations only if recovery is pursued for discrete amounts (and not if recovery is pursued by reducing future per diem rates). We have established this policy because it would not be administratively feasible for States to adjust properly for unallowable costs under the provisions of the regulations where a State pursues recovery of those amounts solely through reductions in current per diem rates.

For purposes of these regulations, we will consider depreciation payments as overpayments if a State requires their recapture in a discrete amount(s) upon gain on the sale of assets. We consider depreciation payments as overpayments in this situation because they satisfy our definition of an overpayment in these regulations. They involve both costs found to be estimated incorrectly as well as an attempt to recover excessive payments from the provider (unless the buyer assumes the seller's debts).

Cases involving third party liability are not subject to these regulations since these situations do not constitute overpayments as defined in these regulations. They represent payments that would be allowable had another payer not been legally responsible for them. In fact, the statute clearly distinguishes third party liability situations from overpayments subject to section 1903(d)(2)(C) of the Act. Section 1903(d)(2)(B) of the Act provides that a refund to the Federal Government is not due until the State has been reimbursed by the liable third party. Section 1903(d)(2)(C) requires the State to refund the Federal share of a provider overpayment following a 60-day period, whether or not recovery has been made. Likewise, probate collections from the estates of deceased Medicaid recipients are not subject to these regulations, as they represent the recovery of payments properly made from resources later determined to be available to the State.

The Conference Report accompanying COBRA refers only to overpayments made to providers (H. Rep. No. 453, 99th Cong., 1st Sess., 548 (1985)). In view of this Congressional intent and our past practice not to consider overpayments due to recipient eligibility errors to be overpayments to providers, we have not made these regulations applicable to eligibility-related overpayments. The Federal share of overpayments involving recipients must be refunded immediately following discovery, as required under section 1903(d)(2)(A) of the Act, if the overpayment occurs during a period for which Medicaid

Quality Control (MQC) systems are not in effect. For periods during which these systems are in effect, the Federal Government recoups recipient overpayment dollars exclusively on the basis of MQC penalties and States are not required to refund these amounts in accordance with section 1903(d)(2)(A) of the Act. These regulations also do not apply to overpayments involving administrative costs. Therefore, the Federal share of all overpayments involving administrative costs must be refunded immediately following discovery, as required by section 1903(d)(2)(A) of the Act.

Discovery of Overpayments

Overpayments are discovered in various ways: The State or a provider may recognize upon a routine review that a payment error has occurred or a Federal review may discover an overpayment that a State should have discovered but has not.

Section 1903(d)(2)(C) of the Act allows a State 60 days from the date of discovery of an overpayment to recover or attempt to recover the overpayment from a provider before the State must refund the Federal share of the overpayment to HCFA. Since discovery signifies the date on which the 60-calendar day recovery period commences, it is necessary to establish rules of discovery.

In these regulations, we specify that discovery of overpayments resulting from situations other than fraud or abuse (including excessive depreciation payments defined as overpayments) occurs on the earliest of the following: (1) The date on which any State Medicaid agency official or other State official first notifies a provider in writing of an overpayment, according to State policies and procedures, and specifies a dollar amount that is subject to recovery; (2) the date on which a provider initially acknowledges a specific overpaid amount to the State in writing; or (3) the date any State official or fiscal agent of the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing.

In the definition of discovery, we specify that initiating a formal recoupment action substitutes for written notification by the State or provider indicating the existence of an overpayment. Some States or their fiscal agents maintain negative (credit) balance reports listing individual Medicaid providers and the amounts they owe the State (i.e., accounts receivable). Sometimes a State will initiate recoupment of an overpayment by reducing a future payment to a provider without having first given notice of its intent to do so, especially if the overpayment amount is small. The statutory purpose of discovery is to establish the starting date for an overpayment recovery period. Therefore, if an overpayment amount has been entered on a negative balance report for the purpose of initiating recoupment without prior notice to the provider, the 60-day recovery period may be said to have begun with the negative balance report entry.

Discovery of overpayments resulting from fraud or abuse situations occurs on the date of the final written notice of an overpayment that the State sends to the provider specifying a dollar amount subject to recovery. Fraud or abuse situations are distinguished from other overpayments because of the need to consider not only the appropriateness of the individual payment but also the intent or past billing practices of the provider. Discovery in fraud or abuse cases does not occur until final written notification to the provider in order to permit State officials adequate time to conduct the necessary investigations and to resolve the legal issues peculiar to these situations.

If a Federal review at any time reveals that a State has failed to discover an overpayment or has discovered an overpayment amount but failed to either (1) send written notice of the overpayment to the provider specifying a dollar amount subject to recovery under the applicable standard State policies and procedures, or (2) initiate a formal recoupment action against the provider without prior notice, under these regulations discovery is deemed to have occurred on the date the Federal official first notifies the State of the overpayment in writing and specifies a dollar amount that is subject to recovery. This provision reflects our belief that failure of the State, for any reason, to discover an overpayment and either notify the provider in writing of the overpayment or initiate a formal action to recoup a specific overpaid amount from a provider without such notice does not relieve the State of its liability to refund the Federal share of the overpayment. The State must refund the Federal share of the overpayment at the end of the 60-day period after discovery by the Federal official, unless the State notifies HCFA that the debt has been discharged in bankruptcy or the provider is out of business.

We are not prescribing the details of the form that the State's notice to the provider must take if the State notifies the provider in writing rather than initiates a formal recoupment action without prior notice. Written notification may indicate either a tentative or final overpayment amount to be recovered. This notification may or may not constitute a formal demand for repayment or mention any appeal rights. The mention or availability of appeal rights does not under any circumstances extend the date of discovery. However, regardless of the form of the State's notice, under these regulations written notification occurs at the point where the State documents its communication by giving the provider written notice regarding a specific dollar amount subject to recovery. Similarly, the form of the notice is not prescribed when the provider prompts discovery by initiating contact with the State agency. What is significant is that the State Medicaid agency has been notified in writing of the specific overpayment subject to recovery or the provider has acknowledged a specific overpaid amount.

We believe the changes to section 1903(d) of the Act made by section 9512 of COBRA support interpretation of the term "discovery" to mean the date on which any State official first specifies an overpayment amount for purposes of internal review and followup. However, under this interpretation, discovery could significantly pre-date written communication of the overpayment amount to the provider or initiation of a formal recoupment action without prior notice and might not afford the State sufficient time for the overpayment to be verified and the notice to be processed within the State agency or for a negative balance report entry to be made before the 60-day period begins.

A State's partial collection of an overpayment amount from a provider during the 60-day recovery period does not extend the 60-day time limit following discovery allowed the State for seeking to recover the total outstanding balance. The outstanding balance is still due to HCFA upon expiration of the 60-day recovery period.

Sometimes, during the 60-day recovery period, a State makes a downward or upward adjustment to the overpayment amount originally communicated between the State and the provider. If these adjustments are made in accordance with the approved State plan, Federal Medicaid law and regulations, and the appeals resolution processes specified in State administrative policies and procedures, these adjustments are subject to specific conditions: Downward adjustment to the original overpayment amount, while reducing the total dollar amount subject to State recovery, does not change the

60-day recovery period for the outstanding balance. Upward adjustment to the original overpayment amount also does not change the 60-day period for recovery of the original amount. However, the incremental amount is subject to its own 60-day recovery period beginning on the date of the State's written notice to the provider regarding the additional overpayment amount.

Adjustments to Federal Payment

Section 1903(d)(2)(C) of the Act, as added by section 9512 of COBRA, specifies that an adjustment in the FFP payment to the State reflecting the Federal share of the overpayment must be made at the end of the 60-day recovery period following discovery. In accordance with sections 1903(d)(2) (A) and (B) of the Act (which contain language unaffected by COBRA), States report their Medicaid expenditures quarterly (on the Form HCFA–64 Quarterly Statement of Expenditures) and FFP payments to States are adjusted through the HCFA grant award process. The HCFA–64 Quarterly Statement of Expenditures is due to HCFA 30 days after the end of each quarter. Consequently, we are requiring States to credit HCFA with the Federal share of overpayments on the Form HCFA–64 submitted for the quarter in which the 60-day period following discovery ends. However, we are not requiring States to refund the Federal share of overpayments in this manner if the State reports the Federal share of a collection or submits an expenditure claim reduced by a discrete amount to recover an overpayment prior to the end of the 60-day period following discovery.

The statute does not require States to credit HCFA with interest on the Federal share of overpayments due at the end of the 60-day period following discovery. However, if a State assesses the provider interest in recovering an overpayment, regulations under 45 CFR 74.47(a) require States to credit HCFA with the Federal share of that assessment at the time the refund of the Federal share of the overpayment amount collected is made.

Requiring the credit of the Federal share of overpayments on the expenditure statement submitted for the quarter in which the 60-day period ends, rather than requiring an immediate refund, assures consistent application of the statute and simplifies the administrative process. In some cases, it also results in allowing a State more than 60 days after discovery to pursue recovery and credit HCFA with the refund. For example, if the overpayment is discovered on April 1 (the first day of the third quarter of the Federal fiscal year), the 60-day period would end May 30. However, the Form HCFA–64 for the third quarter covers the period extending to June 30. In this instance, the State would actually have 90 days after discovery before crediting HCFA with the Federal share of the overpayment. If, for example, discovery is made on May 2, the 60-day period would end on July 2 and the Federal share of the overpayment amount would not have to be reported until the submission of the expenditure statement for the fourth quarter, which ends September 30, or nearly 150 days after discovery. (Since an expenditure statement is due to HCFA 30 days after the end of each quarter, the State would, in fact, have an additional 30 days beyond the timeframes cited in the examples before actually crediting HCFA with the Federal share of the overpayment amounts.) As stated earlier, we believe this procedure is the most administratively feasible alternative which remains consistent with the requirements of the Act for submittal of quarterly expenditure statements and subsequent adjustment of the FFP payment through the grant award process.

On occasion, it may be necessary for States to submit claims for FFP to adjust the Federal share of overpayment amounts previously credited to HCFA because of downward adjustments to the original overpayment amount based on the approved State plan, Federal Medicaid law and regulations, and the appeals resolution processes specified in State administrative policies and procedures. Under these regulations, we are requiring States to submit these retroactive claims for FFP on the Form HCFA–64. The normal 2-year filing limit for retroactive claims does not apply to these adjustments, as downward adjustments to overpayment amounts are not retroactive claims but merely reflect the reclaiming of costs previously claimed.

These regulations do not contemplate States refunding more than the amount due the Federal Government. Therefore, States should not report on the Form HCFA–64 any collections made on overpayment amounts for which the Federal share has been previously refunded. In addition, if a State has refunded the Federal share of an overpayment as required by these regulations and the State subsequently makes recovery by reducing future provider payments by a discrete amount, the State should not reflect that reduction in its claim of Federal financial participation.

For purposes of adjusting the FFP payment, the changes made to section 1903(d)(2) by section 9512 of COBRA do not require us to consider whether the State is able to recover the overpayment by the end of the 60-day period, except for uncollectible amounts discussed in the following section of this preamble. We recognize that the overpayment debt collection process followed by the State is sometimes prolonged and legally complicated. However, the plain wording of sections 1903(d)(2) (C) and (D) does not permit the Federal Government to delay adjustment to FFP by allowing the State a recovery period of more than 60 days while the State awaits the exhaustion of provider appeals or judicial review, or the execution of repayment plans. (Regulations under 45 CFR 201.66 do permit repayment of Federal funds by an installment plan in limited situations where the amount of the repayment exceeds 2½ percent of the estimated annual State share for the program. Our regulations in this document do not alter the provisions of § 201.66 and are compatible with that section.) In addition, as explained previously, States usually will have longer than the 60 days after discovery because of the additional 30 days allowed following the end of each quarter before the mandatory Form HCFA–64 expenditure statements are due.

It has been HCFA's longstanding position that the Federal Government's responsibility to participate financially in State Medicaid expenditures does not encompass FFP for excessive or erroneous State Medicaid expenditures. Consequently, the Federal share of overpayments must be returned to the Federal Government within the statutorily defined timeframe because the overpayments represent excessive claims for Federal reimbursement. The Medicaid statute does not contemplate that the Federal Government absorb or share in any loss resulting from payments not made in accordance with the approved State plan, except as provided under section 1903(d)(2)(D) in cases where the overpayment is a debt that cannot be collected because the provider has gone bankrupt or the debt is otherwise uncollectible because the provider is out of business.

Overpayments Involving Providers Who Are Bankrupt or Out of Business

Section 1903(d)(2)(D) of the Act, as added by section 9512 of COBRA, provides that a State is not required to refund the Federal share of overpayments that constitute debts that

have been discharged in bankruptcy or that are otherwise uncollectible.

Under Federal law, a debtor who files a bankruptcy petition receives an automatic stay from demands from creditors as of the day he or she files the bankruptcy petition in Federal court. Therefore, the State is prevented, as of the filing date of the bankruptcy petition, from any recovery unless the court at a later date denies the bankruptcy petition or some portion of the debt is recovered later through a court-approved discharge of bankruptcy. Because of this automatic stay and the State's inability to recover during the period between the filing of the provider's bankruptcy petition and the court's adjudication of that petition, we are not requiring States to refund the Federal share of overpayments made to a provider declaring bankruptcy as of the date the bankruptcy petition is filed with the Federal court, provided the State is also noted as a creditor on the bankruptcy petition in the amount of the Medicaid overpayment. However, States must credit HCFA with the Federal share of any overpayment amounts that they recover under a court-approved discharge of bankruptcy on the first Form HCFA–64 filed after receipt of those funds. Further, States are required to credit HCFA with the Federal share of any overpayments made to a provider whose petition for bankruptcy is denied in Federal court on the later of the next Form HCFA–64 submission following the date of the court decision or the Form HCFA–64 submission for the quarter in which the 60-day period following discovery of the overpayment ends.

On the basis of the explicit wording in the Conference Committee Report on COBRA (H.R. Rept. No. 453, 99th Cong., 1st Sess., 548 (1985)), we have defined debts as "otherwise being uncollectible" for purposes of these regulations strictly as debts of providers who are "out of business." A State would not be liable for the refund of the Federal share of an overpayment if the provider is out of business and the overpayment is not collectible under State law and administrative procedures. In asserting that a provider is out of business, the State must document its efforts to located the party and its assets. These efforts must be consistent with applicable State law, policies, and procedures and must include pursuit of the party and its assets across State lines in an attempt to recover the overpayment if this action is permitted under applicable State law and administrative procedures. The State also must provide an affidavit or certification from the appropriate State legal authority establishing that the provider is out of business and that the overpayment cannot be collected under State law and procedures and the effective date of that determination under State law. The provider then will be considered certifiably out of business. Transfer of ownership within the State does not exempt a State from the requirement to refund the Federal share of an overpayment, unless State law and procedures deem a provider who has transferred ownership to be out of business and preclude collection of the overpayment from the provider.

In situations in which a State is not liable for refunding the Federal share of an overpayment because the provider is either bankrupt or out of business, the State still is required to notify the provider that an overpayment exists. If the provider files a bankruptcy petition or is certifiably out of business before the 60-day recovery period following discovery ends, the State is not required to refund the Federal share of the overpayment on its subsequent Form HCFA–64 unless the court has denied the bankruptcy petitions. If the 60-day recovery period ends before the provider files the bankruptcy petition or is certifiably out of business, the State is required to credit HCFA with the Federal share of the overpayment on the next HCFA–64 submission. The State could reclaim FFP for any unrecovered amount, citing section 1903(d)(2)(D) of the Act as authority, if, at a later date, the provider files for bankruptcy or goes out of business and the State has not been able to make complete recovery. A State could reclaim overpayments credited to HCFA only if, prior to the date on which the provider files the bankruptcy petition or the date on which the provider is declared certifiably out of business, the State vigorously pursues recovery without complete success, according to its standard policy as prescribed in applicable State law and administrative procedures.

Effective Date of Legislative Provisions

COBRA was enacted on April 7, 1986. Nonetheless, section 9512 specifies that the provisions for the recovery of the Federal share of overpayments apply to overpayments that are identified for quarters beginning on or after October 1, 1985. Based on the language of the Conference Committee report, we have interpreted overpayments that are "identified for quarters" to mean overpayments that "occur and are discovered" during any quarter beginning on or after October 1, 1985. The date upon which an overpayment occurs is the date upon which a State, using its normal method of reimbursement for a particular class of provider (e.g., check, interfund transfer), makes the payment involving unallowable costs to a provider. Two time periods are involved in implementing the overpayment recovery policy:

The Federal share of overpayments that occurred in quarters before October 1, 1985 but are discovered after October 1, 1985, and for which the Federal share has not been refunded to HCFA, must be credited on the Form HCFA–64 submission that is due to HCFA immediately following discovery.

The Federal share of all overpayments that occur and are discovered in quarters beginning on or after October 1, 1985 must be credited to HCFA on the Form HCFA–64 for the quarter in which the 60-day period following discovery ends. For the period between October 1, 1985 (the effective date of section 9512 of COBRA) and April 4, 1989 (the effective date of these regulations), States have been instructed, through an issuance in section 2853 of the *State Medicaid Manual*, on this method of crediting HCFA with the Federal share of overpayments for which the 60-day recovery period has ended in accordance with section 1903(d)(2)(C) of the Social Security Act. A State may be found not liable for refund of the Federal share only if the provider is found to be bankrupt or certifiably out of business (provided that the State has pursued collection without complete success according to its standard policy and can document these efforts).

Regulation Changes

Except in three instance, we have adopted the proposed regulations issued on December 21, 1987, as final regulations. We have amended the Medicaid regulations to add a new Subpart F to 42 CFR Part 433, State Fiscal Administration, to incorporate the provisions of section 1903(d)(2) of the Act as added by section 9512 of COBRA. In addition, we have included a provision for recordkeeping requirements in accordance with established policy and procedures for the Medicaid program under 45 CFR Part 74, Subpart D. Specifically, the new subpart includes definitions and specifies the applicability of the requirements, when discovery of an overpayment occurs, the requirements for refunds to HCFA, the exceptions to the refund requirements for overpayments to providers who are bankrupt or are out of business, how adjustments to the FFP payment are to

be made, and recordkeeping requirements.

Changes to the regulation text of the NPRM include (1) incorporation of definitions of "fraud" and "abuse" that are consistent with definitions of these terms in the Medicaid program integrity regulations under Part 455 (§ 433.304); (2) clarification that appeal rights extended to providers do not extend the date of discovery (§ 433.316(h)); and clarification that transfer of ownership does not constitute an out-of-business situation unless State law provides otherwise (§ 433.318(d)(3)).

Summary of and Response to Public Comments on NPRM

As stated earlier, we received comments from six State agencies on the December 21, 1987 NPRM. Our responses to those comments are as follows:

Comment: Two States objected to our interpretation of the statutory language that the recovery provisions under COBRA are effective for all overpayments "identified for quarters beginning on or after October 1, 1985" to mean overpayments that "occur and are discovered" for quarters beginning on or after October 1, 1985. One State maintained that a plain reading of the statutory language suggests that only overpayments "identified" on or after October 1, 1985 are subject to these rules. The other State requested that the proposed regulations be revised to permit States to base the effective date on either date of service or date of discovery.

Response: The statute states that the amendments made by section 9512 of COBRA shall apply to overpayments identified for quarters beginning on or after October 1, 1985. The words "identified for quarters" indicate that the date of payment is the controlling factor in establishing the applicability of the regulations. We believe that the use of the word "identified" is incidental and that Congress was referring to overpayments made on or after October 1, 1985. This interpretation is supported by the Conference Committee Reports accompanying COBRA, which omits the word "identified" altogether in stating that the statute "applies to overpayments for quarters * * *." (H.R. Rep. No. 453, 99th Cong., 1st Sess. 548 (1985).)

Comment: One State suggested that recapture of depreciation on gain on sale of assets should not be considered an overpayment for purposes of these regulations because this action represents "recovery of portions of payments properly made from resources later determined to be available to the State Medicaid program." The commenter maintained that recapture of depreciation is analogous to the third party liability (TPL) and probate situations. The commenter suggested that, in all three situations, the payment to the provider is not excessive, erroneous, or inconsistent with the State plan when made; recovery is attempted only because resources are later found to be available to the State.

Response: In the preamble to the NPRM, we described overpayments as being improper payments which occur routinely in large claims processing systems and which are typically discovered at some point after the provider receives payment from the State. We included payments at incorrect rates in our examples of situations that may constitute overpayments.

When a facility is sold, the State performs a final cost settlement to determine the allowability of costs reported by the seller. All components of the facility's current per diem rate established on the basis of estimated costs, including depreciation costs, are compared against actual costs. The State then issues a final cost settlement report and pursues recovery of any excessive costs identified. We stated in the preamble of the NPRM that, to the extent the State pursues recovery of any unallowable costs in an institutional provider's per diem rate by a lump sum repayment or by withholding a portion of future State payments to the provider, an overpayment exists. Unallowable depreciation costs which are identified and for which recapture is attempted in the manner described by the commenter constitute an overpayment consistent with these scenarios.

We do not consider depreciation analogous to TPL or probate. In the NPRM, TPL and probate situations were distinguished from overpayments in that the former involve the attempt to recover correct payment amounts from resources other than the provider. Because depreciation payments involve costs found to be incorrectly estimated and an attempt to recover from the provider (unless the buyer assumes the seller's debts), we consider depreciation payments as overpayments for purposes of these regulations if a State requires their recapture in a discrete amount(s) upon gain on the sale of assets, and have clarified this in our discussion earlier of the definition of an overpayment. In Decision 969, the Grant Appeals Board upheld a HCFA disallowance on this issue in affirming that depreciation payments constitute overpayments subject to section 1903(d)(2) of the Act if the State determined them to be excessive and subject to recovery.

Recapture overpayments are particularly difficult for a State to collect because they normally will be due from the seller. For this reason, some State plans require advance notification of the intent to sell to provide time to determine if amounts are due from the seller. Under these plans, failure to provide advance notice could result in the liability being assumed by the new owner. Such a policy facilitates recovery from the provider in States which recapture depreciation.

Comment: Two States suggested that the date of discovery should be redefined to conform with State audit policies and procedures. They stated that defining discovery as the date of a State's first written notice to the provider is contrary to proper audit procedures. One State cited Departmental Grant Appeals Board Decision 810 as concluding that amounts cited in draft audit reports are only an interim step in the discovery process, and any amounts contained in these reports are not properly subject to recovery. Both States agreed that the date of discovery should be defined as the date of the final written notice to the provider of an overpayment determination. One State suggested that an alternative discovery point for sample-based audit findings would be the date upon which the pre-extrapolated audit overpayment amount is established; the pre-extrapolated sample would be considered the discovered amount.

Response: The establishment of a uniform definition of discovery is essential to implementing the statute because discovery is the event which begins the 60-day period after which the State must refund the Federal share of the overpayment. The statute contemplates that discovery be based on documented actions which specify an overpayment amount and indicate that the State is beginning its recovery efforts. We believe that the issuance of a draft audit report could establish initial discovery if the State notified a provider in writing of a specific amount subject to recovery. If discovery does occur through identification of an overpayment in a draft audit report, the regulations allow the State to reclaim the Federal share of the overpayment that was refunded to the extent that the State subsequently makes a downward adjustment based on the approved State plan, Federal Medicaid law and regulations, and the appeals resolution process specified in State administrative policies and procedures.

In Decision 810, the Grant Appeals Board cited Decision 448 in stating that "the Board has held that in instances where HCFA relies on State documentation, HCFA can recover the Federal share only when the State itself could act to recover the overpayment from a provider." In Decision 810, however, the Board also indicated that "HCFA could resolve by regulation the controversy over the use of State audit findings to identify overpayments." The Board said, further, that such a regulation could "clarify at what stage State determinations should be used as a basis for adjusting Federal financial participation." This regulation represents our efforts to define that stage.

With regard to sample-based audit findings, section 9512 of COBRA did not contemplate the establishment of different discovery dates for the pre-extrapolated sample amount and the post-extrapolated sample amount. The State that suggested this approach indicated that the State "after making an overpayment finding through an audit * * * mails the provider a Notice of Overpayment which states the amount of the overpayment and requires repayment of that amount." Even though this initial amount may be subsequently revised downward, repayment has been requested and it is, therefore, proper to consider issuance of the Notice of Overpayment as signifying discovery and initiating the 60-day recovery period.

Comment: One State maintained that our proposed definition of discovery was internally inconsistent in that it allows discovery for fraud or abuse situations to be established as of the date of the "final" written notice to the provider.

Response: Our discussions with State Medicaid officials in developing the proposed regulations established that fraud or abuse situations were unique because they require extensive coordination between State Medicaid staff and legal staff. Also, we believe that fraud or abuse situations are distinguished from other overpayments because of the need to consider not only the appropriateness of the individual payment but also the intent or past billing practices of the provider. The additional time allowed States in these situations to establish "discovery" recognizes the need for extensive legal investigation to establish the context of the overpayment.

Comment: One State suggested that an overpayment not be considered discovered until all administrative and judicial appeals are completed or waived. At this point, the existence and amount of the overpayment would be established definitively.

Response: Based on the statute, we have established that discovery occurs at the point at which the State agency or provider gives notice that an overpayment has been made and recovery is expected. Section 9512 of COBRA does not provide for postponing this date pending the exhaustion of appeals. However, we have indicated in the regulations that the Federal share of an overpayment that has been refunded to HCFA may be reclaimed based on legitimate downward adjustments to the overpayment amount.

Comment: One State suggested that States should not be required to refund the Federal share of an overpayment if the costs of collection exceed the amount the State alleges has been overpaid to the provider. The commenter suggested that requiring the Federal share to be refunded within 60 days of discovery is unnecessarily harsh and could be a disincentive to the State's pursuit of recovery. Further, the commenter maintained that States should not be required to refund the Federal share of discovered overpayments prior to recovery if good faith efforts have been made to pursue recovery.

Response: Section 9512 of COBRA does not provide for exempting States from refunding the Federal share of discovered overpayments based on the cost effectiveness of pursuing recovery. Section 9512 also does not provide for a delay in refunding the Federal share until recovery of the overpayment if there is a good faith effort by the State to recover. The length of the recovery period before a refund is due is fixed in the statute and may not be modified at our discretion. The administrative vehicle for refunding the Federal share is the HCFA–64 Quarterly Statement of Expenditures, which is due to HCFA 30 days after the end of the quarter, although, in practice, States are allowed at least 90 days before the share actually is refunded to HCFA, as explained earlier in this preamble.

Comment: One State suggested that HFCA permit downward adjustments to overpayment amounts in settled and litigated cases if adjustment is not inconsistent with the State Medicaid plan, Federal law, and State policies and procedures.

Response: The NPRM provided that the Federal share of an overpayment refunded by the State can be reclaimed based on downward adjustments after the Federal share has been refunded if the State subsequently determined that the original amount was incorrectly computed. Reclaiming the Federal share is not permitted if the State and provider simply negotiate a settlement to resolve a recovery effort. Such an arrangement between the State and a provider does not alter the amount of Federal funds originally claimed improperly.

Comment: One State maintained that our reliance on the Conference Committee Report to restrict the definition of "otherwise being uncollectable" debts to out-of-business providers was unfounded. The commenter suggested that, if the statute clearly expresses Congressional intent, extrinsic aids should not be consulted.

Response: In interpreting statutory provisions, we frequently refer to the history of the legislative provisions when there can be various meanings attached to a certain provision. The language of the Conference Committee report clarified the intended scope of the stautory phrase "otherwise being uncollectable". The substitution of the term "out of business" for the phrase "otherwise being uncollectable" is included twice in the Conference Committee's explanation of the statutory provision.

Comment: Two States described situations that might not involve providers who are technically out of business but that ought to be exempted from the refund requirements of the regulation. One State cited the example of a provider that exists only as a shell corporation as a situation in which the State cannot claim the out-of-business exemption but is effectively barred from recovery. Another cited several examples: State law protects the provider from recovery while the debt is under appeal; the State grants the provider an extended repayment schedule; no documentation exists to prove that the provider is out of business but the provider and its assets cannot be found and the provider no longer submits claims; the provider is not out of business but the debt has been discharged by the State Board of Control; recovery of the debt is precluded because the provider has transferred ownership; all of the provider's operations are out of State and it no longer participates in the State's Medicaid program or Medicare.

Response: With regard to the case of the shell corporation, the test of out-of-business status is the State's legal certification that the providr is out of business and documentation of the State's recovery efforts. Only to the extent that this test is met can an exemption be granted under the COBRA provision. Debts under appeal, discharged by a State Board, or being recovered through repayment schedules

represent administrative actions that do not involve providers that are bankrupt or out of business and, thus, are not exempt from the COBRA refund requirements. If State law considers a provider that cannot be located or that has transferred ownership to be out of business, exemptions from the refund requirements may be claimed. If a provider operates exclusively out of State, an exemption may be claimed if the provider is considered out of business under State law and the State is legally precluded from pursuing recovery across State lines. We believe that allowing States to define out-of-business situations using State law furnishes sufficient flexibility in applying the refund provision.

Comment: Two States considered unnecessary the requirement that the State legal authority provide an affidavit or certification to establish that a provider is out of business. They regarded documentation of State recovery efforts as sufficient evidence of the provider being out of business.

Response: The proposed regulations attempted to accommodate differing State definitions of out-of-business situations and barriers to recovery. However, a legal determination based on objective consideration of available evidence is necessary to establish that a provider is out of business under State law and to what extent the State agency's attempts to make recovery are constrained by State laws regarding pursuit across State lines and transfer of ownership.

Comment: One State requested that we clarify the out-of business exemption to indicate that the Federal share of an overpayment need not be refunded if the provider went out of business before the date of discovery. The commenter maintained that the NPRM only indicated an exemption would be granted if the provider was out of business on the date of discovery or went out of business during the 60-day period.

Response: For purposes of these regulations, States are not required to refund the Federal share of overypayments if recovery is precluded because the provider goes out of business before the 60-day period ends. Under this provision, States would be exempt from this refund requirement if the provider went out of business *before* or after an overpayment is identified (discovered), so long as the provider remains out of business through the end of the 60-day recovery period.

Comment: One State suggested that, if a provider files for bankruptcy after the Federal share of an overpayment is refunded, HFCA should be required to return the refunded amount pending resolution of the bankruptcy petition.

Response: We believe we have addressed the reclaiming of refunds adequately. The regulations state that, if a provider declares bankruptcy after the Federal share of an overypayment has been refunded, the State may reclaim the refund as long as the State has pursued recovery until the provider files the bankruptcy petition. If the bankruptcy petition is later denied, the State would again be required to refund the Federal share of HCFA.

Regulatory Impact Analysis

Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any regulations that are likely to meet the criteria for a "major rule." A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or (3) significant adverse effects on competiton, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These regulations conform the Medicaid regulations to the amendments to section 1903(d)(2) of the Social Security Act made by section 9512 of COBRA, which are already in effect.

We have determined that these regulations are not a major rule. However, there will be minimal administrative costs to State Medicaid agencies in terms of developing a tracking system for identifying overpayments made to Medicaid providers and refunding the Federal share of those overpayments in a timely manner, in accordance with the provisions of the regulations.

Regulatory Flexibility Act

We prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612) for rules unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. We have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations will affect State agencies, which are not considered small entities, in that they are required to refund the Federal share of overpayments made to Medicaid providers. Medicaid providers will be affected indirectly by the regulations in that States will be vigorously pursuing them during the 60 days following discovery of overpayments to obtain refunds of overpaid amounts, the Federal share of which the State must refund to HCFA at the end of the 60 days. Therefore, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

Sections 433.316, 433.318, 433.320, and 433.322 of these regulations contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. We have submitted the regulations to OMB. A notice will be published in the Federal Register when approval is obtained.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

PART 433—[AMENDED]

42 CFR Part 433 is amended as set forth below:

1. The authority citation for Part 433 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912, and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396(p).

2. The authority statements preceding Subpart B and following §§ 433.112 and 433.116 are removed.

3. The table of contents for Part 433 is amended by adding a new Subpart F. consisting of § § 433.300 through 433.322, to read as follows:

PART 433—STATE FISCAL ADMINISTRATION

* * * * *

Subpart F—Refunding of Federal Share of Medicaid Overpayment to Providers

Sec.

Sec.
433.320 Procedures for refunds to HCFA.
433.322 Maintenance of records.
* * * * *

4. A new Subpart F, consisting of §§ 433.300 through 433.322, is added to read as follows:

Subpart F—Refunding of Federal Share of Medicaid Overpayments to Providers

§ 433.300 Basis.

This subpart implements—

(a) Section 1903(d)(2)(A) of the Act, which directs that quarterly Federal payments to the States under title XIX (Medicaid) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) Section 1903(d)(2) (C) and (D) of the Act, which provides that a State has 60 days from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the Federal Medicaid payment to the State is made; and that adjustment will be made at the end of the 60 days, whether or not recovery is made, unless the State is unable to recover from a provider because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectable.

(c) Section 1903(d)(3) of the Act, which provides that the Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

§ 433.302 Scope of subpart.

This subpart sets forth the requirements and procedures under which States have 60 days following discovery of overpayments made to providers for Medicaid services to recover or attempt to recover that amount before the States must refund the Federal share of these overpayments to HCFA, with certain exceptions.

§ 433.304 Definitions.

As used in this subpart—

"Abuse" (in accordance with § 455.2) means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

"Discovery" (or "discovered") means identification by any State Medicaid agency official or other State official, the Federal Government, or the provider of an overpayment, and the communication of that overpayment finding or the initiation of a formal recoupment action without notice as described in § 433.316.

"Fraud" (in accordance with § 455.2) means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

"Overpayment" means the amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act.

"Provider" (in accordance with § 400.203) means any individual or entity furnishing Medicaid services under a provider agreement with the Medicaid agency.

"Recoupment" means any formal action by the State or its fiscal agent to initiate recovery of an overpayment without advance official notice by reducing future payments to a provider.

"Third party" (in accordance with § 433.136) means an individual entity, or program that is or may be liable to pay for all or part of the expenditures for medical assistance furnished under a State plan.

§ 433.310 Applicability of requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, the provisions of this subpart apply to—

(1) Overpayments made to providers that are discovered by the State;

(2) Overpayments made to providers that are initially discovered by the provider and made known to the State agency; and

(3) Overpayments that are discovered through Federal reviews.

(b) *Third party payments and probate collections.* The requirements of this subpart do not apply to—

(1) Cases involving third party liability because, in these situations, recovery is sought for a Medicaid payment that would have been made had another party not been legally responsible for payment; and

(2) Probate collections from the estates of deceased Medicaid recipients, as they represent the recovery of payments properly made from resources later determined to be available to the State.

(c) *Unallowable costs paid under rate-setting systems.* (1) Unallowable costs for a prior year paid to an institutional provider under a rate-setting system that a State recovers through an adjustment to the per diem rate for a subsequent period do not constitute overpayments that are subject to the requirements of this subpart.

In such cases, the State is not required to refund the Federal share explicitly related to the original overpayment in accordance with the regulations in this subpart. Refund of the Federal share occurs when the State claims future expenditures made to the provider at a reduced rate.

(2) Unallowable costs for a prior year paid to an institutional provider under a rate-setting system that a State seeks to recover in a lump sum, by an installment repayment plan, or through reduction of future payments to which the provider would otherwise be entitled constitute overpayments that are subject to the requirements of this subpart.

(d) *Recapture of depreciation upon gain on the sale of assets.* Depreciation payments are considered overpayments for purposes of this subpart if a State requires their recapture in a discrete amount(s) upon gain on the sale of assets.

§ 433.312 Basic requirements for refunds.

(a) *Basic rules.* (1) Except as provided in paragraph (b) of this section, the Medicaid agency has 60 days from the date of discovery of an overpayment to a provider to recover or seek to recover the overpayment before the Federal share must be refunded to HCFA.

(2) The agency must refund the Federal share of overpayments at the end of the 60-day period following discovery in accordance with the requirements of this subpart, whether or not the State has recovered the overpayment from the provider.

(b) *Exception.* The agency is not required to refund the Federal share of an overpayment made to a provider when the State is unable to recover the overpayment amount because the provider has been determined bankrupt or out of business in accordance with § 433.318.

(c) *Applicability.* (1) The requirements of this subpart apply to overpayments made to Medicaid providers that occur and are discovered in any quarter that begins on or after October 1, 1985.

(2) The date upon which an overpayment occurs is the date upon which a State, using its normal method of reimbursement for a particular class of provider (e.g., check, interfund transfer), makes the payment involving unallowable costs to a provider.

§ 433.316 When discovery of overpayment occurs and its significance.

(a) *General rule.* The date on which an overpayment is discovered is the beginning date of the 60-calendar day period allowed a State to recover or seek to recover an overpayment before a refund of the Federal share of an overpayment must be made to HCFA.

(b) *Requirements for notification.* Unless a State official or fiscal agent of the State chooses to initiate a formal recoupment action against a provider without first giving written notification of its intent, a State Medicaid agency official or other State official must notify the provider in writing of any overpayment it discovers in accordance with State agency policies and procedures and must take reasonable actions to attempt to recover the overpayment in accordance with State law and procedures.

(c) *Overpayments resulting from situations other than fraud or abuse.* An overpayment resulting from a situation other than fraud or abuse is discovered on the earliest of—

(1) The date on which any Medicaid agency official or other State official first notifies a provider in writing of an overpayment and specifies a dollar amount that is subject to recovery;

(2) The date on which a provider initially acknowledges a specific overpaid amount in writing to the edicaid agency; or

(3) The date on which any State official of fiscal agent of the State initiates a formal action to recoup a specific overpaid amount from a provider without having first notified the provider in writing.

(d) *Overpayments resulting from fraud or abuse.* An overpayment that results from fraud or abuse is discovered on the date of the final written notice of the State's overpayment determination that a Medicaid agency official or other State official sends to the provider.

(e) *Overpayments identified through Federal reviews.* If a Federal review at any time indicates that a State has failed to identify an overpayment or a State has identified an overpayment but has failed to either send written notice of the overpayment to the provider that specified a dollar amount subject to recovery or initiate a formal recoupment from the provider without having first notified the provider in writing, HCFA will consider the overpayment as discovered on the date that the Federal official first notifies the State in writing of the overpayment and specifies a dollar amount subject to recovery.

(f) *Effect of changes in overpayment amount.* Any adjustment in the amount of an overpayment during the 60-day period following discovery (made in accordance with the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution process specified in State administrative policies and procedures) has the following effect on the 60-day recovery period:

(1) A downward adjustment in the amount of an overpayment subject to recovery that occurs after discovery does not change the original 60-day recovery period for the outstanding balance.

(2) An upward adjustment in the amount of an overpayment subject to recovery that occurs during the 60-day period following discovery does not change the 60-day recovery period for the original overpayment amount. A new 60-day period begins for the incremental amount only, beginning with the date of the State's written notification to the provider regarding the upward adjustment.

(g) *Effect of partial collection by State.* A partial collection of an overpayment amount by the State from a provider during the 60-day period following discovery does not change the 60-day recovery period for the original overpayment amount due to HCFA.

(h) *Effect of administrative or judicial appeals.* Any appeal rights extended to a provider do not extend the date of discovery.

§ 433.318 Overpayments involving providers who are bankrupt or out of business.

(a) *Basic rules.* (1) The agency is not required to refund the Federal share of an overpayment made to a provider as required by § 433.312(a) to the extent that the State is unable to recover the overpayment because the provider has been determined bankrupt or out of business in accordance with the provisions of this section.

(2) The agency must notify the provider that an overpayment exists in any case involving a bankrupt or out-of-business provider and, if the debt has not been determined uncollectable, take reasonable actions to recover the overpayment during the 60-day recovery period in accordance with policies prescribed by applicable State law and administrative procedures.

(b) *Overpayment debts that the State need not refund.* Overpayments are considered debts that the State is unable to recover within the 60-day period following discovery if the following criteria are met:

(1) The provider has filed for bankruptcy, as specified in paragraph (c) of this section; or

(2) The provider has gone out of business and the State is unable to locate the provider and its assets, as specified in paragraph (d) of this section.

(c) *Bankruptcy.* The agency is not required to refund to HCFA the Federal share of an overpayment at the end of the 60-day period following discovery, it—

(1) The provider has filed for bankruptcy in Federal court at the time of discovery of the overpayment or the provider files a bankruptcy petition in Federal court before the end of the 60-day period following discovery; and

(2) The State is on record with the court as a creditor of the petitioner in the amount of the Medicaid overpayment.

(d) *Out of business.* (1) The agency is not required to refund to HCFA the Federal share of an overpayment at the end of the 60-day period following discovery if the provider is out of business on the date of discovery of the overpayment or if the provider goes out of business before the end of the 60-day period following discovery.

(2) A provider is considered to be out of business on the effective date of a determination to that effect under State law. The agency must—

(i) Document its efforts to locate the party and its assets. These efforts must be consistent with applicable State policies and procedures; and

(ii) Make available an affidavit or certification from the appropriate State legal authority establishing that the provider is out of business and that the overpayment cannot be collected under State law and procedures and citing the effective date of that determination under State law.

(3) A provider is not out of business when ownershp is transferred within the State unless State law and procedures deem a provider that has transferred ownership to be out of business and preclude collection of the overpayment from the provider.

(e) *Circumstances requiring refunds.* If the 60-day recovery period has expired before an overpayment is found to be uncollectable under the provisions of this section, if the State recovers an overpayment amount under a court-approved discharge of bankruptcy, or if a bankruptcy petition is denied, the agency must refund the Federal share of the overpayment in accordance with the procedures specified in § 433.320.

§ 433.320 Procedures for refunds to HCFA.

(a) *Basic requirements.* (1) The agency must refund the Federal share of

overpayments that are subject to recovery to HCFA through a credit on its Quarterly Statement of Expenditures (Form HCFA–64).

(2) The Federal share of overpayments subject to recovery must be credited on the Form HCFA–64 report submitted for the quarter in which the 60-day period following discovery, established in accordance with § 433.316, ends.

(3) A credit on the Form HCFA–64 must be made whether or not the overpayment has been recovered by the State from the provider.

(b) *Effect of reporting collections and submitting reduced expenditure claims.* (1) The State is not required to refund the Federal share of an overpayment when the State reports a collection or submits an expenditure claim reduced by a discrete amount to recover an overpayment prior to the end of the 60-day period following discovery.

(2) The State is not required to report on the Form HCFA–64 any collections made on overpayment amounts for which the Federal share has been refunded previously.

(3) If a State has refunded the Federal share of an overpayment as required under this subpart and the State subsequently makes recovery by reducing future provider payments by a discrete amount, the State need not reflect that reduction in its claim for Federal financial participation.

(c) *Reclaiming overpayment amounts previously refunded to HCFA.* If the amount of an overpayment is adjusted downward after the agency has credited HCFA with the Federal share, the agency may reclaim the amount of the downward adjustment on the Form HCFA–64. Under this provision—

(1) Downward adjustment to an overpayment amount previously credited to HCFA is allowed only if it is properly based on the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution processes specified in State administrative policies and procedures.

(2) The 2-year filing limit for retroactive claims for Medicaid expenditures does not apply. A downward adjustment is not considered a retroactive claim but rather a reclaiming of costs previously claimed.

(d) *Expiration of 60-day recovery period.* If an overpayment has not been determined uncollectable in accordance with the requirements of § 433.318 at the end of the 60-day period following discovery of the overpayment, the agency must refund the Federal share of the overpayment to HCFA in accordance with the procedures specified in paragraph (a) of this section.

(e) *Court-approved discharge of bankruptcy.* If the State recovers any portion of an overpayment under a court-approved discharge of bankruptcy, the agency must refund to HCFA the Federal share of the overpayment amount collected on the next quarterly expenditure report that is due to HCFA for the period that includes the date on which the collection occurs.

(f) *Bankruptcy petition denied.* If a provider's petition for bankruptcy is denied in Federal court, the agency must credit HCFA with the Federal share of the overpayment on the later of—

(1) The Form HCFA–64 submission due to HCFA immediately following the date of the decision of the court; or

(2) The Form HCFA–64 submission for the quarter in which the 60-day period following discovery of the overpayment ends.

(g) *Reclaim of refunds.* (1) If a provider is determined bankrupt or out of business under this section after the 60-day period following discovery of the overpayment ends and the State has not been able to make complete recovery, the agency may reclaim the amount of the Federal share of any unrecovered overpayment amount previously refunded to HCFA. HCFA allows the reclaim of a refund by the agency if the agency submits to HCFA documentation that it has made reasonable efforts to obtain recovery.

(2) If the agency reclaims a refund of the Federal share of an overpayment—

(i) In bankruptcy cases, the agency must submit to HCFA a statement of its efforts to recover the overpayment during the period before the petition for bankruptcy was filed; and

(ii) In out-of-business cases, the agency must submit to HCFA a statement of its efforts to locate the provider and its assets and to recover the overpayment during any period before the provider is found to be out of business in accordance with § 433.318.

(h) *Supporting reports.* The agency must report the following information to support each Quarterly Statement of Expenditures Form HCFA–64:

(1) Amounts of overpayments not collected during the quarter but refunded because of the expiration of the 60-day period following discovery;

(2) Upward and downward adjustments to amounts credited in previous quarters;

(3) Amounts of overpayments collected under court-approved discharges of bankruptcy;

(4) Amounts of previously reported overpayments to providers certified as bankrupt or out of business during the quarter; and

(5) Amounts of overpayments previously credited and reclaimed by the State.

§ 433.322. Maintenance of records.

The Medicaid agency must maintain a separate record of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR Part 74, Subpart D.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program)

Dated: October 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 9, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89–2572 Filed 2–2–89; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6823]

List of Communities Eligible for the Sale of Flood Insurance; Maryland et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in last column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202)

646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of FEMA has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Maryland:			
Unincorporated areas	Allegany	240001	Dec. 2, 1988. Suspension Withdrawn.
Annapolis, city of	Anne Arundel	240009	Do.
Baltimore, city of	Independent city	240087	Do.
Eldorado, town of	Dorchester	240105	Do.
Havre De Grace, city of	Harford	240043	Do.
Hurlock, town of	Dorchester	240112	Do.
Salisbury, city of	Wicomico	240080	Do.
West Virginia:			
Ansted, town of	Fayette	540027	Dec. 16, 1988.
Mt. Hope, city of	Fayette	540280	Do.
Oak Hill, city of	Fayette	540031	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–2529 Filed 2–2–89; 8:45 am]

BILLING CODE 6718–21–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Refugee Resettlement Office

45 CFR Part 400

Refugee Resettlement Program; Refugee Cash Assistance; Requirements for Employability Services, Job Search, and Employment; Refugee Medical Assistance; and Refugee Social Services

AGENCY: Refugee Resettlement Office, Family Support Administration (FSA), HHS.

ACTION: Final Rule.

SUMMARY: This regulation sets forth requirements governing refugee cash assistance; employability services, job search, and employment on the part of recipients of refugee cash assistance (RCA); refugee medical assistance; and refugee social services.

A proposed rule was published in the **Federal Register** of January 30, 1986 (51 FR 3918). Substantial changes have been made in this final regulation after consideration of the written comments received and a consultation on the proposals.

This regulation completes the issuance of comprehensive regulations covering the basic operation of the State-administered Refugee Resettlement Program (RRP). It implements Chapter 2 of title IV of the Immigration and Nationality Act, added by section 311(a)(2) of the Refugee Act of 1980 (Pub. L. 96–212) and amended by the Refugee Assistance Amendments of 1982 (Pub. L. 97–363) and the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605).

EFFECTIVE DATE: July 1, 1989.

ADDRESS: Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Philip A. Holman, (202) 252–4563.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act to revise procedures for the admission of refugees and to establish a uniform base for the provision of assistance and services to refugees in the United States regardless of their country of origin. Previously, refugees in the U.S. had been aided under separate programs for (1) Cuban refugees, (2) Indochinese refugees, and (3) Soviet and other non-Cuban, non-Indochinese refugees. Those programs were regarded as temporary, and, therefore, the issuance of program instructions to the States through Action Transmittals, rather than regulations, was considered appropriate. With the enactment of comprehensive authority in 1980, the Department began the issuance of formal regulations at 45 CFR Part 400, the first of which was published on September 9, 1980 (45 FR

59323), covering State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841). Regulations covering grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures were published January 30, 1986 (51 FR 3904).

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order since it does not create new costs. To the contrary, the regulation is intended to reduce costs by aiding refugees in achieving earlier employment and self-support.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 604(b)), the Secretary certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule will indirectly affect small entities because some services funded in the RRP are provided by not-for-profit institutions under contract with the States. However, nothing in the rule imposes a significant burden on these small entities, and the rule therefore does not meet the threshold for regulatory flexibility analysis.

Sections 400.11, 400.55, 400.64, 400.79, 400.82, 400.94, and 400.147 of this rule contain collection-of-information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the reporting and recordkeeping requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Discussion of Changes

The Department received approximately 250 comments, signed by about 500 persons, on the proposed regulations. The commenters included State and local governments, national and local voluntary refugee resettlement agencies, refugee mutual assistance associations, State refugee advisory committees, refugee service providers, employers of refugees, and individual refugees.

On May 12, 1987, the Office of Refugee Resettlement held a consultation on the proposals, to which all persons who had provided written comments were invited. Approximately 50 commenters, principally State refugee coordinators, participated. The views and recommendations expressed in that consultation, as well as the written recommendations received previously, were taken into consideration in reaching the decisions reflected in this final regulation. Major changes have been made as a result of the comments.

The principal changes made in this final regulation, as compared with the proposed rule published January 30, 1986, are as follows:

1. The proposal (in § 400.11(b) of the proposed rule) that States submit administrative costs budgets as part of annual applications for grants for cash and medical assistance (CMA grants) and for social services has been eliminated from this final regulation.

In this section we have also revised the date by which a State submits its annual plan for social services from the proposed "45 days prior to the beginning of the [Federal] fiscal year" to "45 days prior to the beginning of the State's annual planning cycle for social services." This change provides a more realistic date and greater flexibility for the States. As part of this revision, ORR also plans to delete from its State estimate form (Form ORR–1) the projections currently required on social services.

2. The proposed requirement (in § 400.55(b)(3)) that States count in-kind assistance in the program of refugee cash assistance (RCA) has been modified to require a State to count in-kind assistance only if it counts in-kind assistance in its AFDC program.

3. We have deleted the proposals (§ 400.63) that would have required States (a) to combine into a single filing unit all RCA applicants and recipients who live in a single household and (b), in determining eligibility for and amount of RCA, to take into consideration the needs, resources, and income of all other persons living in the household. In lieu thereof, this final rule requires a State to prorate allowances for shelter, utilities, and similar needs among RCA recipients living in the same household if the State prorates such allowances in its AFDC program. (The regulation would not change the current policy of permitting a State to combine RCA recipients in the same household into a single filing unit, if the State so decides.)

4. The proposed rule (§ 400.64) that would have required monthly reporting by RCA recipients during their receipt of RCA has been revised to require monthly reporting only after an RCA recipient has been in the United States more than 6 months.

5. The proposed rule (§ 400.79(a)) would have required an employability plan to be developed for both applicants for and recipients of RCA. The final regulation requires this only for recipients of RCA.

6. The proposed rule (§ 400.80) would have required applicants for and recipients of RCA to carry out a continuing program of job search beginning at the time the refugee applied for RCA and comprising at least 20 hours of employer contacts per week. The final regulation makes several revisions: Job search will not be required for an RCA applicant; it will be required of an RCA recipient only after the recipient has been in the United States more than 6 months; it will be required to continue for 8 consecutive weeks; and the State will determine the amount of time (or employer contacts) required.

7. The proposal (§ 400.81(d)) which, with a few exceptions, would have prohibited the scheduling of services at times that would have interfered with the previously proposed job search requirements, has been deleted. This change, together with the revisions in the job search requirements, will provide States with the flexibility to develop the individual service and job search plans that can be most effective in enabling RCA recipients to be placed in jobs as soon as possible after their arrival in the United States.

8. Under the proposed rules (§ 400.82(b)(3)), failure or refusal of RCA recipients to meet requirements for participation in employability services, carrying out job search, and acceptance of job offers would have resulted in the application of sanctions to the entire household filing unit. In this final regulation, the sanctioning requirement (§ 400.82(b)(3)) has been changed to apply only to the individual RCA recipient who fails to meet requirements. With this change, the application of sanctions in RCA will be comparable to the sanctioning provisions in the basic AFDC program.

9. The proposed rule (§ 400.104) would have extended the medical assistance coverage of an RMA recipient who would otherwise become ineligible solely because of increased earnings from employment. The period of extension under the proposal would have been for 9 months or until the refugee reached the end of his or her period of time-eligibility for RMA, whichever occurred first. After consideration of the comments received

and further analysis of the differences between this proposal and the AFDC policy from which it was derived (at section 402(a)(37) of the Social Security Act), we have decided to revise § 400.104 to continue the current RMA policy of providing for a 4-month extension of RMA (or as much of such extension as is within the RMA time-eligibility period) if the recipient loses RCA eligibility because of increased earnings from employment. This provision is more closely comparable to Medicaid regulations at 42 CFR 435.112. (See further discussion, below, in section on comments received, "Comments on Subpart G.")

10. The proposed rule (§ 400.146) would have continued the policy, which has been in effect during recent years, of requiring States to use at least 85 percent of their refugee social service funds for employability services. We have revised this policy to make it apply only to those States in which 55 percent or more of the State's population of "time-eligible" refugees is receiving cash assistance. "Time-eligible" refers to refugees whose cash assistance and medical assistance, if they were to qualify for such assistance, would be funded in whole or in part with Federal refugee funds. Under current funding, this population is refugees who have been in the U.S. less than 24 months. Fifty-five percent was selected because it has been approximately the national mean average dependency rate of time-eligible refugees during the last few years.

If a State is successful in reducing the dependency rate to less than 55 percent, this requirement will no longer apply.

11. The proposed rule (§ 400.147 (a)) would have required a State to use "an appropriate portion of [its social service] funds, based on population," to provide services to new and recently arrived refugees. We have revised the wording slightly to provide that such portion be "based on population and service needs, as determined by the State." This change is intended to make clear that the portion need not be based solely on numbers of persons and that it is the State which determines what the appropriate portion is.

12. The proposed rule (§ 400.147(c)) would have restricted the use of social service funds to refugees who have been in the U.S. less than 36 months, except for emergency services and for extreme and unusual needs that a State justified in its annual services plan. We have removed this proposed 36-month restriction.

13. The proposed rule (§ 400.156(a)) would have prohibited States from using their social service funds to provide orientation services to "familiarize refugees with Western culture or to provide basic local orientation since this responsibility rests with the resettlement agency which sponsors a refugee." We have removed this paragraph in order (a) to avoid the implication that additional specific types of orientation not covered by the resettlement agencies could not be provided and (b) to permit local orientation for refugees who have migrated from their initial resettlement site. A general prohibition on duplication of services remains in § 400.156(b) (numbered § 400.156(c) in the proposed rule).

Four additional changes have been made in this final regulation in order to reflect changes made by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) which was enacted November 6, 1986:

1. Language has been included in § 400.75(a) of this final regulation to reflect the requirement added by section 9(a) of the 1986 Amendments that assistance be terminated if an RCA recipient: (a) Refuses an offer of employment which has been determined to be appropriate either by the resettlement agency responsible for the initial resettlement of the refugee or by the appropriate State or local employment service; (b) refuses to go to a job interview which has been arranged through such agency or service; or (c) refuses to participate in a social service or targeted assistance program which such agency or service determines to be available and appropriate.

2. Section 400.82(b)(1), referring to sanctions of RCA recipients who fail to meet requirements, has been revised to eliminate the requirement that the sanction begin "with the month in which such failure or refusal occurred." The 1986 Amendments removed this timing requirement, which had been added by the 1982 Amendments. We have also provided, in § 400.82(b)(3)(B)(iii) of this final regulation, for a conciliation period of up to 30 days before the imposition of a sanction; this conciliation provision follows procedures which are applicable to AFDC recipients and which were in effect in the refugee program prior to the 1982 Amendments.

3. Language has been included in § 400.146(a), regarding the percent of funds which a State whose dependency rate is over 55 percent must use for employability services, to reflect the following language added by section 6 of the 1986 Amendments: "(C) Any limitation which the Director establishes on the proportion of [social service] funds allocated to a State * * * that the State may use for purposes other than [employment-related services, English-as-a-second-language training (in nonwork hours where possible), and case-management services] * * * shall not apply if the Director receives a plan (established by or in consultation with local governments) and determines that the plan provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act." (This statutory provision is also reflected in ORR's notice of social service allocations for FY 1987 (52 FR 18283).)

4. In § 400.11(b)(2), we have changed the reference to an annual "application" for grants for refugee social services to an annual "plan" in order to reflect the use of the term "plan" in section 6 of the 1986 Amendments.

We have also made one technical change in the terminology used in these regulations: We have used the term "social services" rather than "support services," which was used in the proposed rule. "Social services" has continued to be the term used in the authorizing legislation for the refugee program, including the 1986 Amendments. It is also the term in general use in the refugee resettlement field.

Description of the Regulation

This regulation restates some current policies and modifies or augments others. The changes in policy which are made here have one central aim: To aid refugees in achieving earlier employment as a step toward self-support.

Throughout the Nation there is wide variation in the extent to which, and rapidity with which, refugees find employment. In some States, this occurs relatively quickly; in others, a substantial portion of the refugee population may spend its first 24 months in the United States—the period during which Federal refugee funding is currently provided to States for cash and medical assistance to refugees—receiving fully federally funded welfare assistance and, after the completion of that period, may continue on assistance, usually financed by a combination of Federal and State funds and sometimes by local funds as well.

Refugee dependency rates, as measured by the portion of the refugee population who had been in this country less than 31 months as of September 30, 1987 (the period of Federal refugee funding prior to the reduction to 24

months on February 1, 1988), and who were receiving cash assistance, ranged from a high of over 70 percent in three States to less than 20 percent in several other States. These wide differences among States do not appear to be fully explainable by differences in the employment situation in various States, or by differences in the scope and benefit levels of existing welfare programs, or by differences in the background, training, and work experience of the refugees themselves.

At the same time, there are substantial differences in the ways in which different States carry out the RRP. In some States, for example, refugee services (such as English language training) are widely available outside normal working hours, refugees are referred to job opportunities soon after their arrival in the U.S., become employed, and are able to continue their language or vocational training. In other States, refugee services tend to be available only during working hours, refugees are enrolled for services and training on a relatively long-term basis and are not required to seek employment, and referrals to job opportunities do not occur until much later.

This regulation attempts to address these problems by including more specific requirements for the way in which the RRP is to be carried out by States which have relatively high dependency rates, by allowing greater flexibility than current policy in States which have lower than average dependency rates, and by placing additional employment-related requirements on refugees who are receiving refugee cash assistance (RCA).

Thus a new Subpart F, Requirements for Employability Services, Job Search, and Employment, requires employable adult RCA recipients who have been in the U.S. more than 6 months to carry out an 8-week program of job search. At the same time, flexibility is provided to the States to determine the details of such a job search program so that each State can design the specific program which will be most effective in placing refugees in jobs.

A new Subpart I, Refugee Social Services, regroups the designation of social services to fit in with the requirements of Subpart F. It also removes most of the specific eligibility requirements for particular services (as currently set forth in Action Transmittals SSA–AT–79–33, August 24, 1979; ORR–AT–80–1, March 26 1980; and ORR–AT–80–2, April 28, 1980), simplifying the administration of the social service program for States and service providers.

Subpart I also provides greater flexibility than current policy for States with lower-than-average dependency rates by removing the current requirement (most recently contained in ORR's notice of FY 1987 social service allocations at 52 FR 18283, May 14, 1987) that 85 percent of their social service funds must be used for employment services, English language training, and case management—identified herein as "employability services."

Other changes which this regulation makes are described in the sections which follow on the several subparts.

Subpart A—Introduction

Section 400.2

Two changes are made in the list of definitions in § 400.2: A definition of "case management services" is inserted in the definitions in § 400.2, and these services are further addressed in §§ 400.154(j) and 400.155(g) of Subpart I. The definition of "refugee medical assistance" is updated to include references to the appropriate sections of Subpart G.

Subpart B—Grants to States for Refugee Resettlement

Sections 400.11 and 400.13

Section 400.11(a) is revised to conform with ORR's present policy, begun in fiscal year 1985, of issuing two types of basic grants to States for the operation of the State-administered refugee program: (1) CMA grants, covering funding for cash assistance, medical assistance, the program for refugee unaccompanied minors, and related State administrative costs; and (2) social services grants to fund the activities identified in Subpart I.

Section 400.11(b) is revised to require a State to submit an annual State social services plan. This requirement will help to assure that appropriate efforts and funds will be devoted to address the major Congressional intent of placing refugees on jobs as soon as possible after their arrival in the United States.

A new § 400.13 is added on cost allocation. This provision places in regulatory form the basic requirements of ORR's current cost-allocation guidelines which were issued after consultation with the States. A principal purpose of the guidelines is to assure that costs are correctly allocated between the RRP and other programs administered by the State and, within the RRP, among the CMA, social services, and any other RRP grants. Paragraph (c) of this section continues to permit certain overall management costs to be charged against the CMA grant. Paragraph (d) identifies the circumstances under which certain case management costs may be charged against the CMA grant, again reflecting current policy. Section 400.13 does not change the current guidelines, which continue in effect.

Subpart C—General Administration

Section 400.27

A new paragraph (c) is added to § 400.27, "Safeguarding and sharing of information," to clarify, that information concerning persons who have applied for or received assistance or services under the RRP may be released for any of the same purposes as are permissible under the AFDC program, as set forth in 45 CFR 205.50(a). Such purposes include: Any investigation, prosecution, or criminal or civil proceeding in connection with the administration of the program; any other Federal or federally assisted, needs-based assistance or service program; any audit or similar activity; and the location or apprehension of a fugitive felon.

Subpart E—Refugee Cash Assistance

Sections 400.50 through 400.64

Subpart E contains rules governing refugee cash assistance (RCA). The term "refugee cash assistance" refers specifically to cash assistance to needy refugees who do not meet all eligibility requirements for the programs of aid to families with dependent children (AFDC) and supplemental security income (SSI) for the aged, blind, and disabled. The provisions of this subpart do not govern the receipt of assistance by refugees who qualify for AFDC or SSI: they must meet the requirements of those programs which apply to refugees and nonrefugees alike.

Current regulations at 45 CFR 400.62 set forth the basic policies with respect to the provision of refugee cash assistance (RCA) and the extent and duration of Federal refugee program funding for RCA and other cash assistance programs for which refugees may qualify. These regulations do not change those rules.

A change in this subpart is the application of certain additional AFDC provisions to the RCA program (§ 400.64).

A. Recovery of Overpayments and Correction of Underpayments (Section 400.52)

Section 400.52 confirms current practice by applying AFDC rules when overpayments or underpayments occur.

B. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.55 through 400.57)

Under current policy, when a refugee applies for cash assistance a State must first determine his or her eligibility under other federally aided public assistance programs (i.e., AFDC, SSI, or—in Guam, Puerto Rico, and the Virgin Islands—old age assistance (OAA), aid to the blind (AB), aid to the aged, blind, and disabled (AABD), or aid to the permanently and totally disabled (APTD)).

If a refugee is eligible under one of the above programs, a State must provide assistance to that refugee under the appropriate program. If a refugee does not meet the categorical requirements of these other public assistance progams (i.e., family composition, the presence of children, age, disability, etc.), the State must determine eligibility for RCA.

In determining RCA eligibility, a State is required to contact an applicant's sponsor or the resettlement agency to determine the amount of assistance, if any, being provided to the refugee and to inquire whether the applicant has voluntarily quit employment or refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application. This requirement ensures that States verify at the time of application that a refugee has not refused to accept an offer of employment within 30 days prior the date of application for assistance, in accordance with current policy contained in § 400.77(a).

Section 400.55(d) requires a State to distinguish clearly, in its notices to applicants and recipients, between RCA, AFDC, and GA. The purpose of this requirement is to assure that clients are appropriately informed of their eligibility or ineligibility and receive information sufficiently specific to enable them to exercise their right to appeal if they wish to do so.

Conditions of Eligibility for Refugee Cash Assistance (Sections 400.60 through 400.64)

Under current policy, refugees who are ineligible for AFDC, SSI, OAA, AB, AABD, or APTD, but who meet the AFDC need standard in their State of residence, after consideration of income and resources in accordance with 45 CFR 233.20(a) (3) through (11) (except that the two earned income disregards of $30 and of $30 plus one-third at § 233.20(a)(11)(ii)(B) are not applied), are eligible for refugee cash assistance if they have resided in the U.S. less than 18 months following their initial entry into this country. In determining financial eligibility, a State may not consider income and resources of refugee's sponsor which are not contributed to the refugee, or a refugee's resources which are not readily accessible to the refugee—e.g., resources in the refugee's country of origin. A State may not apply to applicants for or recipients of refugee cash assistance the rule under the AFDC-Unemployed Parents (AFDC–UP) program at 45 CFR 233.100(a)(1) that generally defines unemployment as employment less than 100 hours a month. Eligible refugees receive benefits and services at levels equivalent to those provided under the State's AFDC program. This regulation continues the current policy.

Section 400.60(a)(5) adds a requirement that a refugee provide the name of the resettlement agency which was responsible for his or her resettlement. This information is needed to enable the State to verify any assistance being provided and to determine whether the refugee has quit or refused employment, as required under § 400.55(b) (3) and (4). Section 400.60(a)(5) places on the refugee the responsibility for providing the name of the resettlement agency by making this a condition of eligibility. This requirement does not apply to asylees since persons granted asylum under section 208 of the Act usually do not have a sponsoring resettlement agency.

D. Proration of Shelter, Utilities, and Similar Needs (Section 400.63)

Section 400.63 requires a State to prorate allowances for shelter, utilities, and similar needs among RCA and AFDC filing units residing in the same household if it prorates such allowances in its AFDC program. This requirement will help to assure equal treatment between the RCA and AFDC programs in a State.

E. Other AFDC requirements applicable to refugee cash assistance (Section 400.64)

This section formalizes the applicability of certain additional AFDC requirements to the RCA program with respect to budgeting methods, determining eligibility, computing the assistance payment, recovering overpayments and correcting underpayments, and identifying and dealing with fraud.

This section also applies to RCA recipients who have been in the U.S. for at least 6 months and AFDC requirements regarding monthly reporting. Monthly reporting is especially applicable to caseloads in which changes in employment and income are likely to occur—such as the RCA caseload which excludes the aged, blind, and disabled who are covered under SSI and the one-parent families which are covered under AFDC. A State may also require monthly reporting by RCA recipients who have been in the U.S. less than 6 months, if it so decides.

Subpart F—Requirements for Employability Services, Job Search, and Employment

Refugees who apply for or receive refugee cash assistance (RCA) must meet the requirements in Subpart F of these rules. These rules are based on requirements of the Refugee Act, as amended. The rules in Subpart F apply to RCA applicants and recipients. Refugees who receive AFDC must meet the requirements of that program rather than Subpart F.

A. Arrangements for Employability Services (Section 400.72)

Section 400.72 of the regulation allows States to make certain arrangements with appropriate agencies to provide refugees with required employability services as defined in §400.71. It also formalizes a requirement that an agency providing employability services, in order to qualify to receive referrals of employable refugees by the State agency, must agree to advise the State agency whenever a refugee fails or refuses to participate in the required services or to accept an offer of employment.

B. Registration for Employment Services, Participation in Employability Service Programs, and Acceptance of Offers of Employment (Section 400.75)

Section 400.75 generally reflects section 412(e)(2)(A) of the Immigration and Nationality Act, which, except for good cause shown, conditions the receipt of cash assistance by an employable refugee on that refugee's registration with an agency offering employment services specifically designed to assist refugees in attaining economic self-sufficiency. If no such agency is available, the refugee must register with the State or local employment service. Section 412(e)(2)(A) of the Act also conditions receipt of cash assistance on the participation of employable refugees in available and appropriate social service and targeted assistance programs, funded under section 412(c) of the Act, which provide job or language training.

Section 400.75 clarifies the registration requirement by specifying that an "appropriate agency providing employment services" means (as defined in § 400.71) an agency whose services must include "an established program of job referral to, and job placement with, private employers" and

"must be determined acceptable by the State." Previous studies have shown that some referrals for employment services were being made to agencies whose services did not include job referral and placement.

This section also requires that an employable refugee participate in a program of job search, described subsequently in § 400.80.

These requirements are intended to encourage early employment.

C. Criteria for Exemption from Registration (Section 400.76)

Section 400.76 exempts certain individuals from registration for employment services and required social services because of age, full-time attendance at school or training, illness, incapacity, responsibility for the care of a child or another member of the household, or being in the third trimester of pregnancy. These exemptions, which are followed in current policy, are modeled after exemptions which apply to AFDC recipients.

Inability to communicate in English does *not* exempt a refugee from registration.

D. Effect of Nonparticipation in Services and of Quitting Employment (Section 400.77)

Under current policy, employable refugees may not, without good cause, within 30 consecutive days prior to the date of application, or at any time when receiving refugee cash assistance, have voluntarily quit employment or refused to accept an appropriate offer of employment services, training, or employment. Section 400.77 formalizes these requirements.

E. Service Requirements for Employed RCA Recipients (Section 400.78)

A recipient of refugee cash assistance who is employed less than 30 hours a week must accept appropriate part-time English language training or other employment-related training if available and determined appropriate by the State.

Under current policy, a State may encourage but not require part-time English or other employment-related training if a recipient is employed full time. Section 400.78(b) expands this policy to permit a State to require part-time training in this circumstance. We believe that providing this flexibility to a State is in keeping with the objective of full self-support since such training can aid a refugee who is partially supported by cash assistance to acquire additional skills which may lead to advancement, higher income, and full self-support.

Language has also been included to provide that employed recipients may not be required to accept services which interfere with their jobs.

F. Development of an Employability Plan (Section 400.79)

Section 400.79 formalizes current practice in the refugee program by requiring the State agency, or its designee, to develop an employability plan for each registrant if such a plan has not been developed by the resettlement agency.

Section 400.79 clarifies current practice by requiring that the employability plan be designed to lead to the earliest possible employment and contain a definite employment goal that would be attainable in the shortest possible time period consistent with a refugee's employability and the local job market. This requirement reflects the statutory intent, contained in section 412(a)(1)(B) of the Immigration and Nationality Act, that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States".

Section 400.79 also imposes a new requirement, by providing that the employability plan must enable the individual to meet the job search requirements of § 400.80.

We believe that this focus is essential to promoting early employment. Information has shown that, under existing practices, employability plans are often constructed which defer job search and employment for all or nearly all of the period of potential eligibility for RCA.

G. Job Search Requirements (Section 400.80)

Although current policy emphasizes early employment and self-support and requires registration for employment services and acceptance of job offers, it does not contain specific requirements for a job search program to be carried out by RCA recipients.

Section 400.80 specifically requires an employable recipient of refugee cash assistance who has been in the U.S. more than 6 months to carry out an 8-week job search program. The specific requirements and procedures of the job search program—such as the amount of time or number of employer contacts per week—are left up to the States in order to provide each State with the flexibility to develop the most effective programs possible in order to achieve job placements and reduced dependency.

The requirement for job search is intended to reflect the primary emphasis of the resettlement program on early employment and, together with other requirements which RCA recipients must meet, to result in a focused program consisting of the services and activities necessary to achieve early job placement: Employability assessment and planning; employment services to provide the orientation, information, and guidance necessary for effective job search; referrals to employment opportunities; and contacts with potential employers.

H. Criteria for Appropriate Employability Services and Employment (Section 400.81)

Section 412(e)(2)(B) of the Act conditions receipt of refugee cash assistance (RCA), except for good cause shown, on a refugee's acceptance of appropriate offers of employment. Under current policy, criteria and standards adapted from regulations governing WIN (45 CFR 224.34), and referenced in § 400.81, are used by the State agency or its designee to determine if a particular job or training opportunity is appropriate. In order to allow greater flexibility, § 400.81(a) permits a State, if approved by the Director of ORR, to use comparable criteria applied in an alternate program for AFDC recipients.

Existing policy does not require an RCA recipient to accept a job if he or she is receiving training as part of an employability plan approved by the welfare agency. Section 400.81(c) changes current policy by requiring a refugee to accept an appropriate job offer even if it interrupts participation in a program of services except for a program in progress of on-the-job training, vocational training, or professional recertification.

I. Failure or Refusal To Carry Out Job Search or To Accept Employability Services or Employment (Sections 400.82 and 400.83)

Under current policy, if an employable recipient of cash assistance refuses to register for or to accept or continue an employment or training opportunity without good cause, the State agency must terminate assistance with the month of such refusal. This sanction remains in effect for 3 payment months in the first instance, and for 6 payment months in any subsequent instance. Current policy also includes a provision for hearings, as contained in § 400.83.

Under existing policy for RCA, as in the basic AFDC program, only the individual who fails to meet the employment and service requirements is sanctioned. That policy is continued under these regulations. However, the inclusion of failure or refusal to carry out job search as a basis for sanction is

a change from current policy, reflecting the addition of job search requirements by § 400.80. Failure to go to a job interview is also newly identified as a basis for sanction, reflecting a requirement added at section 412(e)(2)(C)(ii) of the Immigration and Nationality Act by the Refugee Assistance Extension Act of 1986.

Subpart G—Refugee Medical Assistance

A State must provide a program of refugee medical assistance (RMA) in accordance with the rules in Subpart G.

A. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.93 and 400.94)

Under current policy, a State must first determine the eligibility of each applicant for Medicaid under its State plan, complying with regulations governing applications, determinations of eligibility, and furnishing Medicaid under 42 CFR Part 435, Subpart J (in the States and the District of Columbia), and 42 CFR Part 436, Subpart J (in Guam, Puerto Rico, and the Virgin Islands). A State with a medically needy program under 42 CFR Part 435, Subpart D, must also determine a refugee's eligibility under that program.

A State must provide Medicaid to eligible refugees. If a refugee is determined ineligible for Medicaid, the State must determine eligibility for refugee medical assistance (RMA).

As set forth in the definition under § 400.2 of this part, the term "refugee medical assistance" (RMA) refers specifically to medical assistance to refugees who do not meet all eligibility requirements for Medicaid, to services provided under § 400.106 to refugees who are eligible either for RMA or for Medicaid, and to services provided under § 400.107.

Section 400.93(d) requires a State to distinguish clearly, in its notices to applicants for and recipients of medical assistance, between RMA and Medicaid. This is parallel to the notice requirement concerning cash assistance at § 400.55(d).

B. Conditions of Eligibility for Refugee Medical Assistance (Sections 400.100 through 400.104)

Under current policy, a State must determine eligibility for refugee medical assistance of refugees who are ineligible for Medicaid. Recipients of refugee cash assistance (RCA) are eligible for refugee medical assistance (RMA). Also, refugees who meet the eligibility requirements for but are not receiving refugee cash assistance are eligible for refugee medical assistance, and States may not require them to actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance. Medicaid categorical eligibility requirements (family composition, age, disability, or blindness) are not applied to applicants for refugee medical assistance.

In States with Medicaid medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's medically needy financial eligibility standards under Medicaid regulations at 42 CFR Part 435, Subpart I, and regulations governing the determination of income eligibility in 42 CFR 435.831, in accordance with the State's approved title XIX State Medicaid plan.

In States without medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's AFDC need standard established under 45 CFR 233.20(a)(2) and regulations governing consideration of income and resources under the AFDC program in 45 CFR 233.20(a)(3) through (11) except that the two earned income disregards of $30 and of $30 and one-third do not apply. In addition, under § 400.103 of this regulation, if an applicant for refugee medical assistance in a State without a medically needy program does not meet the State's AFDC need standard, the State must allow the applicant to "spend down" to the AFDC need standard using methods for deducting incurred medical expenses in 42 CFR 435.831(c). This means that an applicant with income in excess of the AFDC need standard may deduct from his or her countable income certain incurred medical expenses, thereby lowering the amount of countable income to the AFDC need standard and potentially qualifying the applicant for refugee medical assistance.

Section 400.100(a)(4) has been included to make clear that a State may not determine a refugee to be eligible for medical assistance if the eligibility of the refugee for cash assistance has been terminated because of failure or refusal to meet the requirements of subpart F. We do not believe it would be appropriate to continue RMA eligibility if RCA eligibility has been terminated because of failure or refusal to carry out employment-related requirements.

Section 400.104 extends the medical assistance eligibility of an RMA recipient who would otherwise become ineligible solely because of increased earnings from employment. The period of extension, which is based on a provision applicable to the Medicare program, is for 4 months or until the refugee reaches the end of his or her period of time-eligibility for RMA, whichever occurs first.

C. Scope of Medical Services (Sections 400.105 through 400.107)

A State must provide refugees eligible for refugee medical assistance at least the same services in the same manner and to the same extent as are provided under the State's Medicaid program. If refugees need medical services which are beyond the scope of the State's Medicaid program but which are available to destitute U.S. citizens in the State through public facilities, such as county hospitals, the State agency may provide such services to eligible refugees through public facilities in order to avoid refugees becoming a burden on publicly funded local facilities.

Section 400.107 clarifies current policy with respect to health assessments of newly arrived refugees by specifically permitting such assessments as part of the scope of services of the RMA program if they are provided in accordance with requirements established by, and with the approval of, the Director. If such an assessment is done during a refugee's first 90 days in the United States, it can be provided as part of the RMA program without prior determination of the refugee's eligibility for RMA or Medicaid and without regard to whether the refugee is subsequently determined eligible for either RMA or Medicaid.

Subpart I—Refugee Social Services

A State must provide refugee social services in accordance with the rules in subpart I.

A. Applications, Determinations of Eligibility, and Provision of Services; Funding and Service Priorities; and Purchase of Services (Sections 400.145 through 400.148)

Under current practices, States follow procedures established for their social service programs under title XX of the Social Security Act with respect to providing refugees with the opportunity to apply for services, determining eligibility, and providing services. States currently purchase services for refugees from public and private service providers or provide services directly. The rule does not change these current practices.

Section 412(a)(6)(B) of the Immigration and Nationality Act authorizes the Director to develop, and require States to meet, "Standards, goals, and priorities * * * which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficent provision of services." Under this authority, the Director

previously established as a priority "the provision of English language training and employment services" (§ 400.1(c) of the existing regulations, unchanged in this rule). In addition, section 412(a)(6)(A)(ii) of the Act requires that plans submitted by States contain "a description of how the State will insure that language training and employment services are made available to refugees receiving cash assistance" (reflected in § 400.5(c) of the existing regulations).

In light of the intent of the Act, the number of refugees dependent on cash assistance, and the limited funds available for training and services, §§ 400.146 and 400.147 establish funding and service priorities.

Section 400.146 represents a change in current policy. Previously, States were required to use at least 85 percent of their social service grants to provide employability services (now specified by § 400.154) and not more than 15 percent to provide other services (now specified by § 400.155) unless the Director of ORR waived this requirement.

This policy has been established in a statement of program goals, priorities, and standards issued to States—first in August 1982 and with revisions in March 1984—the Director set as objectives that 85 percent of ORR social service funds be targeted for employment services and English language training and that services be focused on the earliest possible movement of refugees from cash assistance to self-support. Subsequently, this was established as a requirement, after consideration of public comments, by notices in the Federal Register regarding the annual allocations of social service funds (first at 50 FR 8194, February 28, 1985, and most recently at 52 FR 18283, May 14, 1987) after consideration of public comments.

As a result of comments on the proposed rule published Janaury 30, 1986, we have revised this requirement in order to provide greater flexibility to States which have lower-than-average cash assistance dependency rates. As revised, the 85-percent requirement applies only to States whose cash assistance dependency rate, as described elsewhere in this preamble and in the regulation, exceeds 55 percent. This is approximately the national mean average dependency rate experienced in recent years.

Section 400.147 also makes revisions in current policy:

Section 400.147(a) requires that a State's social service program use an appropriate portion of funds to provide services to newly arriving and recently arrived refugees, based on population and service needs, as determined by the State. This is intended to avoid a situation, which has sometimes occurred, in which employment-directed services are concentrated on refugees around the time that their time-eligibility for RCA or for fully federally funded AFDC or Medicaid expires rather than at or near the time of their arrival.

Section 400.147(b) requires a state, in providing employability services, to give priority to refugees who are receiving cash assistance which is funded in whole or in part with Federal refugee funds. This emphasis is important to achieving early employment and reducing both Federal assistance costs and State/local assistance costs that occur after the period of full Federal funding has terminated if employment has not previously been attained.

Section 400.147(c) required that if a State intends to provide services to refugees who have been in the U.S. more than 36 months, the State must specify and justify the portion proposed to be used to meet the needs of these refugees as part of its annual social services plan under § 400.11(b)(2).

B. Conditions of Eligibility for Refugee Social Services (Sections 400.150 through 400.152)

Under existing policy, a refugee who meets immigration status and documentation requirements may receive any social service permissible under a State's title XX program. In addition, certain specific services are identified as "refugee social services" and may be provided in accordance with eligibility criteria based on receipt of cash assistance, family income, age, and employment status. The existing criteria are as follows:

—The following refugee social services may be provided to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, without regard to other critera: English language training; career counseling; job orientation; and job placement and followup.
—In addition to the age/nonstudent criterion previously stated, refugees who are unemployed or receiving cash assistance may receive the following services: Employability assessment; development of an individual employability plan.
—In addition to the age/nonstudent criterion previously stated, refugees who are within the family income limit (not more than 90 percent of a State's median family income) or receiving cash assistance (but not necessarily unemployed) may receive the following services: Job development; vocational training; and skills recertification.
—To receive the following services, refugees must be within the family income limit or receiving cash assistance (but other criteria do not apply): Day care; transportation; and translation/interpreter services.
—The following services may be provided to refugees without regard to any of the above eligibility criteria: Outreach; social adjustment.

Under the present rule, employability services § 400.154 continue to be limited to persons 16 years of age or older who are not full-time students in elementary or secondary school, except that employment services could be provided to enable a student to obtain part-time or summer work or full-time permanent employment upon completion of schooling. In addition, title XX social services provided under § 400.155(h) are subject to whatever limitations apply under a State's title XX program.

The requirements for all other specific eligibility limitations are removed (i.e., receipt of cash assistance, unemployment, and income limitations). We believe that this change will improve the focus of social services and at the same time provide greater flexibility to, and less complexity for, States in designing and implementing their programs in order to achieve the most effective outcomes in terms of increased employment and reduced dependency.

For States which have higher-than-average dependency rates, this change—when combined with the requirements that 85 percent of social service funds be used for employability services, that an appropriate portion be used for newly arriving and recently arrived refugees, that priority be given to cash assistance recipients, and that States specify and justify any funds intended to meet the needs of refugees who have been in the U.S. longer than 36 months—can improve the focus of social services while at the same time offering greater flexibility and less complexity in serving high-priority refugees.

C. Scope of Refugee Social Services (Sections 400.154 and 400.155)

Under current policy, refugees may receive any service which is permissible under a State's title XX program. In addition, refugees may receive any of a specified list of refugee social services which a State may provide regardless of whether these services are included in the State's title XX program.

Under this rule, the scope of allowable services remains unchanged from

current policy. In addition, "case management services" has been added to the list, recognizing an already allowable service not previously specifically identified.

However, the allowable services have been regrouped and in some instances slightly redefined in accordance with the employment objective of the program: Section 400.154, "Employability services," identifies and defines those services directed toward refugee employment, for which 85 percent of social service funds must be used in a State whose dependency rate exceeds 55 percent. Section 400.155, "Other services," identifies and defines those services not necessarily specifically directed toward employment.

D. Limitations and Restrictions (Section 400.156)

Under current guidance, States have been instructed to avoid duplication of services and to provide English language training generally outside normal working hours. Section 400.156 formalizes the existing guidance.

Section 400.156(a) formalizes the requirement that English language instruction be provided to the fullest extent feasible outside normal working hours and applies the same requirement to vocational training. This will be beneficial to refugees in becoming employed and continuing their training.

Under existing practices, many training courses are offered during daytime hours, making it difficult for refugees to accept employment without having to terminate their participation in English or other training. Resettlement workers have frequently cited this as a basic problem. In addition, in the Refugee Assistance Amendments of 1982, Congress made clear its intent that English language training should be provided "in nonwork hours where possible" and that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1) of the Act as amended by section 3(a) of the 1982 Amendments). This regulation helps to address these requirements.

Paragraph (b) of this section requires a State to take into account services which a resettlement agency is required to provide for a refugee and not to duplicate those services through its social service program.

Subpart J—Federal Funding

A new § 400.206 is added in Subpart J to cover funding for social services, and a new § 400.220 is added to clarify the calculation of refugee time-eligibility. Both of these sections reflect existing policy.

Discussion of Comments Received

As noted earlier, the Department received approximately 250 comments, signed by about 500 persons, on the proposed regulations. The views and recommendations expressed both in the written comments and in the consultation which ORR held on May 12, 1987, were taken into consideration in reaching the decisions reported below.

The major comments and our responses to them are as follows:

Comments on Subpart A—Introduction (Section 400.2)

Comment: Several commenters recommended expanding the definition of case management to emphasize the need for the case manager to be more proactive in helping refugees attain self-sufficiency.

Response: The definition of "case management" proposed in the regulation is identical to the one used in ORR's cost allocation guidelines. The guidelines went into effect in 1985 after thorough consultation with the States. We believe that the case management definition in the regulation permits case managers to promote the earliest possible employment of refugees—which is the major objective of the program—and have decided not to change this definition which has been working well in practice for the past 2 years.

Comments on Subpart B—Grants to States for Refugee Resettlement (Sections 400.11 and 400.13)

Comment: Several commenters objected to the requirement in § 400.11(b) that States include an administrative costs budget as part of an annual application for Federal refugee grants for cash and medical assistance and social services. Commenters cited the administrative burden involved.

Response: We have concluded that the burden would exceed the value of the information and have eliminated the requirement.

Comment: Regarding § 400.13, several commenters suggested that a number of elements which are contained in ORR's cost-allocation guidelines also be made part of the regulatory language. For example, several commenters asked that the reference in the guidelines to "core staff" be included in the regulation, and a few commenters requested clarification on the treatment of direct and indirect costs.

Response: The regulatory language establishes the basic framework for cost-allocation policies in the refugee program. The regulation is not intended to supplant the more extensive cost-allocation guidelines which have been in effect since 1985 and will continue to apply after the regulation goes into effect. We have added language in the preamble to indicate more clearly that the existing cost-allocation guidelines remain in effect, and we have also made some technical revisions in § 400.13(d) to make the wording conform more closely with that used in the guidelines.

Comments on Subpart E—Refugee Cash Assistance (Sections 400.50–400.64)

Comment: Several commenters disagreed with the proposal in § 400.55(b)(3) to require that in-kind assistance received by an applicant for or recipient of refugee cash assistance (RCA) be counted in determining RCA eligibility. Commenters cited the difficulties of determining in-kind contributions and their value. They also referred to the special initial needs of refugees when they arrive in the United States without resources and to the time-limited responsibilities of the voluntary refugee resettlement agencies under their cooperative agreements with the Department of State for initial reception and placement services.

Response: We have considered the points raised by the commenters—including the fact that the counting of in-kind income is permissible but not mandatory in the program of aid to families with dependent children (AFDC)—and have revised this proposal to require that the State count in-kind contributions only if it counts in-kind contributions in its AFDC program.

Comment: Proposed paragraphs (b)(3), (b)(4), and (c) of § 400.55 required that, in determining eligibility for RCA, the State must verify with the applicant's sponsor or resettlement agency the amount of financial assistance being provided to the refugee, must contact the sponsor or resettlement agency about whether the refugee has refused a job offer, and must notify the resettlement agency whenever a refugee applies for cash assistance. A few commenters objected to these provisions, with most recommending that the requirements be limited to a refugee's first 90 days—a resettlement agency's current period of responsibility under its agreement with the Department of State.

Response: These requirements reflect long-standing policies of the refugee program. In addition, the requirement of § 400.55(c)—that the State notify the resettlement agency (or its local affiliate) whenever a refugee applies for

assistance—reflects the language of the statute.

Although the current cooperative agreements of voluntary resettlement agencies with the Department of State provide for a 30-day period of providing food, clothing, and shelter and a 90-day period of other responsibilities, resettlement agencies and sponsors may go beyond these periods in assisting refugees. Also, under the voluntary agency matching-grant program, administered by ORR, the resettlement agency responsibility typically extends through at least the fourth month after a refugee's arrival in the U.S.

Given these facts, plus the limited duration of the RCA program itself—to which these requirements apply—we have concluded that it is appropriate to continue these long-standing policies.

Comment: Seven commenters objected to § 400.55(d) which requires that a State clearly distinguish in its notices to applicants and recipients as to which programs the refugee has been determined to be eligible or ineligble for. The commenters felt that such distinctions would be confusing to clients and would create an administrative burden for States.

Response: Some of the commenters felt that this requirement would be burdensome by requiring a revision of State application forms. We wish to clarify that the preamble to the proposed regulation was in error in referring to "requiring a State to distinguish clearly, in its applications and notices to recipients * * *." The provision does not refer to application forms, but only to notices to applicants and to recipients of determinations of eligibility and ineligibility. With this clarification, we believe the requirement will be seen as less burdensome. While we agree with the commenters that a refugee may find references to the various public assistance programs confusing, we believe that it is essential that applicants and recipients be provided with notices which clearly advise them what programs they have been determined eligible or ineligible for.

Comment: A large number of commenters, including a majority of States, objected to the proposal, contained in § 400.63, that eligibility for RCA and assistance under RCA be based on a household filing unit that took into account the needs, income, and resources of all persons living in the household. Commenters most often cited the following reasons: The frequently changing composition of refugee households with the arrival of new refugees from overseas and the moving of recent refugees from temporary to more permanent accommodations; the possibility that the provision would discourage sponsorship by making sponsors responsible for all aid to sponsored refugees while living in the sponsors' household; the difficulty or impossibility of obtaining income and resource information from unrelated nonapplicants in the same household; problems of verifying household composition; and legal questions about imposing sanctions on persons who have no relationship of legal responsibility with the individual whose failure or refusal to meet requirements leads to sanctions.

Response: We have found several of the points raised by the commenters to be persuasive and have removed the proposal for use of a household filing unit. Instead, we have substituted a requirement that if a State prorates allowances for shelter, utilities, and similar needs in a household in its AFDC program, it must prorate such allowances in the same manner in its RCA program.

Comment: Section 400.64 proposed to apply certain AFDC requirements to the RCA program. Six commenters recommended that monthly reporting to the State welfare agency not be required of RCA recipients. One commenter recommended that it be optional with small States with low dependency rates; another commenter recommended that it apply only to those RCA cases in which changes in employment and income could be expected to occur; and one commenter supported the requirement.

Response: The RCA program is comprised of the types of cases that are not eligible for AFDC or for the program of supplemental security income (SSI) for the aged, blind, and disabled. Thus RCA consists of single adults, married couples without minor children, and two-parent families with minor children which do not qualify for AFDC either because they are in a State which does not have an AFDC-Unemployed Parent (AFDC–UP) program or because they do not meet all of the requirements for an existing AFDC–UP program. In general, RCA recipients are the most potentially employable of the types of refugee cases receiving cash assistance since they do not include one-parent families with minor children, who qualify for AFDC, or persons who qualify for SSI. We continue to believe, therefore, that monthly reporting is an important requirement for the RCA program.

At the same time, we recognize that monthly reporting creates an administrative workload for the State as well as a requirement that may be confusing to refugees during their initial period in the United States. Therefore we have revised this requirement to provide that monthly reporting not be required in the RCA program until a refugee has been in the United States for at least 6 months. Since refugees remain on RCA for only a short period of time in many States, this revision will mean that monthly reporting will not have to be required of many RCA recipients who are placed in jobs and go off assistance before the 6-month threshold is reached.

States may continue to require monthly reporting before the 6-month point is reached if they so decide.

Comments on Subpart F—Requirements for Employability Services, Job Search, and Employment (Sections 400.70–400.83)

Comment: Two commenters objected to the description of an "employability plan" in § 400.71 as "intended to result in the earliest possible employment of the refugee."

Response: We see this as reflecting the statement of Congressional intent in section 412(a)(1)(B) of the Immigration and Nationality Act that "It is the intent of Congress that in providing refugee assistance under this section * * * employable refugees should be placed on jobs as soon as possible after their arrival in the United States".

Comment: Several commenters objected to the provision in § 400.76(b) that would consider an RCA recipient to be employable even if he or she does not know English. A major concern expressed by commenters was the inability to carry out the proposed job search activities without a knowledge of English.

Response: The policy of not considering a person to be exempt from training and employment requirements because of lack of English has been in effect in the refugee program for more than a decade. However, the specific job search requirements that were proposed were new. After considering these and other comments related to job search, we have made major changes in the job search requirements (described below with reference to § 400.80) which we believe help to address the concerns expressed by these commenters.

At the same time, we have decided not to change the long-standing policy of the refugee program, expressed in § 400.76(b), of considering a refugee to be employable even if he or she does not know English. Many refugees have been successful in obtaining employment with little or no knowledge of English, an initial step toward self-support in the United States.

Comment: A few commenters pointed to difficulties in implementing a proposed requirement in § 400.79(a) that employability plans be developed for applicants for—as distinguished from recipients of—RCA. The commenters noted that an applicant might be found ineligible for RCA.

Response: We concur and have revised the requirement to apply only to recipients.

Comment: Seven commenters noted an error in § 400.79(b) of the proposal in referring to a requirement that voluntary resettlement agencies develop employability plans, a requirement that was contained in proposed legislation but not enacted at the time the proposed rules were published.

Response: We have revised § 400.79(b) to state that if an individual employability plan has been developed by a resettlement agency, the State agency may accept it if it determines it to be appropriate. Section 412(b)(7)(D) of the Immigration and Nationality Act, referred to in the proposed rule, was subsequently enacted as part of the Refugee Assistance Extension Act of 1986 and, in part, calls for the resettlement agency "to develop and implement a resettlement plan including the early employment of each refugee resettled and to monitor the implementation of such plan."

Comment: Section 400.80 of the proposal would have required RCA applicants and recipients to carry out a continuing job search of at least 20 hours of employer contacts per week. Only a few services, directly related to employment, could be counted toward meeting the job search requirements under the proposal.

This proposal was objected to by nearly all commenters, including a majority of States. The major objections were that many new refugees are not ready to begin job search upon arrival in the U.S.; that job placements are currently being made in a more effective manner than the proposed job search requirement would yield; that in smaller communities with limited job opportunities the effect of continuous job search would be a burden on employers and would not result in increased placements; that the proposal was too prescriptive to permit adaptation to the needs of individual refugees; and, in general, that the proposal would create a major administrative burden on States. The major recommendation by the commenters was that each State be allowed to determine how best to design and implement a program of job search.

Response: In response to the comments, we have made major changes in the job search proposal by not requiring RCA recipients to carry out job search until they have been in the U.S. 6 months (while still allowing a State to require job search sooner), by shortening the mandatory period of job search to 8 weeks (rather than the continuing job search originally proposed), and by allowing each State to determine the amount of time which the recipient must devote to job search each week or the number of employer contacts which the recipient must make per week and the procedures the State will follow to assure fulfillment of its job search requirements.

The 8-week mandatory period of job search does not preclude a State from requiring job search at other times.

Comment: A number of commenters recommended that changes be made in § 400.81(c) of the proposed regulations which would have required that an appropriate job offer be accepted even if it interrupted a service program unless the services were being provided on evenings or weekends. The objections centered around the evenings and weekends requirement but also reflected a view that at least some types of training should not be interrupted.

Response: We have revised this provision to remove the reference to evenings and weekends and to specifically exempt on-the-job training and vocational training.

Comment: A few commenters recommended that the proposed requirement in § 400.82(a) for a 90-day deregistration of voluntary registrants for employability services be revised to allow the State to determine whether to apply a deregistration period.

Response: We concur and have revised the wording accordingly.

Comment: A few commenters recommended that we revise the procedures in § 400.82(b)(2) for sending notices of intended termination of RCA to follow AFDC procedures.

Response: We agree and have revised this paragraph to follow AFDC procedures.

Comments on Subpart G—Refugee Medical Assistance (Sections 400.90–400.107)

Comment: Several commenters disagreed with the proposal in § 400.100(a)(4) to remove an entire household filing unit from RMA if the filing unit was sanctioned because of failure to meet RCA requirements for services and employment. The most frequent recommendations were either to remove the RMA sanction or to apply it only to the RCA recipient who failed to meet requirements.

Response: We have revised the sanction so that it applies only to the individual who fails to meet requirements.

Comment: Several commenters indicated their support for § 400.104 of the proposal which would have provided up to 9 months of additional RMA coverage when RMA eligibility would otherwise have been terminated as a result of increased earnings from employment. A few commenters disagreed with the proposal, stating that the extension period should conform to the 4-month Medicaid extension (at 42 CFR 435.112) that results when AFDC is terminated because of increased earnings rather than the 9-month extension (at 45 CFR 233.20(a)(14)) that results from the termination of an AFDC income disregard since the $30 and one-third AFDC income disregards do not apply in the RCA program. The vast majority (nearly 80 percent) of the 250 comments received omitted any reference to the 9-month proposal.

Response: After consideration of the comments received and further analysis, the Department has concluded that the 9-month Medicaid extension that results from the loss of a disregard cannot appropriately be applied to RMA since the RCA/RMA program does not include the Medicaid disregards on which the extension is based. In addition, the 9-month extension, as proposed, would have extended RMA for all recipients whereas the 9-month Medicaid extension applies to only a small percentage of cases whose loss of eligibility is directly the result of the termination of a disregard. Therefore we have decided that it is more appropriate to continue in RMA the 4-month Medicaid extension that is related to increased earnings. We have not included the requirement (at 42 CFR 435.112(a)), applicable to the 4-month extension in the Medicaid program, that the recipient must have received cash assistance for at least 3 months out of the preceding 6-month period since this could serve as a disincentive to early employment of refugee cast assistance recipients. We consider it essential that eligibility for a 4-month extension of refugee medical assistance not be contingent on a refugee's having received refugee cash assistance for a longer, rather than shorter, period of time after arrival in the U.S.

Comments on Subpart I—Refugee Social Services (Sections 400.140–400.156)

Comment: A number of commenters objected to the proposals in §§ 400.146 and 400.147 to continue the current policy of generally requiring States to

use 85 percent of their refugee social service funds for employability services, to prescribe the amount of funds to be used for serving new and recently arrived refugees, and to restrict the use of social service funds to refugees who have been in the U.S. less than 36 months.

Commenters felt that the 85-percent requirement is inappropriate for States in which refugee use of cash assistance is relatively low and employment high and that ORR's existing policy for granting waivers is cumbersome. One recommendation was that the 85-percent requirement be retained only for States with above-average dependency rates.

With reference to the proposed 36-month limitation, the commenters felt that the proposal would prevent the provision of necessary services to refugees with longer term needs such as some Hmong refugees and refugee women who need services but may not be ready for them initially when principal attention is focused on the male head of household.

Response: In response to the comments, we have revised the 85-percent requirement (in § 400.146) so that it applies only to States whose cash assistance dependency rate of time-eligible refugees exceeds 55 percent—approximately the national mean average. (The national mean average is calculated by dividing the total number of time-eligible refugees receiving cash assistance by the total time-eligible refugee population of the U.S. and multiplying by 100.) We believe that, in these States, the importance of effective employment-related services for time-eligible refugees receiving cash assistance, for which 100 percent of the cost is being paid from Federal funds, is so great that available resources must be focused on this group in order to try to meet the statutory intent of early employment. When a State succeeds in reducing its dependency rate, these requirements will no longer apply.

We have removed the proposal which, with certain exceptions, would have prohibited the use of social service funds for refugees who have been in the U.S. more than 36 months (in § 400.147(c)). If a State intends to provide services to this population, the regulation requires that the State must specify and justify the portion of its social service funds proposed to be used to meet the needs of these refugees as part of its annual social services plan under § 400.11(b)(2).

With respect to the proposed priority on serving new and recently arrived refugees (in § 400.147(a)), we have revised the wording slightly to make clear that the State determines how to meet this need, taking into account both the size of this population and the estimated needs for services.

Comment: Several commenters objected to the prohibition on provision of orientation services which was contained in § 400.156(a) of the proposed regulations. The commenters said that the prohibition, which was intended to avoid duplication of the efforts of voluntary resettlement agencies, did not take into account the many specific types of local orientation needed which went beyond the responsibilities of the resettlement agencies or the needs of secondary migrants who have left their localities of initial resettlement and need orientation to their new communities.

Response: We have deleted the proposed paragraph since the question of duplication is more generally addressed in § 400.156(b) of this regulation (previously designated § 400.156(c) in the proposed rule).

Comment: Section 400.156(b) of the proposed rules required English language and vocational training to be provided to the fullest extent feasible outside normal working hours. Many commenters objected to this proposal, especially since it was combined with proposed provisions requiring the interruption of weekday services and the avoidance of conflict with a continuing program of job search. Commenters pointed to a number of problems with scheduling services at night—among them, the fear of refugees in some neighborhoods of going out at night, inability of refugees to provide for child care at night, and the inability of service providers to retain staff for night and weekend schedules. The recommendation of most commenters was to allow greater flexibility and permit hours which would allow the widest participation of new and recently arrived refugees.

Response: We have retained the working of the proposed § 400.156(b) (redesignated as § 400.156(a)). However, as discussed previously, we have made extensive changes in related provisions regarding job search and the noninterruption of certain services provided on weekdays. We believe that these changes provide the flexibility recommended by the commenters while retaining the concept that services be offered outside normal working hours in order to promote the early employment of refugees and to provide the opportunity for employed refugees to benefit from services they need and want.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and Record keeping requirements.

Dated: June 29, 1987.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: June 6, 1988.

Otis R. Bowen,

Secretary of the Department of Health and Human Services.

Editorial Note: This document was received at the Office of the Federal Register on January 26, 1989.

45 CFR Part 400 is amended as follows:

1. The authority citation for Part 400 continues to read as follows:

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

2. The table of contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

§ 400.2 [Amended]

3. Section 400.2 is amended by alphabetically adding the definitions for the terms "case management services" and "time-eligibility" and by revising paragraph (b) of the definition of the term "Refugee medical assistance" to read as follows:

"Case management services" means the determination of which service(s) to refer to a refugee to, referral to such service(s), and tracking of the refugee's participation in such service(s).

* * * * *

"Refugee medical assistance" * * * (b) services provided in accordance with §§ 400.106 and 400.107 of this part.

* * * * *

"Time-eligibility" means the period for which FF (Federal funding) is provided under §§ 400.203(a) and 400.204(a) of this part, after applying the limitation "[s]ubject to the availability of funds" in accordance with § 400.202.

* * * * *

4. Section 400.11 is amended by revising paragraphs (a) and (b)(1), by redesignating existing paragraph (b)(2) as (b)(3), and by adding a new paragraph (b)(2) to read as follows:

§ 400.11 [Amended]

(a) *Quarterly grants.* Subject to the availability of funds (and in accordance with the limitations of Subpart J of this part), ORR will make two types of quarterly grants to eligible States:

(1) *Grants for cash assistance, medical assistance, and related administrative costs ("CMA grants"),* for the following purposes: Cash assistance provided by a State or local public agency under the program of aid to families with dependent children

(AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the Immigration and Nationality Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of the Pub. L. 93–66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State; and

(2) *Grants for social services, as set forth in this part.* ORR will compute the amount of the quarterly awards based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(b) *Form and manner of State application for grant award*—(1) *CMA grants.* For quarterly grants for cash assistance, medical assistance, and related administrative costs, including assistance and services to unaccompanied minors ("CMA grants"), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, and a justification statement in support of the estimates no later then 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Grants for refugee social services.* For quarterly grants for refugee social services, a State must submit to the Director, or designee, an annual plan no later than 45 days prior to the beginning of the State's annual planning cycle for social services on a form prescribed by the Director.

* * * * *

5. A new § 400.13 is added in Subpart B, to read as follows:

§ 400.13 Cost allocation.

(a) A State must allocate costs, both direct and indirect, appropriately between the RRP and other programs which it administers.

(b) Within the RRP, a State must allocate costs appropriately among its CMA grant, social services grant, and any other RRP grants which it may receive, as prescribed by the Director.

(c) Certain administrative costs incurred for the overall management of the State's refugee program (e.g., development of the State plan, overall program coordination, and salary and travel costs of the State Refugee Coordinator), as identified by the Director, may be charged to the CMA grant. All other costs must be allocated among the CMA grant, social services grant, and any other RRP grants.

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant except where all of the following criteria are met:

(1) The case management activities are targeted to time-eligible cash/medical assistance recipients and applicants for the purpose of assisting such recipients and applicants to obtain or retain employment:

(2) Such case management activities are provided under formal and functional linkages with the appropriate local welfare agency and employment service providers; and

(3) Such linkages include required reporting to the welfare agency when a refugee is offered a job, is placed in a job, or fails to participate in the required employability services.

Subpart C—General Administration

6. A new paragraph (c) is added to existing § 400.27, to read as follows:

§ 400.27 Safeguarding and sharing of information.

* * * * *

(c) The disclosure of information for any purpose set forth in § 205.50(a) of this title shall be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program.

7. Subpart E is revised and new Subparts F, G, and I are added to read as follows:

Subpart E—Refugee Cash Assistance

§ 400.50 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

§ 400.51 Definitions.

For purposes of this subpart—

"Filing unit" means the individual or individuals whose needs are considered in determining eligibility for, and the amount of, an assistance payment for which FF [Federal funding] is claimed under this part.

"Household" means the individual or individuals living in a housing unit.

§ 400.52 Recovery of overpayments and correction of underpayments.

The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.55 Opportunity to apply for cash assistance.

(a) A State must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State must—

(1) Comply with regulations at Part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(2) Determine eligibility for other cash assistance programs in accordance with §400.56 of this part;

(3) Verify with the applicant's sponsor or the resettlement agency the amount of financial assistance which the sponsor or resettlement agency is actually providing to the applicant and count any such assistance, provided in cash and, if the State counts in-kind assistance in its AFDC program, in kind, in considering income and resources of applicants under §400.61 of this part; and

(4) Contact the applicant's sponsor or the resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with §400.77(a) of this part.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for cash assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee cash assistance and other programs such as AFDC and GA. For example, if a refugee applies for assistance, is determined ineligible for AFDC but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to AFDC and to

refugee cash assistance. Similarly, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, and the State reviews the case file to determine possible eligibility for AFDC or GA, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

§ 400.56 Determination of eligibility under other programs.

(a) *AFDC.* (1) The State must determine eligibility under the AFDC program for refugees who apply for cash assistance.

(2) A State must provide cash assistance under the AFDC program to all refugees who apply for and are eligible under that program.

(3) If the appropriate State agency determines that the refugee applicant is not eligible for cash assistance under the AFDC program, the State must determine eligibility for refugee cash assistance in accordance with §400.60.

(b) *Cash assistance to the aged, blind, and disabled*—(1) *SSI.* (i) The State agency must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration, HHS, to apply for cash assistance under the SSI program.

(ii) If the State agency determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) *OAA, AB, APTD,or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.57 Emergency cash assistance to refugees.

If the State agency determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

Conditions of Eligibility for Refugee Cash Assistance

§ 400.60 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are ineligible for cash assistance under the AFDC, SSI, OAA, AB, APTD, and AABD programs but meet refugee cash assistance need standards;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Meet the requirements contained in Subpart F of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part.

(b) A refugee may be eligible for refugee cash assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

§ 400.61 Consideration of income and resources.

(a) In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must apply the regulations at § 233.20(a)(3) through (11) of this title for considering income and resources of AFDC applicants, except that the State agency may not apply the earned income disregard of $30 plus one-third of the remainder of the earnings or the disregard of $30 set out in § 233.20(a)(11)(ii)(B) of this title.

(b) The State agency may not consider any resources remaining in the applicant's country of origin to be accessible to an applicant for or recipient of refugee cash assistance.

(c) The State agency may not consider a sponsor's income and resources to be accessible to a refugee solely because the person is serving as a sponsor.

§ 400.62 Need standards and payment levels.

(a) In determining need for refugee cash assistance, a State agency must use the State's AFDC need standards established under § 233.20(a)(1) and (2) of this title.

(b) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (a) of this section and applying the consideration of income and resources in § 400.61, a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

§ 400.63 Proration of shelter, utilities, and similar needs.

If a State prorates allowances for shelter, utilities, and similar needs in its AFDC program under § 233.20(a)(5) of this title, it must prorate such allowances in the same manner in its refugee cash assistance programs.

§ 400.64 Other AFDC requirements applicable to refugee cash assistance.

In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

233.31 Budgeting methods for AFDC.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC)—which shall apply to recipients of refugee cash assistance who have been in the United States more than 6 months.
233.37 How monthly reports are treated and what notices are required (AFDC).
235.110 Fraud.

Subpart F—Requirements for Employability Services, Job Search, and Employment

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services or targeted assistance, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee cash assistance must comply with the requirements in this subpart. (A refugee who is an applicant for or recipient of AFDC must meet the requirements of the AFDC program instead of the requirements in this subpart; a refugee who is an applicant for or recipient of

GA must meet the requirements of the GA program instead of the requirements in this subpart.)

§ 400.71 Definitions.

For purposes of this subpart and Subpart I—

"Appropriate agency providing employment services" means an agency providing services specified under § 400.154(a) of this part which are specifically designed to assist refugees in becoming employed, which must include an established program of job referral to, and job placement with, private employers, and which must be determined acceptable by the State.

"Designee," when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of § 400.72(a) of this subpart.

"Employability plan" means an individualized written plan for a refugee registered for employment services that sets forth a program of services intended to result in the earliest possible employment of the refugee.

"Employability services" means services, as specified in § 400.154 of this part, designed to enable an individual to obtain employment and to improve the employability or work skills of the individual.

"Employable" means not exempt from registration for employment services under § 400.76 of this part.

"Employment services" means the services specified in § 400.154(a) of this part.

"Registrant" means an individual who has registered for employment services under § 400.75 of this part.

§ 400.72 Arrangements for employability services.

(a) The State agency must make such arrangements as are necessary to enable refugees to meet the requirements of, and receive the employability services specified in, this subpart.

(b) If a State agency makes such arrangements with another agency or agencies, it must retain responsibility for meeting the requirements in this subpart.

(c) In order for an agency to qualify to receive referrals from the State agency of refugees required to register for employability services, such agency must agree to advise the State agency whenever such a refugee fails or refuses to participate in the required services or to accept an offer of employment.

General Requirements

§ 400.75 Registration for employment services, participation in employability service programs and targeted assistance programs, going to job interviews, and acceptance of appropriate offers of employment.

(a) As a condition for receipt of refugee cash assistance, a refugee who is not exempt under § 400.76 of this subpart must, except for good cause shown—

(1) Register with an "appropriate agency providing employment services," as defined in § 400.71, and participate in the employment services provided by such agency, as defined in § 400.154(a) of this part.

(2) Carry out job search, as provided for in § 400.80.

(3) Go to a job interview which is arranged by the State agency or its designee.

(4) Accept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee.

(5) Participate in any employability service program which provides job or language training in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee; or if such a program funded under section 412(c) is not available or appropriate in the area in which the refugee resides, any other available and appropriate program in such area.

(6) Participate in any targeted assistance program in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee.

(7)(i) Accept an offer of employment which is determined to be appropriate by the resettlement agency which was responsible for the initial resettlement of the refugee or by the appropriate State or local employment service;

(ii) Go to a job interview which is arranged through such agency or service; and

(iii) Participate in a social service or targeted assistance program which such agency or service determines to be available or appropriate.

(b) The State agency must permit, but may not require, the voluntary registration for employment services of an applicant or recipient who is exempt under § 400.76 of this part.

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) The State agency must consider an applicant for or recipient of refugee cash assistance to be employable and require him or her to meet the requirements of § 400.75(a) unless the applicant or recipient is—

(1) Under age 16.

(2) Under age 18 and a full-time student (as defined by the State for its AFDC program); or (if the State's AFDC program extends coverage to this group) age 18 and a full-time student in secondary school or in the equivalent level of vocational or technical training (as defined by the State for its AFDC program) and reasonably expected to complete the program before reaching age 19.

(3) Ill, when determined by the State agency on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training.

(4) Incapacitated, when determined by a physician or licensed or certified psychologist and verified by the State agency, that a physical or mental impairment, by itself or in conjunction with age, prevents the individual from engaging in employment or training.

(5) 65 years of age or older.

(6) Caring for another member of the household who has a physical or mental impairment which requires, as determined by a physician or licensed or certified psychologist and verified by the State agency, care in the home on a substantially continuous basis, and no other appropriate member of the household is available.

(7) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child.

(8) Working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 workdays. Or

(9) Pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the next 3 months.

(b) Inability to communicate in English does not exempt a refugee from registration for employment services, participation in employability service programs, carrying out job search, and

acceptance of appropriate offers of employment.

§ 400.77 Effect of quitting employment or failing or refusing to participate in required services.

(a) As a condition of eligibility for refugee cash assistance, an employable applicant may not, without good cause, within 30 consecutive calendar days immediately prior to the application for assistance (or such longer period required by § 400.82(b)(3)(ii), if applicable), have voluntarily quit employment or have refused to accept an offer of employment determined to be appropriate by the State agency or its designee, using criteria set forth in § 400.81.

(b) As a condition of continued receipt of refugee cash assistance, an employable recipient may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of § 400.75(a).

§ 400.78 Service requirements for employed recipients of refugee cash assistance.

(a) As a condition of continued receipt of refugee cash assistance, a recipient who is not exempt under § 400.76 of this part and who is employed less than 30 hours a week must accept part-time employability services, as available and as determined to be appropriate, using criteria set forth in § 400.81 of this part, provided that such services must not interfere with the recipient's job.

(b) A State agency may, but is not required to, require part-time employability services if a recipient of refugee cash assistance is employed at least 30 hours a week, provided that such services must not interfere with the recipient's job.

§ 400.79 Development of an employability plan.

(a) An individual employability plan must be developed for each recipient of refugee cash assistance who is not exempt under § 400.76 of this part.

(b) If such a plan has been developed by the resettlement agency which sponsored the refugee, or its designee, the State agency, or its designee, may accept this plan if it determines that the plan is appropriate for the refugee and meets the requirements of this subpart.

(c) The employability plan must—

(1) Be designed to lead to the earliest possible employment and not be structured in such a way as to discourage or delay employment or job-seeking;

(2) Contain a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee in relation to job openings in the area; and

(3) Enable the individual to meet the job search requirements of § 400.80 of this part.

Job Search Requirements

§ 400.80 Job search requirements.

(a) An employable recipient of refugee cash assistance must carry out a job search program beginning at any time required by the State. The State agency shall require such job search program to begin:

(1) No later than 6 months after the refugee entered the United States or

(2) At the time the refugee is determined eligible for refugee cash assistance if the refugee has completed at least 6 months in the United States at the time of such determination.

(b) Such job search program shall continue for at least 8 consecutive weeks and shall meet such requirements as the State agency determines appropriate, including the amount of time to be devoted to employer contacts per week or the number of employer contacts required per week.

(c) The State agency must determine and carry out the procedures it considers necessary to ensure that requirements for participation in job search are met.

Criteria for Appropriate Employability Services and Employment

§ 400.81 Criteria for appropriate employability services and employment.

The State agency or its designee must determine if employability services and employment are appropriate in accordance with the following criteria:

(a) The services or employment must meet the following criteria, or, if approved by the Director, the comparable criteria applied by the State in an alternative program for AFDC recipients:

(1) All assignments must be within the scope of the individual's employability plan. The plan may be modified to reflect changed services or employment conditions.

(2) The services or employment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health must be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health.

(3) The total daily commuting time to and from home to the service or employment site must not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case the round trip commuting time must not exceed the generally accepted community standards.

(4) When child care is required, the care must meet the standards normally required by the State in its work and training programs for AFDC recipients.

(5) The service or work site to which the individual is assigned must not be in violation of applicable Federal, State, or local health and safety standards.

(6) Assignments must not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin.

(7) Appropriate work may be temporary, permanent, full-time, part-time, or seasonal work if such work meets the other standards of this section.

(8) The wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market.

(9) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation. And

(10) No individual may be required to accept employment if:

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute; or

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he or she has membership may be deemed appropriate.

(11) In addition to meeting the other criteria of this paragraph, the quality of training must meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

(b) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, provided that such training: Is approved as part of the individual's employability plan by the State agency, or its designee; does not exceed one year's duration (including

any time enrolled in such program in the United States prior to the refugee's application for assistance); is specifically intended to assist the professional in becoming relicensed in his or her profession; and, if completed, can realistically be expected to result in such relicensing.

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless:

(1) The refugee is currently participating in a program *in progress* of on-the-job training (as described in § 400.154(c)) or vocational training (as described in § 400.154(e)) which meets the requirements of this part and which is being carried out as part of an approved employability plan; or

(2) The refugee is enrolled full-time in a professional recertification program which meets the requirements of paragraph (b) of this section.

Failure or Refusal To Carry Out Job Search or to Accept Employability Services or Employment

§ 400.82 Failure or refusal to carry out job search or to accept employability services or employment.

(a) *Voluntary registrant.* When a voluntary registrant—i.e., a recipient of refugee cash assistance who is exempt from registration under § 400.76 of this part—has failed or refused to participate in appropriate employability services, to carry out job search, or to accept an appropriate offer of employment, the State agency, or its designee, may deregister the individual for up to 90 days from the date of determination that such failure or refusal has occurred, but the individual's cash assistance may not be affected.

(b) *Mandatory registrant*—(1) *Termination of assistance.* When, without good cause, a mandatory registrant—i.e., an employable recipient of refugee cash assistance who is not exempt from registration under § 400.76 of this part—has failed or refused to meet the requirements of § 400.75(a) or has voluntarily quit a job, the State must terminate assistance, in accordance with paragraphs (b)(2) and (3) of this section.

(2) *Notice of intended termination.* (i) In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the State agency must give timely and adequate notice, following the same procedures as those used in its AFDC program under § 206.10(a)(7) of this title.

(ii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

(B) Notice of the registrant's right to a hearing under § 400.83 of this part.

(3) *Sanctions.* (i) If the sanctioned individual is the only member of the filing unit, the assitance shall be terminated. If the filing unit includes other members, the State shall not take into account the sanctioned individual's needs in determining the filing unit's need for assistance.

(ii) The sanction applied in paragraph (b)(3)(i) of this section shall remain in effect for 3 payment months for the first such failure and 6 payment months for any subsequent such failure.

(iii) A conciliation period prior to the imposition of sanctions must be provided for in accordance with the following time-limitations: The conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.

§ 400.83 Hearings.

The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 205.10(a) of this title, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

Subpart G—Refugee Medical Assistance

§ 400.90 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee medical assistance (RMA), as defined at § 400.2 of this part.

§ 400.91 Definitions.

For purposes of this subpart—

"Medically needy" means individuals who are eligible for medical assistance under a State's approved Medicaid State plan in accordance with section 1902(a)(10)(C) of the Social Security Act.

"Spend down" means to deduct from countable income incurred medical expenses, thereby lowering the amount of countable income to a level that meets financial eligibility requirements in accordance with 42 CFR 435.831 (or, as applicable to Guam, the Virgin Islands, and Puerto Rico, 42 CFR 436.831).

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.93 Opportunity to apply for medical assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply for medical assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for medical assistance, the State agency must comply with regulations governing applications, determinations of eligibility, and furnishing Medicaid (including the opportunity for fair hearings) in the States and the District of Columbia under 42 CFR Part 435, Subpart J, and in Guam, Puerto Rico, and the Virgin Islands under 42 CFR Part 436, Subpart J, and 42 CFR Part 431 Subpart E.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for medical assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee medical assistance and Medicaid. For example, if a refugee applies for assistance, is determined ineligible for Medicaid but eligible for refugee medical assistance, the notice must specify clearly the determinations with respect both to Medicaid and to refugee medical assistance.

§ 400.94 Determination of eligibility for Medicaid.

(a) The State must determine Medicaid eligibility under its Medicaid State plan for refugees who apply for medical assistance.

(b) A State that provides Medicaid to medically needy individuals in the State under its State plan must determine a refugee applicant's eligibility for Medicaid as medically needy.

(c) A State must provide medical assistance under the Medicaid program to all refugees eligible under its State plan.

(d) If the appropriate State agency determines that the refugee applicant is not eligible for Medicaid under its State plan, the State must determine the applicant's eligibility for refugee medical assistance.

Conditions of Eligibility for Refugee Medical Assistance

§ 400.100 General eligibility requirements.

(a) Eligibility for refugee medical assistance is limited to those refugees who—

(1) Are ineligible for Medicaid but meet the financial eligibility standards under § 400.101;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Have not been denied, or terminated from, refugee cash assistance under § 400.82 of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part or a plan for an unaccompanied minor in accordance with § 400.112.

(b) A refugee may be eligible for refugee medical assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

(c) The State agency may not require that a refugee actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance.

(d) All recipients of refugee cash assistance are eligible for refugee medical assistance.

§ 400.101 Financial eligibility standards.

In determining eligibility for refugee medical assistance, the State agency must use—

(a) In States with medically needy programs under 42 CFR Part 435, Subpart D, the State's medically needy financial eligibility standards established under 42 CFR Part 435, Subpart I, and as reflected in the State's approved title XIX State Medicaid plan; and

(b) In States without a medically needy program, the State's AFDC need standards established under § 233.20(a)(2) of this title.

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraph (b) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must use—

(1) In States with medically needy programs, the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan; and

(2) In States without medically needy programs, the standards governing consideration of income and resources of AFDC applicants in § 233.20(a) (3) through (11) of this title, except as specified in § 400.61(a) of this part.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or resettlement agency in determining eligibility for and receipt of refugee medical assistance.

§ 400.103 Coverage of refugees who spend down to AFDC need standard.

In States without a medically needy program, if an applicant for refugee medical assistance does not meet the appropriate AFDC need standard, the State agency must allow that individual to spend down to the AFDC need standard using the methods for deducting incurred medical expenses set forth in 42 CFR 435.831(c).

§ 400.104 Transitional coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving refugee medical assistance becomes ineligible solely by reason of increased earnings from employment, the refugee's medical assistance eligibility shall be extended by a period of four months or until the refugee reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b), whichever comes first.

Scope of Medical Services

§ 400.105 Mandatory services.

In providing refugee medical assistance to refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program, as delineated in 42 CFR Part 440.

§ 400.106 Additional services.

If a State or local jurisdiction provides additional medical services beyond the scope of the State's Medicaid program to destitute residents of the State or locality through public facilities, such as county hospitals, the State may provide to refugees who are determined eligible under §§ 400.94 or 400.100 of this part the same services through public facilities.

§ 400.107 Health assessments.

(a) As part of its refugee medical assistance program, a State may provide a health assessment to a refugee provided—

(1) The assessment is in accordance with requirements prescribed by the Director, or his or her designee; and

(2) Written approval for the assessment program or project has been provided to the State by the Director, or designee.

(b) If such assessment is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under §§ 400.94 or 400.100 of this part.

Subpart I—Refugee Social Services

§ 400.140 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(c) of the Act for refugee social services.

§ 400.141 Definitions.

For purposes of this subpart—

"Refugee social services" means any title XX social service as defined below or any service set forth in §§ 400.154 or 400.155 of this subpart.

"Title XX social services" means any service which is permissible in the State under the State's annual pre-expenditure report under title XX of the Social Security Act.

Applications, Determinations of Eligibility, and Provision of Services

§ 400.145 Opportunity to apply for services.

(a) A State must provide any individual wishing to do so an opportunity to apply for services and determine the eligibility of each applicant.

(b) Except as otherwise specified in this subpart, a State must determine eligibility for and provide refugee social services specified in §§ 400.154 and 400.155 in accordance with the same procedures which it follows in its social service program under title XX of the Social Security Act with respect to determining eligibility, acting on applications and requests for services, and providing notification of right to a hearing.

Funding and Service Priorities

§ 400.146 Use of funds.

(a) If a State's dependency rate, as defined in paragraph (b) of this section, is 55 percent or more, as determined by the Director, the State must use at least 85 percent of its social service grants to

provide employability services as set forth in § 400.154 of this subpart. This limitation shall not apply if the annual social services plan which the Director receives from the State, in accordance with § 400.11(b)(2) of this part, was established by or in consultation with local governments, and the Director determines that the plan provides for the maximum appropriate provision of employability services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

(b) "Dependency rate" means the result of the following calculation:

(1) The number of refugees receiving cash assistance funded in whole or in part under this part,

(2) Divided by the Director's estimate of the State's population of refugees who have been in the United States less than the number of months for which funding for cash assistance is provided under this part, and

(3) Multiplied by 100.

§ 400.147 Priority in provision of services.

(a) A State must plan its social service program and allocate its social service funds in such a manner that an appropriate portion of funds, based on population and service needs, as determined by the State, is used to provide services to newly arriving refugees and to other refugees who have been in the United States less than one year. The portion proposed for such use must be specified and justified as part of the State's plan under § 400.11(b)(2) of Subpart B.

(b) In providing employability services, a State must give priority to a refugee who is receiving cash assistance which is funded, in whole or in part, under this part.

(c) If a State intends to provide services to refugees who have been in the United States for more than 36 months, the State must specify and justify, as part of its plan under § 400.11(b)(2) of Subpart B, the portion of service funds which it proposes to use to provide services to those refugees.

Purchase of Services

§ 400.148 Purchase of services.

A state may provide services directly or it may purchase services from public or private service providers.

Conditions of Eligibility for Refugee Social Services

§ 400.150 General eligibility requirements.

Eligibility for refugee social services is limited to those refugees who—

(a) Meet immigration status and identification requirements in Subpart D of this part;

(b) Meet the other eligibility requirements and conditions in this subpart.

§ 400.152 Limitations on eligibility for specific services.

(a) A State may provide the social services defined in § 400.154 to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, except that such a student may be provided services under § 400.154 (a) and (b) in order to obtain part-time or temporary (e.g., summer) employment while a student or full-time permanent employment upon completion of schooling.

(b) A State may provide the social services defined in § 400.155 to refugees without eligibility limitations, except for such limitations as may apply to title XX services provided under § 400.155(h).

Scope of Refugee Social Services

§ 400.153 Title XX social services.

A State may provide the same services in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.154 Employability services.

A State may provide the following employability services—

(a) *Employment services,* including development of an individual employability plan, world-of-work and job orientation, job clubs, job workshops, job development, referral to job opportunities, job search, and job placement and followup.

(b) *Employability assessment services,* including aptitude and skills testing.

(c) *On-the job training,* when such training is provided at the employment site and is expected to result in full-time, permanent, unsubsidized employment with the employer who is providing the training.

(d) *English language instruction,* with an emphasis on English as it relates to obtaining and retaining a job.

(e) *Vocational training,* including driver education and training when provided as part of an individual employability plan.

(f) *Skills recertification,* when such training meets the criteria for appropriate training in § 400.81(b) of this part.

(g) *Day care,* when necessary for participation in an employability service or for the acceptance or retention of employment.

(h) *Transportation,* when necessary for participation in an employability service.

(i) *Translation and interpreter services,* when necessary in connection with employment or participation in an employability service.

(j) *Case management services,* as defined in § 400.2 of this part, for refugees who are considered employable under § 400.76 and for recipients of AFDC and GA who are considered employable, provided that such services are directed toward a refugee's attainment of employment as soon as possible after arrival in the United States.

Note: Under circumstances specified in § 400.13(d), a State may, but is not required to, charge certain case managment services to its CMA grant rather than its social services grant.)

§ 400.155 Other services.

A State may provide the following other services—

(a) *Information and referral services.*

(b) *Outreach services,* including activities designed to familiarize refugees with available services.

(c) *Social adjustment services,* including:

(1) *Emergency services,* as follows: Assessment and short-term counseling to persons in a perceived crisis; referral to appropriate resources; and the making of arrangements for necessary services.

(2) *Health-related services,* as follows: Information; referral to appropriate resources; assistance in scheduling appointments and obtaining services; and counseling to individuals or families to help them understand and identify their physical and mental health needs and maintain or improve their physical and mental health.

(3) *Home management services,* as follows: Formal or informal instruction to individuals or families in management of household budgets, home maintenance, nutrition, housing standards, tenants' rights, and other consumer education services.

(d) *Day care,* when necessary for

participation in a service other than an employability service.

(e) *Transportation,* when necessary for participation in a service other than an employability service.

(f) *Translation and interpreter services,* when necessary for a purpose other than in connection with employment or participation in an employability service.

(g) *Case management services,* when necessary for a purpose other than in connection with employment or participation in employability services.

(h) *Title XX social services,* which may be provided in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.156 Limitations and restrictions.

(a) In order to avoid interference with refugee job search and employment, English language instruction and vocational training funded under this part must be provided to the fullest extent feasible outside normal working hours.

(b) In planning and providing services under §§ 400.154 and 400.155, a State must take into account those services which a resettlement agency is required to provide for a refugee whom it sponsors and not duplicate the provision of such services to such refugee.

8. Section 400.206 is added in Subpart J to read as follows:

§ 400.206 Federal funding for social services.

Federal funding is available for refugee social services as set forth in Subpart I of this part, including the reasonable and necessary identifiable administrative costs of providing such services, in accordance with allocations determined by the Director.

9. A new § 400.220 is added in Subpart J to read as follows:

§ 400.220 Counting time-eligibility of refugees.

A State may calculate the time-eligibility of a refugee under this part in either of the following ways: (a) On the basis of calendar months, in which case the month of arrival in the United States must count as the first month; or (b) on the basis of the actual date of arrival, in which case each month will be counted from that specific date.

[FR Doc. 89-2197 Filed 2-2-89; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[FCC 88-359]

Modification of Space Station Authorizations of GE American Communications, Inc.; Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; policy statement.

SUMMARY: This action disposes of a modification request made by GE American Communications, Inc. (GE) seeking authority to operate its 12/14 GHz K-3 satellite from 85° W.L. with transponders capable of operating either with 27 MHz or 54 MHz of usable bandwidth with 60 watt instead of 45 watt traveling wave tube amplifiers. This Order establishes the creation of a bifurcated orbital arc segment to which higher power density satellite such as the K-3 satellite may be assigned. Specifically, the 75-79 W.L. and 132°-136° W.L. Segments are designated as the high power density arc segments. However, because GE asserts it will not operate outside of the 85°-106° W.L. orbital arc, the FCC also denies GE's modification request to operate a high power density satellite at 85° W.L.

EFFECTIVE DATE: December 29, 1988.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon Jr. at (202) 634-1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in the matter of the applications of GE American Communications, Inc., File Nos. 1970-1971-DSS-MP/ML-86 and 1972-DSS-MP-86, adopted November 3, 1988 and released November 29, 1988.

The full text of this document is available for inspection and copying during normal business hours in the Domestic Facilities Division Public Reference Room (Room 6220), 2025 M Street NW., Washington, DC 20554. 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.

Summary of Memorandum and Opinion and Order

1. This order addresses reponses to the Commission's *Tentative Decision,* 53 FR 3056 (February 3, 1988) concerning the modification request of GE American Communications, Inc. (GE) to redesign and operate its K-3 satellite at 85° W.L. and redesign its K-4 ground spare satellite with 60 watt traveling wave tube amplifiers. This proceeding had its origins in 1986 when GE filed its modification request. Several satellite operators objected to the GE request, asserting that K-3's proposed operation would cause unacceptable interference into neighboring lower power density satellites. Because the affected operators and GE could not reach agreement, the Commission developed the proposal in the Tentative Decision which entailed establishing an orbital arc segment from 87°-93° W.L. to which high power density satellites could be assigned. Consequently, this meant that Satellite Transponder Leasing Corporation's SBS-4 was to be relocated from 91° W.L. to 85° W.L. The Commission also proposed to require adjacent satellite cross-polarization and to space the 12/14 GHz satellites in the high power density arc with 1.5° separations to increase the number of satellites that could be accommodated.

2. Generally, the Tentative Decision commenters expressed reservations regarding the tentative proposal. The comments can be grouped into three categories: (1) Those that oppose the proposal because it requires relocating SSB-4, (2) those that specifically oppose the use of the 87°-93° W.L. arc because they believe that it precludes the operation of traditional lower power density satellites and services from a prime orbital arc segment, and (3) those that support the concept or arc segmentation but not the Commission's proposal to impose 1.5° separation within the high power density segment.

3. In light of these comments and a change in circumstances since the Tentative Decision—i.e., the relinquishment of several domestic satellite licenses in the past several months—the Commission adopts an approach suggested by several of the commenters. Specifically, in this order, we designate an eastern segment at 75°-79° W.L. and a western segment at 132°-136° W.L. as the high power density arcs. Because GE asserts it will not operate its K-3 satellite outside of the 85°-106° W.L. orbital arc, we deny GE's modification request to operate a high power density satellite at 85° W.L. SBS-4 can therefore remain at its current 91° W.L. location. Finally, the Commission maintains 2° separations in the high power density arc segment and therefore will not require adjacent high power density 12/14 GDz satellites to be cross-polarized.

Order Clauses

4. Accordingly, it is ordered that GE American Communication, Inc.'s request to modify the technical parameters of its Satcom K–3 and K–4 satellites, Application File No. 1970–DSS–MP/ML–86, is denied.

5. It is further ordered that Application File No. 1971–DSS–MP/ML–86 is granted and GE American Communications, Inc. is authorized to offer all the transponders on its Satcom K–3 satellite on a non common carrier basis.

6. It is further ordered that Application File No. 1979–DSS–MP–86 is granted and the schedule for implementation of the Satcom K–3 satellite specified in RCA American Communications, Inc., 94 FCC 2d 441 (1983), is modified as follows:

SATCOM K–3—

Construction completed, April 1989.

Launch no later than October 1989.

7. It is further ordered that Assignment of Orbital Locations, 50 FR 35228 (August 30, 1985), as modified in Comsat General Corporation, 2 FCC. Rcd 4570 (1987) and Comsat General Corporation, 3 FCC Rcd 4071 (1988), is modified to reassign the GSTAR III satellite from 136° W.L. to 124° W.L. effective 30 days from the release of this Order.

8. It is further ordered that the orbital assignment policies regarding the establishment of a bifurcated high power density arc described herein are adopted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–2454 Filed 2–2–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 219

Department of Defense Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program; Correction

AGENCY: Department of Defense.

ACTION: Interim rule and request for comments; correction.

SUMMARY: This document corrects an interim rule on Small Business Competitiveness Demonstration Program which was published in the **Federal Register** on Friday, January 27, 1989 (54 FR 4246). The action is necessary to make technical corrections to reporting requirements contained in the rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretry, DAR Council, (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Part 204 as follows:

PART 204—ADMINISTRATIVE MATTERS

1. On page 4246, section 204.671–5 is corrected by designating in paragraph (e) the introductory text in unlettered paragraph "Item E2" as paragraph (i), adding a sentence to the designated paragraph (i) and adding paragraphs (ii) through (iv); by revising in paragraph (e) the unlettered paragraph "Code Y" of the unlettered paragraph "Item E2"; by changing in pargraph (e) in the table of Codes following the text in the unlettered paragraph "Item E3" Code F between Code F and Code M to read "Code G"; by adding in paragraph (e) in the first sentence of the unlettered paragraph "Item E4" between the word "the" and the word "designated" the word "four"; and by adding in paragraph (e) in the unlettered paragraph "Code Y" in the unlettered paragraph "Item E4" between the word "contractor" and the word "is" the words "represents that it"; to read as follows:

204.671–5 Instructions for Completion of DD Form 350.

* * * * *

Item E2, Small Business Competitiveness Demonstration Program Test.

(i) The Small Business Competitiveness Demonstration Program is set forth in FAR 19.10. Supplies and services subject to the program are set forth in FAR 19.1005, as supplemented (see 219.1005(b)).

(ii) If Item B–13 is coded 1 through 4, or A, code this item in accordance with the instructions below.

(iii) If Item B–13 is coded 5 or B through G, code this item with the same code used to report the original contract governing this action.

(iv) If Item B–13 is coded 6, 7, or 8, use Code N.

Code Y—Enter this code for any action awarded to a U.S. business concern under the Small Business Competitiveness Demonstration Program for either the four designated industry groups or the ten targeted industry categories.

204.672–5 (Corrected)

2. On page 4247, the amendatory language in paragraph 5 is corrected by substituting at the end of the text the words "most appropriate subline." in lieu of the words "code which is appropriate for the set-aside methods used."

3. On page 4247, section 204.675–3 is corrected by revising the first sentence of paragraph (b) to read as follows:

204.675–3 Instructions for Completion of the DD Form 350.

* * * * *

(b) Leave Items B4, B5B, B5E, B5F, B5G, B10, B11, B12B, B12C, C4, C6, C11, C12, D2, D3, D4E, D5, D7, D8, and E1 blank. * * *

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

4. On page 4247, section 219.1071 is corrected by substituting in the first sentence of paragraph (a) between the word "the" and the word "at" the word "provision" in lieu of the word "clause"; by substituting in paragraph (b)(1) between the word "the" and the word "at" the word "provision" in lieu of the word "clause".

[FR Doc. 89–2505 Filed 2–2–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–98, Amdt. 192–60A]

[RIN 2137–AB19]

Exception From Pressure Testing; Non-Welded Tie-In Joints

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: RSPA has received 16 petitions for reconsideration of a final rule requiring leak testing of welded joints that tie in pressure-tested segments of pipeline. RSPA is persuaded by the petitions that because these joints are generally subject to nondestructive testing and because the need for leak testing has not been adequately demonstrated, the requirement lacks an adequate safety basis. Therefore, RSPA is deleting the requirement from the rule.

EFFECTIVE DATE: This final rule takes effect as of October 17, 1988, the effective date of the original final rule.

FOR FURTHER INFORMATION CONTACT: Bernard Liebler, (202) 366–2392, regarding the content of this notice.

SUPPLEMENTARY INFORMATION: RSPA recently published a final rule (53 FR 36028, September 16, 1988) excepting from the pressure test requirements of Subpart J non-welded joints that tie in pressure tested segments of pipeline, provided such tie-in joints are leak tested at not less than the operating pressure of the pipeline (Amendment 192–60; 53 FR 36028, September 16, 1988). Amendment 192–60 also imposed the leak test requirement on similar welded tie-in joints. Until Amendment 192–60 was published, welded joints used to tie in pressure-tested segments of pipeline were excepted from all of the pressure test requirements of Subpart J. Believing that leak testing of both welded and non-welded tie-in joints is a simple, prudent, and common safety procedure, RSPA adopted the requirement for leak testing welded tie-in joints without opportunity for public comment.

Fourteen operators and two trade associations have petitioned RSPA to reconsider and withdraw the requirement to leak test welded tie-in joints. The petitioners contend that all welded tie-in joints are nondestructively tested, and such testing of a joint should obviate the need for a leak test. They assert further that leak testing would be both costly and impractical, because contrary to usual practice, the joint would have to be left uncovered after construction for an indefinite time until the line is pressurized. They also argue that it was improper to have adopted the requirement to leak test welded tie-in joints without notice or opportunity for comment by interested parties.

RSPA recognizes that nondestructive testing of a welded tie-in joint provides greater assurance that the joint will not leak than a leak test at operating pressure. However, under § 192.241(b) welded tie-in joints may be placed in service without nondestructive testing on certain low stress level lines and in certain cases where the weld is approved by a qualified welding inspector. Although the petitions indicate many operators may voluntarily be nondestructively testing these joints, RSPA does not have data that demonstrate a need for leak testing such joints in the absence of nondestructive testing.

Given the superiority of nondestructive testing and the lack of information indicating a need to leak test those welded tie-in joints that are not nondestructively tested, it appears now that there was not an adequate safety basis to require leak testing of welded tie-in joints. Furthermore, on reconsideration, RSPA believes that it should not have issued the requirement without prior notice and an opportunity for public comment. Therefore, RSPA grants the petitions and by this document is modifying § 192.503(d) to remove welded tie-in joints from the leak test requirement.

Several petitioners also noted some confusion regarding the requirement to leak test tie-in joints "at not less than * * * operating pressure," since the term "operating pressure" is not defined in Part 192. The intent is to require a leak test at the pressure at which the operator intends to place the pipeline into service, even though this pressure may be below the MAOP of the pipeline or a future operating pressure of the same pipeline.

Impact Assessment

This final rule is considered to be nonmajor under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since welded tie-in joints were not previously required to be leak tested, the rule will have a minimal effect on the economy, and further evaluation of this effect is unnecessary. Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities. RSPA has analyzed this action in accordance with the principles and criteria contained in E.O. 12612, and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment. Because this rule change in response to petitions for reconsideration removes a requirement established without adequate procedure and returns welded, tie-in joints to their prior status under § 192.503(d), notice and public procedures are unnecessary, and the change may be issued as final.

List of Subjects in 49 CFR Part 192

Pipeline safety, Test, Tie-in, Joint.

In view of the foregoing, RSPA amends 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; and 49 CFR 1.53.

2. Section 192.503(d) is revised to read as follows:

§ 192.503 General requirements.

* * * * *

(d) Each joint used to tie in a test segment of pipeline is excepted from the specific test requirements of this subpart, but each non-welded joint must be leak tested at not less than its operating pressure.

Issued in Washington, DC, on January 31, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–2541 Filed 2–2–89; 8:45 am]

BILLING CODE 4910–60–M

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. RSOR–10, Notice No. 2]

RIN 2130–AA55

Prohibiting Tampering With Safety Devices

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending its existing rules concerning railroad operating practices to prohibit tampering with safety devices and operational monitoring devices installed on locomotives. The amendments also make it unlawful to operate any train on which safety devices have been unlawfully disabled. FRA is issuing this final rule to deter the disabling of safety devices because of the grave risks posed by disabled devices on trains.

EFFECTIVE DATE: This rule becomes effective March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Historical Background

There are approximately 25,000 locomotives in service on the nation's railroads. Many are equipped with one or more devices intended either to record data concerning the unit's operation or to directly improve the safety of its operation. Within this latter category of devices, the range of equipment extends from devices designed to audibly alert a person at the controls to changing conditions to

devices that automatically impose sanctions if the operator fails to take appropriate responsive action. FRA has historically exercised some degree of regulatory control over nearly all of the presently available devices under the provisions of either its locomotive safety standards or its signal safety standards.

Public attention focused on the tampering issue when, during the investigation of the January 4, 1987, Amtrak/Conrail accident at Chase, Maryland, FRA found evidence indicating that the effectiveness of a critical safety device installed on the Conrail locomotive had been impaired. An alerter whistle, designed to warn the operator of a need to respond to a more restrictive signal aspect, had been muted by the use of tape. In FRA's view, disabling of the alerter whistle was a principal cause of that tragedy.

Chase was not the only recent accident in which there is reason to suspect that the disabling of a critical safety device was a causal factor. On February 8, 1986, a collision occurred at Hinton, Alberta, in which a Canadian National freight train struck a VIA Rail passenger train. The Canadian Transport Commission report of investigation contains information suggesting there is evidence to support a conclusion that a "deadman pedal" on the freight train failed to function, because it had been improperly nullified. On March 21, 1988, two Chicago & North Western freight trains collided at Dixon, Illinois. In this accident there is preliminary evidence to suggest that one of the automatic train control devices had been improperly nullified.

Following discovery of the taped whistle at Chase, FRA initiated several nationwide spot checks to determine whether the evidence found at Chase represented an isolated instance or a widespread problem. During those inspections, FRA inspectors reported more than 100 instances in which they found evidence of deliberate action to negate the proper functioning of one of the identified safety devices.

Initial Response to the Problem

These findings prompted FRA to initiate civil penalty action in approximately 70 cases and to make its preliminary information available to Congress, which was then considering adoption of rail safety legislation. The following is a summary of what occurred in both contexts.

Those inspectors who had observed instances of what they believed to be "tampering" reduced their observations to writing and filed violation reports with FRA's Office of Chief Counsel recommending assessment of civil penalties against the relevant railroads. Subsequent detailed review of the reports led FRA to conclude that some 70 observations warranted further action because the available evidence supported a conclusion that FRA could establish at least a prima facie case of noncompliance with an FRA rule.

In each of these instances, FRA instituted legal action to impose a civil penalty against the railroad that had operated or permitted to be operated a locomotive with a device in noncompliance with its existing rules. Since, at that time, FRA lacked authority to impose any sanctions against an individual for either operating a train with a disabled device or actually disabling the device, FRA took the indirect approach of holding the principal, the railroad, responsible for the conduct of its employees and relied on the railroad to take disciplinary action against the individual.

Concluding that FRA's legal authority to respond to such situations should be enhanced, Congress passed the Rail Safety Improvement Act of 1988 granting FRA enforcement authority over individuals. With that authority, FRA can now assess civil penalties against individuals for willful violations of FRA rules. FRA has recently issued final rules and a policy statement detailing the manner in which it will implement this new civil penalty authority. These changes became effective on January 1, 1989. (See the December 29, 1988 and July 28, 1988, issues of the **Federal Register**; 53 FR 52918 and 53 FR 28594.)

The Subsequent Response

Section 21 of the RSIA requires that FRA adopt regulations addressing three related but distinct aspects of the problem. It requires that FRA make it unlawful for (i) any individual to willfully tamper with or disable a device; (ii) any individual to operate or permit to be operated a train with a tampered or disabled device; and (iii) any railroad to operate such a train. FRA recently published in the **Federal Register** an NPRM proposing to explicitly prohibit tampering with locomotive mounted safety devices. See the August 31, 1988 issue of the **Federal Register** (53 FR 33786).

Commenter Views

In response to that notice, FRA received written views from the Railway Labor Executives Association (RLEA), the Brotherhood of Locomotive Engineers (BLE), the Association of American Railroads (AAR), the Consolidated Rail Corporation (Conrail), the Monongahela Railway Company (MGA), the Railway Progress Institute (RPI), and the National Railroad Passenger Corporation (Amtrak). In addition, FRA held a public hearing on September 8, 1988 and received oral statements concerning this proposal. Significant changes to the proposed rule have been made in response to these views and comments.

While condemning individuals who act to unlawfully nullify the effect of locomotive-mounted safety devices, commenters voiced concern over several aspects of the proposed rule. These concerns can generally be grouped under three headings: (1) What equipment should be covered by this rule? (2) how does the proposed rule relate to FRA's existing locomotive and signal regulations? and (3) what actions to determine the functional status of such devices are necessary to comply with this rule?

(1) Scope of the Rule Concerns

Since many locomotives are equipped with one or more devices intended either to directly improve operational safety or to record data concerning the unit's operation, FRA proposed to employ a functional description for the devices covered by the rule. FRA explained in the NPRM that the described category included equipment ranging from devices designed to audibly alert a person at the controls concerning changing conditions to devices that automatically impose sanctions if the operator fails to take appropriate responsive action. FRA stated that the devices of concern in this proceeding include equipment known as "event recorders," "alerters," "deadman controls," "automatic cab signals," "cab signal whistles," "automatic train stop equipment," and "automatic train control equipment."

Two commenters expressed the concern that a functional description could permit the universe of devices to be interpreted so broadly as to include such items as fans used to circulate air within the locomotive cab or interior cab lighting. One commenter suggested that FRA specify the types of devices covered by this rule, rather than using a functional definition, and furnished a list of devices for consideration. That list included several kinds of equipment that clearly fall outside the announced scope of this rulemaking, including radios and traditional audible warning devices such as airhorns and bells.

A major concern for many commenters was FRA's proposal to cover event recorders in this rule. Several commenters urged that FRA delay implementation of any rule on

event recorder tampering until FRA conducts its separate regulatory examination of whether rules requiring event recorders are necessary. Commenters argued that some new locomotives are being equipped with computerized diagnostic capabilities intended to aid in maintaining these units. To the degree that such computers store data about a locomotive's performance, they could be considered "event recorders" even though the data may relate to fuel consumption or engine cylinder temperatures. A more pressing problem in the eyes of the commenters was how an individual would inspect a recording device to determine that it was functioning. The testimony suggested that the design and installation of some recorders simply will not permit anyone other than a skilled technician to ascertain whether it is functioning. At least one commenter suggested that FRA could create a disincentive to the continued installation of event recorders if it issues a rule containing onerous requirements concerning such recorders.

(2) Relationship of This Proposal to Existing Rules

After reviewing the comments, FRA believes that much of the concern over this aspect of the current proposal was caused by misunderstanding or misinterpretation of both FRA's existing rules and FRA's proposal to prohibit tampering. These provisions must address three distinct situations: (1) Where a device is inoperative because FRA permits it to be deactivated; (2) where the device is inoperative because it is defective; and (3) where the device is inoperative because it has been tampered with. FRA's existing rules concerning locomotives and signal systems already address the first two situations, and this proceeding addresses the third.

Although nothing in FRA's proposal suggested altering the existing regulatory schemes, many commenters expressed concern that FRA's proposal appeared to ignore legitimate occasions when functional devices should be deactivated. In several instances, this concern was coupled with concern and apparent misunderstanding of the liability of individuals for noncompliance with the inspection or remedial action provisions of the existing rules.

(3) Actions Required for Compliance

Commenters expressed concern that FRA's proposal for identifying when culpability should attach or commence for subsequent operators of disabled devices was not practical. The commenters apparently believe that under FRA's proposal they would either have to accept significant delays for train operations, while trains crews examined the devices, or they would have to devise and implement ways to seal such devices so as to preclude tampering.

FRA's Final Rule

(1) Identification of Devices

FRA is responding to commenter concern over proper identification of the devices that are within the scope of this rule in several ways. First, FRA is moving the definitional language that identifies the devices to the section on scope and purpose. FRA is retaining the functional description originally proposed because that wording effectively identifies existing equipment and is sufficiently expansive to cover equipment that may appear in the future (particularly those associated with advanced train control systems currently undergoing research testing). The latter consideration is an important one; it would clearly serve no public purpose to require this agency to conduct new regulatory proceedings every time a new warning or monitoring device appears on the market. FRA disagrees with commenter arguments that this definition is so broad and ambiguous as to be confusing. However, for clarity, FRA has specified in the preamble the equipment that it considers to be within the scope of this rule, along with examples of the type of equipment that is not covered. In addition, FRA is ready and willing to respond in writing to any inquiry about any other devices.

Normally, FRA would only place illustrative examples in the preamble to a rule, since that is sufficient for resolving future interpretive questions. In this instance, FRA has decided to include such illustrations in an Appendix B to this rule to aid both comprehension and compliance.

For reader convenience, it should be noted that FRA has not, at this time, included the following equipment within the coverage of this rule: Monitors for end-of-train devices; bells or whistles that are not connected to alerters, deadman pedals, or signal system devices; fans for controlling interior temperature of locomotive cabs; and locomotive performance monitoring devices, unless they record data such as train speed and air brake operations. Radios have not been included in this proceeding because they are the subject of a parallel proceeding now in process.

Although such devices are beyond the scope of the proceeding, this does not imply that FRA condones the disabling of these devices. It is simply a reflection of the fact that the record does not disclose any history of tampering with these particular devices. FRA will not hesitate to include such devices should instances of tampering be discovered.

(2) Relationship of This Proposal to Existing Rules

After reviewing the comments, FRA believes that much of the concern over the current proposal was caused by misunderstanding or misinterpretation of both FRA's existing rules and FRA's proposal to prohibit tampering. FRA's regulatory program must address three distinct situations: (i) Where a device is inoperative because FRA permits it to be deactivated; (ii) where the device is inoperative because it is defective; and (iii) where the device is inoperative because it has been tampered with. FRA's existing rules concerning locomotives and signal systems already address the first two situations, and this proceeding addresses the third. Because these rules have complementary, yet slightly different, purposes and distinct underlying legal bases, they contain different standards of culpability for corporations and individuals reflecting the relative responsibilities of each group.

(i) Permissible Deactivation of Functional Devices

When FRA permits a functional device to be inoperative, there is no issue of corporate or individual liability, provided the conditions placed by FRA on the use of the locomotive containing the deactivated device are met. Current FRA rules permit safety devices connected to the signal system to be deactivated (i.e., "cut-out") in several instances. For example, FRA permits a locomotive not being used as the controlling locomotive to operate with its automatic train control system deactivated, even though that unit is operating in automatic train control territory. Similarly, FRA permits the deactivation of on-board signal equipment, such as cab signals, when the locomotive is operating in territory that is not equipped with the roadbed infrastructure necessary to operate them. By waiver, FRA also permits deactivation of locomotive-mounted signal equipment during some switching operations.

Alerters, deadman controls, and event recorders are not currently mandated by FRA. However, when installed, they are subject to the locomotive safety standards under the provisions of § 229.7 because they are

"appurtenances" under both that section and the underlying statute. Consequently, such devices, when present, must be in proper condition and safe to operate.

Nothing in FRA's proposal or this final rule alters these existing regulatory schemes. Commenter concerns that FRA's proposal appeared to ignore legitimate occasions when functional devices should be deactivated are therefore essentially misplaced. Because of the expressed concern, however, FRA has made changes to the final rule to clearly sanction deactivation of alerters, deadman pedals, and event recorders in appropriate circumstances. FRA's action to allay such concerns is discussed more extensively in the section-by-section analysis.

(ii) Defective Devices

Although FRA's rules essentially require that these safety devices be in proper condition, the rules also recognize that such equipment occasionally becomes inoperative for reasons that have nothing to do with human intervention. The NPRM in this proceeding did not propose any change in the provisions concerning that eventuality. If an alerter, deadman control, or event recorder is found to be defective, the locomotive may be moved in accordance with § 229.9. Essentially, § 229.9 provides that if the defective condition is discovered during the daily inspection required by 229.21, the defective locomotive can be moved to a repair facility only as a lite locomotive or dead in the train. Such movement must be preceded by a qualified person's determination that it is safe to move the unit. If the defect is discovered while the locomotive is enroute, the defective unit can remain in service for a limited period, provided that a similar determination is made prior to permitting continued use of the locomotive.

FRA's signal rules contain an analogous structured response to defective equipment. A locomotive with a defective automatic cab signal system, automatic train stop, or automatic train control system can be moved to a repair facility as a non-controlling unit when the defect is discovered during the daily or predeparture inspection. Defects encountered enroute can be moved under § 236.567, which requires a determination by a qualified person that it is appropriate to continue the movement with the imposition of operational safeguards to compensate for the defective condition. These existing rules for the movement of defective equipment have not been modified by the current rulemaking.

With the enactment of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342) (RSIA), individuals as well as railroad companies became responsible for such defective equipment. The RSIA amended the penalty provisions of the railroad safety statutes to make them applicable to any "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)" who fails to comply with the regulations or statutes (e.g., section 3 of the RSIA amending section 209 of the Federal Railroad Safety Act of 1970).

The RSIA provides that civil penalties may be assessed against individuals, but "only for willful violations." Since both the locomotive and signal rules were originally written to impose requirements only on railroads, FRA amended those rules effective August 1, 1988, to make clear that any individual who willfully violates their requirements may be held liable for a civil penalty. In addition, FRA recently amended all of its safety regulations to reflect the initial assessment amounts for violations of specific regulations. (See the December 29, 1988 and July 28, 1988, issues of the **Federal Register**; 53 FR 52918 and 53 FR 28594) .

This final rule does not effect the liability of individuals for noncompliance with the inspection or remedial action provisions of the existing rules. Moreover, no question of corporate or individual liability will arise if defective equipment is handled in accordance with FRA's existing rules for remedial action.

If an undetected defective condition existed or if a defective locomotive were not being operated in compliance with FRA provisions for moving defective equipment, FRA would have to be able to prove that the individual involved was acting "willfully" before it could establish liability for a civil penalty. Prior to any discussion of what that term means in this context, it is necessary to point out that action to seek the imposition of civil penalties against an individual is only one of a number of steps an inspector could take to ensure compliance. Inspectors have a wide array of options, ranging from issuance of informal warnings, to initiation of a civil penalty action against an individual, to recommending that FRA pursue a disqualification proceeding. As has traditionally been the case with respect to acts of noncompliance, FRA field inspectors will exercise discretion in deciding which situations call for a civil penalty assessment as the best method of ensuring compliance.

If an inspector decides to recommend institution of a civil penalty action against an individual, FRA will have to determine the threshold question of whether that alleged violation was "willful." FRA has previously published an extensive discussion of what it considers to be a "willful" violation. (53 FR 52918, December 29, 1988). With respect to FRA's existing rules, simple negligence cannot support a finding of a "willful" violation. The misgivings expressed by several commenters appear to stem from a misunderstanding on this point.

(iii) Prohibiting Tampering

FRA's proposal in this proceeding was designed to address the situation in which an individual acts to impair or nullify a functional safety device that cannot permissibly be rendered inoperative. In order to deter such action, FRA proposed to (a) make it unlawful for any person to tamper with such devices; (b) make it unlawful for subsequent operators of locomotives to ignore the impaired devices; and (c) make it unlawful for railroads to operate trains hauled by locomotives with such impaired devices. Reflecting the provisions of section 21 of the RSIA, FRA is adopting regulations addressing the three related but different aspects of the problem by employing three different standards of culpability.

Many commenters apparently read FRA's proposal as overriding its existing regulations permitting functional devices to be rendered inoperative in appropriate circumstances as well as those that sanction limited use of a locomotive when it develops a defect while enroute. As previously noted, that is not the case. Similarly, at least two commenters concluded that one aspect of FRA's proposal, designed to ensure that train crew members would have a reasonable opportunity to determine the status of their equipment, would implicitly require a new set of inspections and testing that would be in addition to those currently required by FRA rules.

Several commenters suggested that FRA devise a way to authorize people to approve decisions to render devices inoperative and then make instances in which unauthorized action was taken the subject of regulatory sanctions. While this approach has some appeal, it contains serious limitations. It would require that the FRA identify those who will have such power and it would demand either some form of written evidence that authority had been granted or a mechanism for resolving disputes about whether such authority had been granted. Furthermore, it introduces a degree of ambiguity into a

situation that cries out for clarity and precision.

FRA has decided to take the essence of the commenters' suggestions and reorient the rule to clearly identify the situations that serve to "authorize," by operation of law, action that renders such devices inoperative. Restructuring the rule, to reflect the fact that there are lawful reasons why a functional device might have been rendered inoperative and why a locomotive with a defective device might still be in service, requires that FRA significantly reformat this subpart and substantially modify the proposed wording of nearly every section. For example, since there are some unique reasons why alerters, deadman pedals, and event recorders might be legitimately rendered inoperative, and since these reasons are not currently evident on the face of FRA's locomotive regulations, FRA will state them in this rule, at least until the locomotive rules are revised. The definitional approach originally proposed by FRA becomes both unworkable and redundant under this approach for resolution of the commenters' concerns and has been deleted from the final rule.

(3) Actions Necessary to Comply With This Rule

The restructured rule addresses the third major issue raised by the commenters—the actions necessary to be reasonably assured of the functional status of such devices—through the addition of new Appendix. Although commenters urged that FRA consider sanctioning the use of locks or seals as indicative that safety devices guarded by such protective devices are not disabled, FRA has decided to employ a civil penalty enforcement policy, predicated on a showing of actual knowledge on the part of subsequent operators, to ameliorate concerns about the need to provide additional seals or inspections.

Section-by-Section Analysis

Section 218.51

FRA has renumbered, restructured, and reworded all of the proposed sections. The definitions that were proposed as additions to existing § 218.5 have not been adopted. The concepts they expressed have been incorporated in the altered language for the substantive provisions. Proposed § 218.101 has become § 218.51 in the final rule. Paragraph (a) of this section continues to address the purpose of this subpart, but paragraph (b) now contains the cross references to the other FRA rules that sanction deactivation of these safety devices. It is this provision that directly responds to commenter confusion over whether FRA was indirectly abolishing the substantive provisions of its rules, particularly its signal rules.

It should be noted that FRA has included in paragraph (b) a parallel notification requirement to that found in § 236.567 of the signal rules for enroute equipment failures. Under paragraph (b), when an alerter, deadman pedal, or event recorder becomes defective enroute, it will be necessary to notify a designated person of that condition in the same manner that is required for enroute failures of signal equipment in order to make such deactivation "lawful" for the purpose of this rule.

Section 218.53

Section 218.53 in the final rule essentially contains the same wording FRA proposed in paragraph (b) of proposed § 218.101. As noted earlier, although FRA has retained the functional definition it originally proposed, it has responded to commenter concern by illustrating in its Appendix on enforcement policy the types of devices intended to be included and excluded by the definition. Although FRA does not normally include such examples, it has done so here for the convenience of the regulated community.

Section 218.55

Section 218.55 contains the basic prohibition against tampering that FRA proposed to have in § 218.103. This section now contains an additional paragraph to more precisely identify the prohibited conduct. Section 218.55 contains the substantive provision that addresses the first of the statutory objectives: Prohibiting conduct that nullifies the effectiveness of these safety devices. It is structured to preclude all actions or inactions that would result in a device's not functioning as intended, such as removing recording tapes from event recorders, taping alerter whistles so as to mute them, unplugging or disconnecting wires that result in signal-related devices not activating brake systems, or not activating a device when activation was required by FRA regulation.

This provision contains the statutory formulation of culpability for such conduct: An individual must be engaged in "willful" conduct before liability for a civil penalty can arise. As FRA previously stated in its policy statement (see the July 28, 1988 issue of the **Federal Register**), FRA considers a "willful" act to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or with reckless disregard for whether the act violated the requirements of the law. Accordingly, a showing of neither evil purpose (as is sometimes required in criminal law) nor actual knowledge of the law is necessary before FRA can prove that the conduct constitutes a violation. However, a level of culpability higher than simple negligence must be demonstrated. In summary, to assess a civil penalty, FRA would need proof that the individual had intended to disable one of these devices, had acted voluntarily, had in fact disabled the device, and either had knowledge of the law or had recklessly disregarded the law.

This provision gives FRA an effective way to respond to those individuals who consciously place themselves and others at risk by defeating the very safety devices that were installed to improve the safety of all concerned. FRA anticipates that as a matter of policy it will seek to have the responsible individual disqualified from holding any safety-sensitive function if it encounters situations where there is clear evidence of tampering. The message that the individual is now placing his or her employment in railroad operations on the line, in addition to placing his or her life on the line by such conduct, should help deter such conduct in the future. FRA reserves the right both to disqualify those who willfully tamper with safety devices and to impose a civil penalty for such conduct.

Section 218.57

Section 218.57 is the most extensively changed section of FRA's original proposal. It contains a totally new approach to the concepts originally proposed in § 218.105 and the proposed definition, "operate a train." As restructured, § 218.57 addresses the second situation identified in the statute: Instances in which one individual has tampered with a device and a second individual knowingly operates a train or permits it to be operated, notwithstanding the presence of the disabled or tampered-with unit. The most common occurrence addressed by this provision is the situation in which a train crew encounters a locomotive with a safety device that has been tampered with prior to the crew's assuming responsibility for the locomotive.

Under the relevant statutory standard set forth in the RSIA ("knowingly operates or permits to be operated a train on which such devices have been tampered with or disabled by another person")—now incorporated into the regulatory wording of this provision—

individuals could be held to a simple negligence standard of conduct, i.e., a standard of reasonable care under the circumstances. FRA's conclusion about the proper interpretation of the word "knowingly" stems from both normal canons of statutory construction and analysis of decisional law concerning the use of similar statutory constructs in the civil penalty context. It is also consistent with other Departmental interpretations of the word as used in similar contexts. (See 49 CFR 107.299, defining "knowingly" under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 et seq.)

Under the statutory language, the responsible members of the crew could be culpable if either (1) due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or (2) having ascertained that the device was not functioning, still elected to operate the train. Similarly, railroad supervisors who permit or direct that a train with a disabled device be operated after having learned that the safety device is not functioning or after having failed to use reasonable care in the performance of their duties could also be subject to sanction.

However, as a matter of enforcement policy, application of a negligence standard in this particular context appears unwarranted. We have seen no evidence of an employee's negligent failure to detect another employee's tampering having caused a safety problem. Were a negligence standard applied, crew members would have an understandable sense of personal obligation to carefully examine each controlling locomotive in order to ascertain the condition of the safety devices, regardless of each employee's actual responsibility for the proper functioning of such devices or whether efficient operation of the railroad permits such an inspection. Such inspections take time and can have significant economic implications for both the train crew and the railroad. For example, when a relief crew boards a moving locomotive while the preceding crew alights, there is no practical opportunity for the relief crew to inspect the safety devices on the locomotive without seriously disrupting operations. There is no safety reason to require an inspection under such circumstances. The potential for substantial systemic operational delays occasioned by such inspections, which were clearly perceived by the commenters, could have the effect of impinging on a railroad's ability to offer competitive rail service.

FRA can effectively attack the known dimensions of the tampering problem by employing an enforcement policy that limits its enforcement actions to situations where individuals had actual knowledge of the disabled device and operated the train notwithstanding that knowledge. As explained in Appendix B, added by the final rule, FRA will not take enforcement action against an individual under § 218.57 absent a showing of such actual knowledge of the facts. However, should FRA receive evidence indicating that a stricter enforcement policy is necessary to address the tampering problem, it will revise its enforcement policy to permit enforcement actions based only on a showing of the individual's negligence, as the RSIA permits it to do now. Any such change in enforcement policy will become effective only after publication of a revised Appendix B.

In selecting this enforcement policy approach for resolving commenter concerns over this issue, FRA considered a restructuring of this provision that was directly based on commenter suggestions. But commenter recommendations would have created a regulatory structure that was based on two legal presumptions. The first of these would have employed an existing concept in FRA's signal rules that is relevant in this proceeding: the use of seals or locks. FRA currently requires the use of locks and seals under its signal rules to guard against unauthorized actions to cut out signal devices (see §§ 236.3 and 236.553). If such seals or locks are in place it is reasonable to infer that the equipment is in proper working order, at least until there is some evidence to the contrary. Some railroads have extended this practice to other equipment such as event recorders.

As suggested by the commenters, FRA considered building on this concept and creating a presumption that when an individual encounters a sealed or locked safety device the individual may infer that the sealed or locked device has not been tampered with. FRA rejected this approach because it had the indirect effect of requiring all railroads to retrofit all devices with such seals, something clearly not warranted by the known facts. Such an approach would also have required FRA to delay the effective date of the rule for a considerable period, which is not in the public interest.

The second presumption FRA considered was oriented toward providing individuals with an opportunity to determine that the safety devices have not been tampered with. Since there are operational practices described elsewhere that result in train crews commencing to operate a train with no opportunity to determine the status of equipment before the train gets underway, FRA considered prescribing the moment in time when the crew's responsibility for the condition of the devices would commence. FRA initially proposed to solve this dilemma by defining what would constitute "operating a train." The proposed definition contemplated that train crew responsibility would not arise until after operational events had dictated that an airbrake test be performed. Since such tests require that the train be stopped for a reasonable period of time, FRA believed that crewmembers in the controlling locomotive would have adequate opportunity to determine the condition of the safety devices. Several commenters construed this definition as requiring that additional brake tests be performed and vigorously objected to this proposal.

FRA also considered responding to commenter concerns by creating a presumption that unless the crew had been present during an airbrake test they not be considered to have knowledge of the condition of the train's safety devices. Such a presumptive approach was rejected because it did not directly address the legal and personal responsibility crews would likely feel to inspect the equipment.

Under FRA's enforcement policy solution, there is no need real or imagined to conduct any inspection other than those historically required by FRA regulations. This rule does not require, or provide a basis for anyone else requiring, that any new inspection be performed.

FRA has decided not to delay mandatory compliance with the subsequent operator provisions. Although FRA did receive requests for delay in the effective date, those requests were based on a perceived need to alter the railroad's operating practices to achieve compliance with this rule.

Although the procedural rules for employee disqualification are not in effect and will be the subject of a different rulemaking proceeding, FRA wants all concerned parties to be aware that it reserves the right to use its authority to disqualify individuals who willfully violate this rule. As a matter of policy, if FRA encounters situations where there is clear evidence that an individual willfully operated a train after some other person had unlawfully nullified a safety device, FRA will consider disqualifying that individual

from holding a safety-sensitive function on the railroad.

Section 218.59

FRA proposed in § 218.007 to address the third situation identified by the statute: Instances in which a railroad operates a train with a locomotive equipped with a device, disabled as a consequence of tampering. In a restructured format, § 218.59 of the final rule will make the railroad strictly liable for the conduct of its employees when they operate a train with a disabled device. Under such a strict liability standard of conduct, FRA will not be obligated to prove any level of knowledge or intent on the part of the railroad. Once FRA can prove that a train with a disabled device operated on that railroad, FRA has a legal basis for imposing a civil penalty for that conduct. As in all other cases, of course, inspectors retain discretion to determine whether imposition of a civil penalty is the most appropriate means to assure future compliance.

Section 218.61

Section 218.61 of the final rule does not have a counterpart in the proposed rule. It is intended to more directly address the special situations in which a railroad could legitimately assert that the functioning of a device has become a distraction and hence a detriment to safety. FRA has encountered this argument in situations where alerter or deadman controls have been nullified while the locomotive was used exclusively to perform yard switching service. All commenters who addressed this issue appear to support FRA sanctioning such limited deactivation. FRA has provided four distinct situations that will permit deactivation of an otherwise functioning alerter or deadman pedal. In addition to the switching operation problem identified in the NPRM, FRA is permitting these two devices to be disabled or "cut-out" in three instances where it would be either impractical or unsafe to attempt to keep such equipment functioning. FRA also identified one situation where it would be either impossible or impractical to keep event recorders functioning and is permitting them to be deactivated or "cut-out" in that setting.

The final rule in this proceeding includes a revised penalty schedule for Part 218 reflecting the higher maximum penalties now available and adding entries for the new sections being adopted herein. See the recent revisions to the penalty provisions and penalty schedule of Part 218 required by the RSIA published in the **Federal Register** initially on July 28, 1988 (53 FR 28594). Although FRA's penalty schedules are statements of policy and notice and comment are not required to revisions of those schedules (see 5 U.S.C. 553(b)(3)(A)), FRA solicited views on what penalties may be appropriate. FRA did not receive any expression of opinion on what the appropriate penalties should be, but did receive requests that it fully explore the issue of how it will employ its disqualification authority. Since the rulemaking proceeding on disqualification is imminent, FRA believes that it is premature to discuss how this authority will be exercised in this limited context. Consequently, all that FRA has done in this regulation is to specifically place all interested parties on notice that noncompliance may serve as basis for invoking that power.

Public Participation

Several parties took note of the limited period of time that FRA provided for submitting comments in this proceeding. Section 21 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342) requires that these regulations be issued by September 20, 1988. Due to the complexity of developing a notice of proposed rulemaking, FRA was not able to publish a proposal more than 30 days prior to the statutory limit. However, the proposal was placed on public display at the office of the Federal Register as early as possible, and a substantial comment period was provided. In consideration of the statutory limit of September 20, FRA found that good cause existed to publish this notice with a comment period of less than 30 days.

FRA appreciates the prompt response of the commenters to this proposal and recognizes the effort that making such a rapid response entails. As noted earlier, FRA has decided not to delay or stagger the mandatory compliance with certain provisions as requested by several commenters. FRA's restructured rule does not impose directly or indirectly any need to modify equipment or operating practices to accommodate these new requirements.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies

This rule has been evaluated in accordance with existing policies and procedures. The rule is considered to be non-major under Executive Order 12291 but significant under the Department's policies and procedures (44 FR 11034, February 26, 1979).

The rule will not have any direct or indirect economic impact because it does not impose any additional regulatory burden on either railroads or individuals. To the degree that potential imposition of a civil penalty serves as a deterrent to individuals who might contemplate disabling one of these devices, the rule might serve to reduce expenses by avoidance of exposure to accidents that can be prevented or minimized by a functioning device.

Regulatory Flexibility Act

These regulations will not have any economic impact on small entities. FRA, therefore, certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations do not contain directly or indirectly any information collection requirements.

Environmental Impact

These rules will not have any identifiable environmental impact.

Federalism Implications

These rules will not have a substantial effect on the states, on the relationship between the states and the national government, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 218

Railroad safety, Railroad operating practices.

The Rule

In consideration of the foregoing, FRA is amending Part 218, Title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority citation for Part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. By amending the table of contents to add new Subpart D as follows:

Subpart D—Prohibition Against Tampering With Safety Devices

Sec.

3. Add Subpart D, consisting of §§ 218.51 through 218.61.

Subpart D—Prohibition Against Tampering With Safety Devices

§ 218.51 Purpose.

(a) The purpose of this subpart is to prevent accidents and casualties that can result from the operation of trains when safety devices intended to improve the safety of their movement have been disabled.

(b) This subpart does not prohibit intervention with safety devices that is permitted:

(1) Under the provisions of § 236.566 or § 236.567 of this chapter;

(2) Under the provisions of § 218.61 of this part; or

(3) Under the provisions of § 229.9 of this chapter, provided that when a locomotive is being operated under the provision of § 229.9(b) a designated officer has been notified of the defective alerter, deadman pedal, or event recorder at the first available point of communication.

§ 218.53 Scope and definitions.

(a) This subpart establishes standards of conduct for railroads and individuals who operate or permit to be operated locomotives equipped with one or more of the safety devices identified in paragraph (c) of this section.

(b) "Disable" means to unlawfully render a device incapable of proper and effective action or to materially impair the functioning of that device.

(c) "Safety device" means any locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the indications of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering. See Appendix B to this part for a statement of agency policy on this subject.

§ 218.55 Tampering prohibited.

Any individual who willfully disables a safety device is subject to a civil penalty as provided in Appendix A of this part and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures provided for in 49 CFR Part 209.

§ 218.57 Responsibilities of individuals.

Any individual who knowingly operates a train, or permits it to be operated, when the controlling locomotive of that train is equipped with a disabled safety device, is subject to a civil penalty as provided for in Appendix A of this part and to disqualification from performing safety-sensitive functions on a railroad if found to be unfit for such duties. See Appendix B to this part for a statement of agency enforcement policy concerning violations of this section.

§ 218.59 Responsibilities of railroads.

Any railroad that operates a train when the controlling locomotive of a train is equipped with a disabled safety device is subject to a civil penalty as provided for in Appendix A of this part.

§ 218.61 Authority to deactivate safety devices.

(a) For the purpose of this chapter, it is lawful to temporarily render a safety device incapable of proper or effective action or to materially impair its function if this action is taken as provided for in paragraphs (b) or (c) of this section.

(b) If a locomotive is equipped with a device to assure that the operator is alert or not physically incapacitated, that device may be deactivated when:

(1) The locomotive is not the controlling locomotive;

(2) The locomotive is performing switching operations and not hauling cars in a manner that constitutes a train movement under Part 232 of this chapter:

(3) The locomotive is dead-in-tow; or

(4) The locomotive is a mid-train slave unit being controlled by radio from a remote location.

(c) If a locomotive is equipped with a device to record data concerning the operation of that locomotive and/or the train it is powering, that device may be deactivated only when that locomotive is being hauled dead-in-tow.

4. Amend Appendix A by adding the following:

Appendix A—Schedule of Civil Penalties [1]

Section		Violation	Willful violation
*	* * * * *		
218.55	Tampering		7,500
218.57	(i) Knowingly operating or permitting operation of disabled equipment	2,500	
	(ii) Willfully operating or permitting operation of disabled equipment		5,000
218.59	Operation of disabled equipment	2,500	5,000

[1] Except as provided for in § 218.57, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where the circumstances warrant. See 49 CFR Part 209, Appendix A.

5. By adding a new Appendix B to read as follows:

Appendix B—Statement of Agency Enforcement Policy

The Rail Safety Improvement Act of 1988 (Pub. L. 100-342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. Section 21 of the RSIA requires that FRA adopt regulations addressing three related but distinct aspects of problems that can occur when safety devices are tampered with or disabled. It requires that FRA make it unlawful for (i) any individual to willfully tamper with or disable a device; (ii) any individual to knowingly operate or permit to be operated a train with a tampered or disabled device; and (iii) any railroad to operate such a train.

Because the introduction of civil penalties against individuals brings FRA's enforcement of the rail safety laws into a new era and because the changes being introduced by this regulation are so significant, FRA believes that it is advisable to set forth the manner in which it will exercise its enforcement authority under this regulation.

Safety Devices Covered by This Rule

FRA has employed a functional description of what constitutes a safety device under this rule. FRA's wording effectively identifies existing equipment and is sufficiently expansive to cover equipment that may appear in the future, particularly devices associated with advanced train control systems currently undergoing research testing.

FRA has been advised by portions of the regulated community that its functional definition has some potential for confusing people who read the rule without the benefit of the preamble discussions concerning the meaning of this definition. Since this rule is specifically intended to preclude misconduct by individuals, FRA wants this rule to be easily comprehended by all who read it. To achieve that clarity, FRA has decide to specify which types of equipment it considers to be within the scope of this rule and provide some examples of equipment that is not covered. In addition, FRA is ready and willing to respond in writing to any inquiry about any other devices that a party believes are treated ambiguously under this rule. This regulation applies to a variety of devices including equipment known as "event recorders," "alerters," "deadman controls," "automatic cab signals," "cab signal whistles," "automatic train stop equipment," and "automatic train control equipment." FRA does not consider the following equipment to be covered by this rule: Radios; monitors for end-of-train devices; bells or whistles that are not connected to alerters, deadman pedals, or signal system devices; fans for controlling interior temperature of locomotive cabs; and locomotive performance monitoring devices, unless they record data such as train speed and air brake operations. Although FRA considers such devices beyond the scope of the regulation, this does not imply that FRA condones the

disabling of such devices. FRA will not hesitate to include such devices at a later date should instances of tampering with these devices be discovered. FRA does not currently perceive a need to directly proscribe tampering with such devices because there is no history of these devices being subjected to tampering.

Subsequent Operators of Trains With Disabled Devices

Section 218.57 addresses instances in which one individual has tampered with a safety device and a second individual (a "subsequent operator") knowingly operates a train or permits it to be operated, notwithstanding the presence of the disabled or tampered-with unit. The most common occurrence addressed by this provision is the situation in which a train crew encounters a locomotive with a safety device that has been tampered with prior to the crew's assuming responsibility for the locomotive. FRA has structured this provision and its attendant enforcement policy to reflect the fact that instances in which one individual encounters a locomotive that someone else has tampered with are relatively infrequent occurrences.

FRA's regulatory prohibition for subsequent operator conduct reflects the legal standard for individual culpability set forth in the RSIA. Under the relevant statutory standard ("knowingly operates or permits to be operated a train on which such devices have been tampered with or disabled by another person")—now incorporated into § 218.57—individuals could be held to a simple negligence standard of conduct, i.e., a standard of reasonable care under the circumstances. FRA's conclusion about the proper interpretation of the word "knowingly" stems from both normal canons of statutory construction and analysis of decisional law concerning the use of similar statutory constructs in the civil penalty context. It is also consistent with other Departmental interpretations of the word as used in similar contexts. (See 49 CFR 107.299, defining "knowingly" under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*)

Under that statutory language, the responsible members of the crew could be culpable if either (1) due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or (2) having ascertained that the device was not functioning, still elected to operate the train. Similarly, railroad supervisors who permit or direct that a train with a disabled device be operated after having learned that the safety device is not functioning or after having failed to use reasonable care in the performance of their duties could also be subject to sanction.

However, as a matter of enforcement policy, application of a negligence standard in this particular context presently appears unwarranted. We have seen no evidence of an employee's negligent failure to detect another employee's tampering having caused a safety problem. FRA can effectively attack the known dimensions of the tampering problem by employing an enforcement policy that limits its enforcement actions to situations where individuals clearly had actual knowledge of the disabled device and intentionally operated the train notwithstanding that knowledge.

Therefore, FRA will not take enforcement action against an individual under § 218.57 absent a showing of such actual knowledge of the facts. Actual, subjective knowledge need not be demonstrated. It will suffice to show objectively that the alleged violator must have known the facts based on reasonable inferences drawn from the circumstances. For example, it is reasonable to infer that a person knows about something plainly in sight on the locomotive he is operating. Also, unlike the case where willfulness must be shown (see FRA's statement of policy at 49 CFR Part 209, Appendix A), knowledge of or reckless disregard for the law need not be shown to make out a violation of § 218.57. The knowledge relevant here is knowledge of the facts constituting the violation, not knowledge of the law.

Should FRA receive evidence indicating that a stricter enforcement policy is necessary to address the tampering problem, it will revise its enforcement policy to permit enforcement actions based only on a showing of the subsequent operator's negligent failure to detect the tampering, as the relevant provision of the RSIA permits it to do now. Any such change in enforcement policy will become effective only after publication of a revised version of this appendix.

Issued in Washington, DC, on January 31, 1989.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 89-2579 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 54, No. 22
Friday, February 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing proposed regulations that were issued to clarify the method of calculating overtime pay under title 5, United States Code, for employees on certain unusual work schedules. The proposed regulations, published May 12, 1987 (52 FR 17762), would have separated overtime worked on a daily basis into two distinct types—(1) overtime work in excess of 8 hours in a day *outside* the basic 40-hour workweek, and (2) overtime work in excess of 8 hours in a day *within* the basic 40-hour workweek. The proposed regulations also would have made it clear that only the daily overtime hours *outside* the basic workweek are to be excluded in the calculation of weekly overtime hours. The intent of the proposed regulations was to prevent inconsistent application of Governmentwide pay administration policies.

FOR FURTHER INFORMATION CONTACT: Edward Magee, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Comments received on the proposed regulations were mostly unfavorable. After reviewing these comments, we have determined that the proposed regulations would further complicate overtime pay computations under title 5 and would not contribute to clarity. Consequently, to avoid burdening agencies unnecessarily with additional regulations that apply in a limited set of circumstances, OPM is withdrawing these proposed regulations.

Agencies are reminded, however, that employees covered by both title 5 and the Fair Labor Standards Act (FLSA) are entitled to receive pay under whichever law provides the greater benefit. Therefore, two separate pay computations must be made. Our regulations in 5 CFR Part 551 on pay administration under the FLSA require computations on a workweek basis and provide for a comparison of *overtime pay* entitlements under title 5 and the FLSA to determine the greater benefit. We believe that so long as overtime pay is properly computed under title 5 and the FLSA, comparing these two entitlements will ensure that employees receive the greater total benefit.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 89–2504 Filed 2–2–89; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB–88–105]

Tobacco Inspection; Flue-Cured and Burley Tobacco; User Fee Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Dairy and Tobacco Adjustment Act of 1983, as amended (Pub. L. 99–198), section 1161, prohibits the importation of flue-cured and burley tobacco which contains prohibited pesticide residue(s) and establishes related certification and testing requirements. This proposal would increase the user fees charged to importers. The increased user fees are necessary in order to recover the Department's costs of providing services under the Act.

DATE: Comments are due on or before March 6, 1989.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, telephone—(202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the inspection and grading of imported flue-cured and burley tobacco to increase the fees collected for testing of imported tobacco. The fees would as nearly as possible cover the cost of providing services, including administrative and supervisory costs. The authority for these regulations is contained in the Dairy and Tobacco Adjustment Act of 1983, as amended (Pub. L. 99–198), section 1161 (the Act).

User fees are assessed on imported flue-cured and burley tobacco to cover the cost of sampling and testing under current regulations. The fee for sampling and testing imported flue-cured and burley tobacco in accordance with these regulations would be raised from $.001 per pound to $.0035 per pound. The additional fee for sampling and testing imported flue-curred and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues would be raised from $.003 per pound to $.0035 per pound. However, a minimum fee of $162.00 would be established for each lot.

These fees were determined after a thorough review of the procedures currently being used, the average volume sampled and tested and the number of staff hours necessary to provide and supervise the testing service. The costs actually incurred by this relatively new program have been closely monitored. Based on this review and analysis, it has been determined that the cost of testing tobacco samples has risen by 35 percent since the program was instituted. It has been found that, for small lots, the fees per pound do not cover the cost of testing a sample. Accordingly, this proposed rule would increase the per-pound fees and establish a minimum fee per lot.

These proposed rules have been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and have been determined to be "nonmajor" because

they do not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business of this proposed rule. Few, if any, of the firms which would be affected by these proposed regulations meet the definition of small business because of their individual size. The Administrator, Agricultural Marketing Service, has determined that these actions would have no significant economic impact upon any entity, small or large, and would not substantially affect the normal movement of the commodity in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with these proposals may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, not later than March 6, 1989.

For the reasons set forth in the preamble, it is proposed that the regulations in 7 CFR Part 29, Subpart B, be amended as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

6. In § 29.500, paragraph (b) is revised to read as follows:

§ 29.500 Fees and charges for inspection and testing of imported tobacco.

* * * * *

(b) The fee for sampling, testing and certification of imported flue-cured and burley tobacco for prohibited pesticide residues is $.0035 per pound, and shall be paid by the importer. The fee for testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues shall be an additional $.0035 per pound. The minimum fee assessed pursuant to this paragraph shall be $162.00 per lot. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

Dated: January 31, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-2533 Filed 2-2-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0639]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent regarding proposed effective date.

SUMMARY: The Board is giving public notice that should the Board adopt an amendment to its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229) restricting the delayed disbursement of teller's checks, such an amendment would not be effective April 1, 1989, as published in the Board's proposed rule (53 FR 24093, June 27, 1988). The Board is providing this notice to allay the concerns of commenters that a final rule will be adopted with an insufficient lead time for implementation.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), Gayle Thompson, Program Leader (202/452-2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On June 27, 1988, the Board published for comment a proposed amendment to its Regulation CC (12 CFR Part 229) as part of its regulatory responsibility for the payments system as provided in the Expedited Funds Availability Act (53 FR 24093). The proposed rule would prohibit certain delayed disbursement practices by setting out requirements for the issuance of teller's checks. The Board proposed an effective date for the rule of April 1, 1989.

The Board has received over 230 written comments from the public, and Board staff has had numerous informal conversations with industry representatives regarding the effects of the proposal. Over 70 percent of the commenters supported the Board's objective to restrict the delayed disbursement of teller's checks; however, commenters indicated that the proposed rule was ambiguous and would be difficult to administer. As of this date, the Board is still in the process of evaluating alternative methods of dealing with delayed disbursement practices relating to teller's checks. Many commenters have expressed concern that if a final rule is adopted, the April 1 effective date would not provide the industry adequate time to make conforming changes in teller's check service arrangements. In response to the commenters' concerns, the Board is giving notice that if and when a final rule restricting the delayed disbursement of teller's checks is adopted, the effective date will *not* be April 1, 1989, and the Board will allow such lead time as it determines to be reasonable for the industry to implement any necessary changes.

(Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et. seq.*)

By order of the Board of Governors of the Federal Reserve System, January 30, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2507 Filed 2-2-89; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 229

[Docket R-0657]

Regulation CC; Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretation.

SUMMARY: The Board is publishing for comment a proposed official Board interpretation concerning a preemption determination under its Regulation CC, Availability of Funds and Collection of Checks (12 CFR Part 229), with respect to the law of Wisconsin. The Expedited Funds Availability Act provides standards for determining whether state law governing funds availability supersedes, or is preempted by federal law. Under Regulation CC, the Board will issue preemption determinations upon request.

DATES: Comments must be submitted on or before March 3, 1989.

ADDRESSES: Comments, which should refer to Docket R-0657, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above

address will be made available to the public, and may be inspected at the Freedom of Information Office, Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Program Leader (202/452-2934), Division of Federal Reserve Bank Operations, or Oliver Ireland, Associate General Counsel, Legal Division (202/452-3625); for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (the "Act"). The regulation requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted laws governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that provides for a shorer hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent, and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme. Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon the request of a state, bank, or other interested party.

Generally, federal law preempts the Wisconsin funds availability requirements. Wisconsin law supersedes Regulation CC, however, with respect to in-state checks that are defined as nonlocal under the federal law, and with respect to state and local government checks, to the extent that fewer conditions to prompt availability are required under the state law. Wisconsin law continues to apply to the extent that it covers accounts or deposits not subject to the federal rules.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. Appendix F is amended by adding a preemption determination for the state of Wisconsin alphabetically to read as follows:

Appendix F—Official Board Interpretations

* * * * *

Wisconsin

Background

The Board has been requested, in accordance with § 229.20(d) of Regulation CC (12 CFR Part 229), to determine whether the Expedited Funds Availability Act ("the Act") and Subpart B (and in connection therewith, Subpart A) of Regulation CC preempt the provisions of Wisconsin law concerning availability of funds. This preemption determination specifies those provisions of the Wisconsin funds availability law that are not preempted by the Act and Regulation CC. (See also the Board's preemption determination regarding the Uniform Commercial Code, section 4-213(5), pertaining to availability of cash deposits.)

Wisconsin Statutes § 404.213(4m) requires Wisconsin banks to make funds deposited in accounts available for withdrawal within specified time frames. Generally, checks drawn on the U.S. Treasury, the State of Wisconsin, or on a local government located in Wisconsin must be made available for withdrawal by the second banking day following deposit. In-state and out-of-state checks must be made available for withdrawal within five banking days and eight banking days following deposit, respectively. Exceptions are provided for new accounts and reason to doubt collectibility. In addition, Wisconsin Statutes § 404.103 permits these availability requirements to be varied by agreement.

Coverage

Wisconsin law defines account as "any account with a bank and includes a checking, time, interest or savings account" (Wisconsin Statutes § 404.104(1)(a)). The federal preemption of state funds availability requirements only applies to "accounts" subject to Regulation CC, which generally consist of transaction accounts. Regulation CC does not affect the Wisconsin law to the extent that the state law applies to deposits in savings, time, and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not "accounts" under Regulation CC. (Note, however, that under § 229.19(e) of Regulation CC, *Holds on Other Funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC, in certain circumstances.)

The Wisconsin statute applies to "items" deposited in accounts. This term encompasses instruments that are not defined as "checks" in Regulation CC (§ 229.2(k)), such as nonnegotiable instruments, and are therefore not subject to Regulation CC's provisions governing funds availability. Those items that are subject to Wisconsin law but are not subject to Regulation CC will continue to be covered by the state availability schedules and exceptions.

Availability Schedules

Temporary schedule. The Wisconsin statute requires that in-state nonlocal checks be made available for withdrawal not later than the fifth banking day following deposit. (Wisconsin Statutes § 404.213(4m)(b)(1)). This time period is shorter than the seventh business day availability required for nonlocal checks under § 229.11(c) of Regulation CC, although it is not shorter than the schedules for nonlocal checks set forth in § 229.11(c)(2) and Appendix B-1 of Regulation CC. Thus, the state schedule for in-state nonlocal checks supersedes the federal schedule to the extent that it applies to an item payable by a Wisconsin bank that is defined as a nonlocal check under Regulation CC, and is not subject to reduced schedules under § 229.11(c)(2) and Appendix B-1.

Permanent Schedule. Under the federal permanent availability schedule, nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit. The fifth banking day availability requirement for in-state items in the Wisconsin statute supersedes the Regulation CC time period adjustment for withdrawal by cash or similar means in the permanent schedule, to the extent that the in-state checks are defined as nonlocal under Regulation CC.

Next-day availability. Under the Wisconsin statute, the proceeds of state and local government checks must be made available for withdrawal by the second banking day following deposit, if the check is indorsed only by the person to whom it was issued. (Wisconsin Statutes § 404.213(4m)(b)(1)) Regulation CC requires next-day availability for these checks, if they are deposited in an account of a payee of the check, deposited in person to an employee of the depositary bank, and deposited with a special deposit slip, if the depositary bank informed its customers that use of such a slip is a condition to next-day availability. Under the federal law, if a state or local government check is not deposited in person to an employee of the depositary bank, but meets the other conditions set forth in § 229.10(c)(1)(iv), the funds must be made available for withdrawal not later than the second business day following deposit. The Wisconsin statute supersedes Regulation CC to the extent that it does not permit the use of a special deposit slip as a condition to receipt of second-day availability.

Exceptions to the schedules. Wisconsin law provides exceptions to the state availability schedules for new accounts (those opened less than 90 days) and reason to doubt collectibility (Wisconsin Statutes § 404.213(4m)(b)). The state law also permits variation by agreement (Wisconsin Statutes

§ 404.103(1)). In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions apply. For deposits that are covered by the state availability schedule (e.g., in-state nonlocal checks), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

Business day/banking day. The definitions of "business day" and "banking day" in the Wisconsin statutes are preempted by the Regulation CC definition of those terms. For determining the permissible hold under the Wisconsin schedules that supersede the Regulation CC schedule, deposits are considered made on the specified number of "business days" following the "banking day" of deposit.

Wisconsin law considers funds to be deposited, for the purpose of determining when they must be made available for withdrawal, when an item is "received at the proof and transit facility of the depository." For the purposes of this preemption determination, funds are considered deposited under Wisconsin law in accordance with the rules set forth in § 229.19(a) of Regulation CC.

Disclosures

The Wisconsin statute does not require disclosure of a bank's funds availability policy. The state does require, however, that a bank give notice to its customer if it extends the time wtihin which funds will be available for withdrawal due to the bank's doubt as to the collectibility of the item (Wisconsin Statutes § 404.213(4m)(b)).

Regulation CC preempts state disclosure requirements concerning funds availability that relate to "accounts" that are inconsistent with the federal requirements. The state requirement is different from, and therefore inconsistent with, the federal disclosure rules (§ 229.20(c)(2)). Thus, the Wisconsin statute is preempted by Regulation CC to the extent that this notice requirement applies to "accounts" as defined by Regulation CC. The Wisconsin requirement would continue to apply to accounts, such as savings and time accounts, not governed by the Regulation CC disclosure requirements.

By order of the Board of Governors of the Federal Reserve System, January 30, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-2506 Filed 2-2-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[OST Docket No. 45884; Notice 89-1]

Statement of Enforcement Policy on Rebating

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of extension of comment period.

SUMMARY: Comments in response to the notice of proposed rulemaking, Notice 88-5, dated October 21, 1988, (53 FR 41353) were originally due on December 20, 1988. By letter, the Italian Embassy has asked the Department to extend the comment period until mid-February 1989, because it was unable to meet the original deadline. We are granting this requirement and extending the comment period until February 21, 1989.

DATE: Comments should be received by February 21, 1989.

ADDRESSES: Comments should be sent to Docket Clerk, C-55, Docket 45884, Department of Transportation, Room 4107, 400 7th Street SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m. Monday through Friday. Persons wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time- and date-stamped the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, C-70, Department of Transportation, 400 7th Street SW, Room 4116, Washington, DC 20590, (202) 366-0342, or Betsy Wolf, an attorney in his office.

Issued in Washington, DC on January 30, 1989.

Mimi Weyforth Dawson,

Deputy Secretary of Transportation.

[FR Doc. 89-2578 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 85N-0053]

Additional Standards for Viral Vaccines; Measles Virus Vaccine Live, Mumps Virus Vaccine Live, Rubella Virus Vaccine Live, and Measles Live and Smallpox Vaccine

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations governing clinical trials for three viral vaccines: Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live. The proposed amendments would eliminate the requirements that the lots of vaccine used in clinical trials be consecutively manufactured and show satisfactory results in all prescribed tests. These proposed amendments are identical to changes made previously in the requirements for Poliovirus Vaccine Live Oral. They are intended to make the testing requirements for these viral vaccines more flexible and consistent with current scientific knowledge. The proposed amendment would also eliminate one of the safety tests for Mumps Virus Vaccine from the standards because the remaining tests provide adequate assurance of safety. FDA is also proposing to remove additional standards for Measles Live and Smallpox Vaccine. All licenses are revoked and no future licenses are expected. In addition, FDA is proposing to remove reference to the use of Measles Virus Vaccine Live with gamma globulin.

DATES: Comments by April 4, 1989. FDA is proposing that any final rule based on this proposal be effective 30 days after its date of publication in the **Federal Register.**

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

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800

Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 1, 1984 (49 FR 23004), FDA amended 21 CFR 630.11 of the regulations governing clinical trials for Poliovirus Vaccine Live Oral. The clinical trials are performed to determine the antigenicity of that vaccine and must be completed satisfactorily to qualify the vaccine for licensure. The agency amended § 630.11 by eliminating the requirement that the five lots of oral poliovirus vaccine used in clinical trials be consecutively manufactured. The agency eliminated the requirement because it provided no additional assurances of safety, purity, and potency of the vaccine; It resulted in wasted effort and material by manufacturers conducting clinical studies; and it needlessly denied manufacturers flexibility in scheduling clinical trials. In addition without the requirement FDA may accept clinical studies performed in other countries as part of the basis of approval for U.S. licensure. Under that revised regulation, any five lots of poliovirus vaccine manufactured with the same methodology, regardless of the sequence of manufacture, would be appropriate for use in clinical trials to demonstrate antigenicity for approval of the license application.

In the **Federal Register** of June 1, 1984, FDA also amended § 630.11 by removing the provision that the five lots of oral poliovirus vaccine used in clinical trials each show satisfactory results in all prescribed tests. As explained in that final rule, this revision was prompted by questions concerning the proper interpretation of clinical data used in the early 1960's as part of the basis for licensure of the oral poliovirus vaccine currently licensed in the United States. FDA also noted that the change would facilitate FDA's ability to rely on clinical studies performed in other nations in support of an application for a license in the United States. Thus, the agency amended § 630.11 to eliminate the requirement that the five lots of oral poliovirus vaccine used in the required clinical trials each show satisfactory results in all prescribed tests. By eliminating this requirement, alternative methods in laboratory test procedures are permitted as long as they continue to ensure the safety and effectiveness of the vaccine.

Further, in the final rule of June 1, 1984 FDA stated that it would propose to revise the additional standards for other viral vaccines, consistent with amendments made to § 630.11. Accordingly, FDA is now proposing to amend the regulations governing clinical trials for three other viral vaccines: Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live.

The agency is proposing to eliminate the requirement that the lots of these vaccines used in clinical trials be consecutively manufactured because the requirement is unnecessary to ensure the safety, purity, and potency of the vaccines and is an unnecessary burden on manufacturers conducting clinical studies. Any five lots of vaccine manufactured with the same methodology, regardless of the sequence of manufacture, would be appropriate for use in clinical trials to demonstrate antigenicity.

The agency is also proposing to eliminate the requirement for clinical trials that each lot of the vaccine show satisfactory results in all prescribed tests. The elimination of this requirement would permit the use of alternative methods in laboratory test procedures as long as the tests continue to ensure the safety and effectiveness of the vaccine.

FDA emphasizes that eliminating the requirement for clinical trials that each lot show satisfactory results in all prescribed tests would not compromise the safety, purity, or potency of these three vaccines. Under the applicable requirements of FDA's investigational new drug regulations (21 CFR Part 312), FDA will continue to require that all investigational vaccines have been shown by appropriate methods to be suitable for administration to humans before permitting their use in clinical trials in the United States. In addition, 21 CFR 601.2 of the regulations requires that, to obtain a license, manufacturers must submit "data derived from nonclinical laboratory and clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency * * *."

Thus, FDA is proposing to amend the regulation for Measles Virus Vaccine Live in § 630.31 by removing the word "consecutive" and the phrase "each of which has shown satisfactory results in all prescribed tests." FDA is also proposing to amend § 630.30(c)(1) by removing the reference to § 630.31. For years Measles Virus Vaccine Live was administered with human gamma globulin. Currently licensed Measles Virus Vaccine Live is no longer administered with human gamma globulin. Accordingly, FDA is proposing to remove the phrase—i.e., either with or without human gamma globulin—in § 630.31.

Because the regulations at § 630.51 *Clinical trials to qualify for license* of Mumps Virus Vaccine Live and § 630.61 *Clinical trials to qualify for license* of Rubella Virus Vaccine Live require manufacturers to "* * * follow the procedures prescribed in § 630.31 * * *," there is no need to amend these regulations. FDA is proposing to amend § 630.50(c)(1) by removing the reference to § 630.51 and § 630.60(e)(1) by removing the reference to § 630.61.

FDA emphasizes that the proposed amendments will not affect FDA's regulatory requirements for the consistency of manufacture for commercial use of the three licensed vaccines subject of this proposal.

FDA is also proposing to amend § 630.31 of the regulations to permit the use in clinical trials of "suitable route of administration" of the viral vaccine to replace the current requirement that the vaccine be administered by subcutaneous injection. This proposed amendment would permit use of alternative routes of administration. Other routes of administration such as by aerosol have been used experimentally and in the future one or more of these routes may be found as effective or possibly more effective as administration by injection.

FDA is also proposing to amend the regulation for Mumps Virus Vaccine Live in § 630.55(a)(4) by removing the phrase "and in chick embryo liver" from the second sentence. The safety tests performed in chick embryo kidney, in addition to the remaining safety tests in § 630.55(a), provide adequate assurances of safety. FDA believes that testing in chick embryo liver is unnecessary and provides no additional assurance of the safety of the product.

FDA is also proposing to amend the regulation for Rubella Virus Vaccine Live in § 630.62(a) by inserting the phrase "or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter." This change adds flexibility to the regulation by providing for changes consistent with scientific knowledge. The proposed regulation would provide for the propagation of rubella virus in cell lines if approved by the Director, Center for Biologics Evaluation and Research.

On March 12, 1987, the remaining product license for the Measles Live and Smallpox Vaccine was revoked at the request of the licensed manufacturer (License No. 2; Merck, Sharp, and Dohme). FDA does not believe any licenses will be issued for this product in the future. Accordingly, FDA is proposing to remove the additional standards for Measles Live and Smallpox Vaccine in §§ 630.80 through

630.86 (21 CFR 630.80 through 630.86), inclusive.

The agency has determined under 21 CFR 25.24(c)(10) 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.

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule removes unnecessary restrictions in the regulations governing clinical trials of three viral vaccines; no additional burdens are imposed upon manufacturers. Therefore, the agency concludes that this proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. Also, this proposed rule does not impose any additional recordkeeping or reporting requirements on the regulated industry. The reporting and recordkeeping requirements of this proposed rule are governed by the current good manufacturing practice for finished pharmaceuticals regulations in 21 CFR Part 211 (OMB Control No. 0910–0139).

Interested persons may, on or before April 4, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 630

Biologics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 630 be amended as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

1. The authority citation for 21 CFR Part 630 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 355, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10.

2. Section 630.30 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.30 Measles virus vaccine live.

* * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated measles virus used in the manufacture of measles virus vaccine. For this purpose, vaccine from each of the five consecutive lots used by the manufacturer to establish consistency of manufacture of the vaccine shall be tested separately in the following manner:

* * * * *

3. Section 630.31 is revised to read as follows:

§ 630.31 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design, by a suitable route of administration of the product. Such clinical trials shall be conducted with five lots of measles virus vaccine which have been manufactured by the same methods. There shall be a demonstration under circumstances wherein adequate clinical and epidemiological surveillance of illness has been maintained to show that the measles virus vaccine, when administered as recommended by the manufacturer is free of harmful effect upon administration to approximately 1,000 susceptible individuals, in that there were no detectable neutralizing antibodies before vaccination and there was serological conversion after vaccination. The five lots of vaccine shall be distributed as evenly as possible among the 1,000 individuals tested. Demonstration shall be made of immunogenic effect by the production of specific measles neutralizing antibodies (i.e., sero-conversion from less than 1:4 to 1:8 or greater) in at least 90 percent of each of five groups of measles susceptible individuals, each having received a virus vaccine dose which is not greater than that which was demonstrated to be safe in field studies (§ 630.30(b)) when used under comparable conditions. Such clinical trials shall be conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with the requirements for informed consent set forth in Part 50 of this chapter.

4. Section 630.50 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.50 Mumps Virus Vaccine Live.

* * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated mumps virus used in the manuacture of mumps vaccine. For this purpose, vaccine from each of the five consecutive lots used by the manufacturer to establish consistency of manufacture of the vaccine shall be tested separately in monkeys shown to be serologically negative for mumps virus antibodies in the following manner:

* * * * *

5. Section 630.55 is amended by revising paragraph (a)(4) to read as follows:

§ 630.55 Test for safety.

(a) * * *

(4) *Inoculation of other cell cultures.* The mumps virus pool shall be tested for adventitious agents in the volume and following the procedures prescribed in § 630.35(a)(3), in rhesus or cynomolgus monkey kidney, in whole chick embryo, and in human cell cultures. In addition, each vizus pool shall be tested in chick embryo kidney in the same manner except that the volume tested in each cell culture shall be equivalent to 250 human doses or 25 milliliters, whichever represents a greater volume. The mumps virus pool is satisfactory only if results equivalent to those in § 630.35(a)(3) are obtained.

* * * * *

6. Section 630.60 is amended by revising the introductory text of paragraph (e)(1) to read as follows:

§ 630.60 Rubella Virus Vaccine Live.

* * * * *

(e) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated rubella virus used in the manufacture of rubella vaccine. For this purpose, vaccine from each of the five consecutive lots used by the manufacturer to establish consistency of manufacture of the vaccine shall be tested separately in monkeys shown to be serologically negative for rubella

virus antibodies in the following manner:

* * * * *

7. Section 630.62 is amended by revising paragraph (a) to read as follows:

§ 630.62 Production.

(a) *Virus cultures.* Rubella virus shall be propagated in duck embryo cell cultures, rabbit renal cell cultures, or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter.

* * * * *

§§ 630.80 through 630.86 [Removed]

8. Part 630 is amended by removing §§ 630.80 through 630.86.

Dated: December 27, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-2566 Filed 2-2-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Revised schedule of public hearings.

SUMMARY: This notice is to revise the schedule and locations of public hearings on the employment of homeworkers in the women's apparel industry. Public hearings previously scheduled for San Antonio, Texas, for March 2–3, 1989, and Chicago, Illinois, for March 8–9, 1989, will be held as planned. The public hearing in Miami, Florida, has been rescheduled for March 15–16, 1989, and additional hearings have been scheduled in Los Angeles, California, for March 22–23, 1989, and in New York, New York, for March 29–30, 1989. The purpose of these hearings is to gather information about the characteristics of this industry and the kinds of enforcement mechanisms appropriate for a new regulation governing women's apparel homework.

DATES: The public hearings will be held in San Antonio, Texas, on March 2–3, 1989, Chicago, Illinois, on March 8–9, 1989, Miami, Florida, on March 15–16, 1989, Los Angeles, California, on March 22–23, 1989, and New York, New York, on March 29–30, 1989. The hearings will begin at 9:30 am. local time. Interested parties who wish to testify in person should so notify the Wage and Hour Administrator in writing no later than February 17, 1989. Oral testimony will be kept to a maximum of twenty minutes unless different arrangements are made in advance with the Administrator. However, persons testifying are free to submit more extensive written statements for inclusion in the hearing record. Also, such persons are asked to advise the Administrator on their need, if any, if translators.

All interested parties are invited to submit written comments on this matter to the Administrator on or before April 14, 1989.

ADDRESSES: The locations for the public hearings are as follows:

Institute of Texan Cultures, 801 South Bowie, Hemisfair Plaza, San Antonio, Texas 78206

2525 Ceremonial Courtroom, Everett McKinley Dirksen Federal Building, 219 South Dearborn, Chicago, Illinois 60604

Riverfront South Hall, City of Miami Riverfront Hall, Miami Convention Center, 400 S.E. 2nd Avenue, Miami, Florida 33131

State Building, Room 1138, 107 S. Broadway, Los Angeles, California 90012

U.S. Court of International Trade, Ceremonial Courtroom, 2nd Floor, 1 Federal Plaza, New York, New York 10007

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 30, 1988, the Department of Labor published in the **Federal Register** an advance notice of proposed rulemaking and notice of hearings on regulations at 29 CFR Part 530. (See 53 FR 53344.) These regulations prohibit the employment of homeworkers in the women's apparel industry. That notice advised the public of hearings scheduled for Miami, Florida, San Antonio, Texas, and Chicago, Illinois. On January 31, 1989, the Department published another notice in the **Federal Register** advising the public that additional hearings would be scheduled for New York City and Los Angeles. In addition, that notice indicated that the Miami hearing would be rescheduled for a later date as a result of the workload in arranging for these two hearings. Finally, the notice revised the date for persons to notify the Administrator of their desire to testify and the date for filing comments on the advance notice of proposed rulemaking. (See 54 FR 4836.)

Persons who do not advise the Administrator that they wish to testify at the hearings will be heard as time permits following those who have been scheduled, but they may be limited to ten minutes each for their presentation.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor.

Signed at Washington, DC on this 1st day of February, 1989.

Alan C. McMillan,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

[FR Doc. 89-2693 Filed 2-2-89; 8:45 am]

BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3512-6]

Texas; Final in Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The State of Texas has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed the Texas application and has made a tentative determination, subject to public review and comment, and a legislative change which would allow Texas to implement the permitting portion of its program, that the Texas hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA proposes to approve the Texas hazardous waste program revisions. The Texas application for program revision is available for public review and comment.

DATES: Comments on the Texas program revision application must be received by the close of business on March 6, 1989. A public hearing will be held on Tuesday, February 28, 1989, in Room 118 of the Stephen F. Austin Office Building

at 1700 North Congress in Austin, Texas at 7 p.m. to allow interested members of the public to express their views on the program revision application.

ADDRESSES: Copies of the Texas program revision application are available from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses for inspection and copying: Texas Water Commission (TWC), Library, Fifth Floor, Stephen F. Austin State Office Building, 1700 North Congress, Austin, Texas 78711, Phone (512) 463–7834; U.S. EPA Region VI, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone (214) 655–6444; and U.S. EPA Headquarters, Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone (202) 382–5926. Written comments should be sent to Ms. Lynn Prince, State Programs Section (6H–HS), Hazardous Waste Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone (214) 655–6760.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Prince, State Programs Section (6H–HS), Hazardous Waste Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone (214) 655–6760.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act") 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations to 40 CFR Parts 260–266 and 124 and 270.

B. Texas

The State of Texas initially received final authorization in a notice published on December 12, 1984, and effective December 26, 1984. Texas received authorization for revisions to its program in notices published in the **Federal Register** on March 26, 1985, October 4, 1985, January 31, 1986, and December 18, 1986. On November 12, 1987, Texas submitted a program revision application for additional program approvals.

Today, Texas is seeking approval of its program revision in accordance with § 271.21(b)(4) for the non-HSWA revisions to the Federal RCRA program that were published in the **Federal Register** through July 3, 1986. These revisions include such changes as the interim status standards for land fills and the regulation of radioactive mixed waste.

EPA has reviewed the Texas application, and has made a tentative determination, subject to public review and comment, and a legislative change which would allow Texas to implement the permitting portion of its program, that the Texas hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA has made the tentative determination to grant Texas final authorization for the additional program modifications once the EPA concerns are satisfactorily addressed by the State.

Texas passed Article 7 of the Texas Department of Commerce Act (Tex. Rev. Civ. Stat. Ann. art. 4413(301) section 7.003(a) (Vernon Supp. 1988)), in July of 1987, and it became effective September 1, 1987. Section 7.003(a) of the act is not specific to environmental permits, but applies to all permits issued by a Texas State Agency or political subdivision. It states in part:

> The approval, disapproval, or conditional approval of an application for a permit shall be considered by each regulatory agency solely on the basis of * * * requirements in effect at the time the original application for the permit is filed. If a series of permits is required for a project, the * * * requirements in effect at the time the original application for the first permit in that series is filed, shall be the sole basis for consideration of all subsequent permits required for the completion of the project.

Federal regulations require that EPA approve or disapprove RCRA State program revisions based on the requirements of 40 CFR Part 271 (40 CFR 271.21(b)(2)). One of these requirements, § 271.14, concerns permitting. All State RCRA programs must have legal authority to implement the conditions in § 270.32 (40 CFR 271.14(k)). Section 270.32(b)(1) states that each RCRA permit shall include conditions necessary to achieve compliance with the regulations including the applicable requirements of the regulations (40 CFR 270.32(b)(1)). For a State-issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit (40 CFR 270.32(c)).

Texas regulations are equivalent to these regulations. They require that any statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit application shall be included in the permit (31 TAC 305.127(4)(b)). However, in July 1987, the Texas Department of Commerce Act was passed and, as noted above, it requires that State agencies use solely those regulations in effect at the time of permit filing when processing a permit. Because statutory authority prevails over regulatory authority, the provisions of 31 TAC 305.127(4)(b) may be considered to have been legislatively pre-empted. Therefore, Texas does not currently have equivalent regulations for 40 CFR 270.32, nor does Texas have the authority to carry out the conditions in 40 CFR 270.32 as required by 40 CFR 271.14.

The next regularly scheduled session of the Texas legislature is in January, 1989. The Governor of the State of Texas indicated by letter to the Regional Administrator of Region VI, dated August 22, 1988, that the executive branch of the State government is committed to taking steps to ensure that the legislature passes an amendment to the Department of Commerce Act which would exclude permitting under the RCRA program from the requirements of the act.

When a legislative amendment becomes effective, Texas' program will satisfy all the requirements necessary for final authorization. EPA proposes that Texas be granted final authorization for its revised RCRA program once a satisfactory amendment to the Department of Commerce Act becomes effective. EPA will provide subsequent notice once the amendment is adopted by the legislature, and the Final Authorization will become effective only after the effective date of the amendment. If the amendment is not adopted by the end of the next regular legislative session in 1989, then EPA will commence proceedings under the regulations at 40 CFR 271.23(b) to

withdraw approval of the authorized Texas program. The criteria for withdrawing approval of State programs is found in 40 CFR 271.22.

The public may submit written comments on EPA's tentative determination until March 6, 1989. Copies of the Texas application for program revision are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

The Final Determination will be published in the **Federal Register.**

The Texas program revisions include changes to the base program as well as changes to the subsequent post-base program. The Texas Water Commission adopted permanent revisions in 31 TAC Chapters 281, 301, 305, 335, and 337. The State's new regulations pick up changes in the Federal RCRA program through the July 14, 1986, publication of the **Federal Register.** The State of Texas has also picked up some of the provisions of HSWA although the State is not seeking HSWA authorization. For example, Texas does not seek authorization of the availability of information provisions contained in section 3006(f) of RCRA.

EPA can authorize those Texas rules which are more stringent than the Federal program. Since Texas' regulations include many more stringent "HSWA-type" requirements, EPA plans to authorize these regulations as more stringent provisions of the Texas authorized RCRA program. The "HSWA-type" requirements will not be authorized for HSWA purposes at this time, and EPA, therefore, will retain its responsibilities to carry out the HSWA provisions in Texas.

The Texas provisions incorporating the Federal HSWA provisions concerning research, development, and demonstration permits for authorization cannot be considered as equivalent, or more stringent, RCRA (pre-HSWA) requirements. Texas has not applied, nor is it required at this time to apply, for authorization of these Federal HSWA requirements. Therefore, Subchapter K of 31 Texas Administrative Code Chapter 305 (as amended July 14, 1987) is not being considered as part of the authorized State program.

Although these new provisions are not as stringent as RCRA permitting requirements, they may be equivalent to, or more stringent than, the newer and more flexible permitting authorities for research, development and demonstration facilities that HSWA provides.

EPA will consider these provisions when Texas applies for HSWA authorization.

The State also submitted revisions to the Program Description, Attorney General's Statement and the Memorandum of Agreement between the State of Texas and EPA, Region VI. Three executed Memoranda of Understanding (MOUs) were also submitted. The first MOU is between the Railroad Commission of Texas, TWC and the Texas Department of Health (TDH). That document addresses the jurisdictional division among the agencies over wastes that result from activities associated with the exploration, development, and production of oil or gas and the refining of oil. The second MOU between TWC and TDH concerned the regulation and management of radioactive mixed wastes. The third MOU between TWC and the Attorney General of Texas concerned public participation in the State hazardous waste enforcement process.

The State of Texas is not seeking authority over activities on Indian lands.

C. Codification in Part 272

EPA will use Part 272 for codification of the decision to authorize the Texas program and for incorporation by reference of those provisions of the Texas statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is proposing to amend Part 272, Subpart SS. A separate notice will be published for the proposed codification.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization does not create any new requirements but simply approves requirements which are already State law. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials, Transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 1006, 2002(a), and 3006 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6905, 6912(a) and 6926.

Dated: September 16, 1988.

Joseph D. Winkle,

Acting Regional Administrator.

[FR Doc. 89-2184 Filed 2-2-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300195; FRL-3513-6]

Acrylonitrile-Butadiene Copolymer, FD&C Yellow No. 6 Aluminum Lake, 2-(2'-Hydroxy-5'-Methylphenyl) Benzotriazole, and Octadecyl 3,5-Di-Tert-Butyl-4-Hydroxyhydrocinnamate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that acrylonitrile-butadiene copolymer (CAS Reg. No. 9003-18-3), FD&C Yellow No. 6 aluminum lake (CAS Reg. No. 15790-07-5), 2-(2'-hydroxy-5'-methylphenyl) benzotriazole (CAS Reg. No. 2440-22-4), and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082-79-3) be exempted from the requirement of a tolerance when used as inert ingredients (components of ear tags and similar slow-release devices) in pesticide formulations applied to animals. This proposed regulation was requested by Y-Tex Corp.

DATE: Written comments, identified by the document control number [OPP-300195], must be received on or before February 21, 1989.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Registration Support Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716, 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 to the submitter. 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: Kerry B. Leifer, Registration Support Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Registration Support Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

SUPPLEMENTARY INFORMATION: At the request of Y-Tex Corp., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for acrylonitrile-butadiene copolymer, FD&C Yellow No. 6 aluminum lake, 2-(2'-hydroxy-5'-methylphenyl)benzotriazole, and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate when used as inert ingredients (components of ear tags and similar slow-release devices in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredients. Acrylonitrile-butadiene copolymer (CAS Reg. No. 9003–18–3), FD&C Yellow No. 6 aluminum lake (CAS Reg. No. 15790–07–5), 2-(2-hydroxy-5-methylphenyl) benzotriazole (CAS Reg. No. 2440–22–4), and octadecyl 3,5-di-tert-butyl-4-hydroxycinnamate (CAS Reg. No. 2082–79–3).

Name and address of requestor. Y-Tex Corporation, P.O. Box 1450, 1825 Big Horn Avenue, Cody, WY 82414

Bases for approval

Acrylonitrile-butadiene copolymer—

1. Because of their high-average molecular weight, insoluble form, and solid nature, butadiene copolymers are not expected to result in residues in meat and milk or to be bioavailable.

2. Toxicity data for the major monomer, acrylonitrile, were extensively reviewed by the U.S. Food and Drug Administration (FDA) (49 FR 36635; September 19, 1984). FDA concluded that the worst-case exposure to this monomer would result in an upper daily lifetime oncogenic risk of less than 1.2×10^{-7}, based on a daily lifetime consumption of 1,060 grams of soft drinks contained in acrylonitrile/styrene plastic beverage bottles (from which the monomer might be expected to migrate) with acrylonitrile monomer concentrations not exceeding 80 ppm.

3. Residues of acrylonitrile or 1,3-butadiene are not expected to be present at toxicologically significant levels in meat and milk based upon the maximum concentrations of these monomers (0.5 ppm acrylonitrile, 0.005 ppm 1,3-butadiene) in the devices per se.

4. Acrylonitrile-butadiene copolymers are cleared under 21 CFR 181.32 as prior-sanctioned substances used in certain articles intended to contact food. Listed articles include films (21 CFR 181.32(a)(1)(ii)—no restriction), coatings on paper and paperboard products in contact with meat and lard only (21 CFR 181.32(a)(2)(i)—blended with polyvinyl chloride (PVC)), coatings on conveyor belts used with fresh fruits, vegetables, and fish (21 CFR 181.32(a)(2)(ii)—blended with PVC mixed with neoprene), and extruded pipe (21 CFR 181.32(a)(3)(iii)—blended with PVC).

5. Acrylonitrile copolymers may be safely used on an interim basis as articles or components of articles intended for use in contact with food subject to certain prescribed limitations on acrylonitrile monomer extraction under 21 CFR 180.22.

FD&C Yellow No. 6 aluminum lake—

1. Residues of FD&C Yellow No. 6 aluminum lake in meat and milk are not expected to be of sufficient magnitude to warrant toxicological concern.

2. FD&C Yellow No. 6 is permanently listed for general use as a color additive in foods, drugs, cosmetics, and medical devices under 21 CFR Parts 74, 81, 82, and 201.

3. Lakes of FD&C Yellow No. 6 are provisionally listed as color additives under 21 CFR 81.1, and specifications are given under 21 CFR 82.51 and 21 CFR 82.706.

2-(2'-Hydroxy-5'-methylphenyl) benzotriazole—1. Residues of 2-(2'-hydroxy-5'-methylphenyl)benzotriazole in milk and meat are not expected to be of sufficient magnitude to warrant toxicological concern.

2. 2-(2'-Hydroxy-5'-methylphenyl) benzotriazole is cleared under 21 CFR 178.2010 as an antioxidant and/or stabilizer in polymers used in the manufacture of articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate—1. Residues of octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate in milk and meat are not expected to be of sufficient magnitude to warrant toxicological concern.

2. Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate is cleared under 21 CFR 177.1010 as an antioxidant and stabilizer in resinous and polymeric coatings used as the food-contact surface of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

3. Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate is cleared under 21 CFR 178.2010 as an antioxidant and/or stabilizer in polymers used in the manufacture of articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support this regulation.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices these ingredients are useful and do not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendments to 40 CFR Part 180 will pose no hazard to the public health. It is therefore proposed that the regulation 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, that contains these inert ingredients may request within 15 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 both the subject and the petition and document control number [OPP-300195]. All written comments filed in response to this proposal will be available for inspection in the Registration Support 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.

Dated: January 23, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 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 180.1001(e) is amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* *	*
Acrylonitrile-butadiene copolymer (CAS Reg. No. 9003-18-3) conforming to 21 CFR 180.22.	.....	Carrier in animal tag and similar slow-release devices.
* *	* *	*
FD&C Yellow No. 6 aluminum lake (CAS Reg. No. 15790-07-5).	Not more than 2% by weight of pesticide formulation.	Pigment in animal tag and similar slow-release devices.
* *	* *	*
2-(2'-Hydroxy-5'-methylphenyl) benzo-triazole (CAS Reg. No. 2440-22-4).	Not more than 0.5% by weight of pesticide formulation.	Ultraviolet light absorber/stabilizer in animal tag and similar slow-release devices.
* *	* *	*
Octadecyl 3,5-di-tert-butyl-4-hydroxyhydro-cinnamate (CAS Reg. No. 2082-79-3).	Not more than 0.5% by weight of pesticide formulation.	Thermal stabilizer/antioxidant in animal tag and similar slow-release devices.
* *	* *	*

[FR Doc. 89-2424 Filed 2-2-89; 8:45 am]

BILLING CODE 6560-50-M

COMMISSION ON CIVIL RIGHTS

45 CFR Part 704

Implementation of Freedom of Information Reform Act

AGENCY: United States Commission on Civil Rights.

ACTION: Proposed rule.

SUMMARY: The United States Commission on Civil Rights proposes to amend its Information Disclosure regulations to incorporate the recent changes to the Freedom of Information Act (FOIA) regarding requests for law enforcement records and the establishment and waiver of fees to be charged for search, review and duplication of records in response to FOIA requests. These proposed rules follow guidance issued by the Office of Management and Budget.

DATE: Comments on these proposed rules must be received on or before March 6, 1989.

ADDRESS: Written comments should be submitted to: William H. Gillers, Solicitor, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Room 606, Washington, DC 20425, (202) 376-8514.

FOR FURTHER INFORMATION CONTACT: William H. Gillers, Solicitor, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Room 606, Washington, DC 20425, (202) 376-8514.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (FOIRA) (Pub. L. 99-570) amended the Freedom of Information Act (FOIA) (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The purpose of these proposed rules is to implement the changes mandated by the FOIRA. These proposed changes to the Commission's Information Disclosure regulations at 45 CFR Part 704 are in accordance with guidelines published by the Office of Management and Budget (OMB) at 52 FR 10012 (March 27, 1987).

The FOIRA established three levels of fees that may be charged depending on the identity of the requester and the anticipated use of the requested information. These proposed rules provide for the charging of fees as follows: (1) Representatives of the news media as well as educational and noncommercial scientific institutions—document duplication alone; (2) commercial use requesters—duplication, search and review time; and (3) all other requesters—duplication and search time. Those requesters subject to search and/or duplication fees, with the exception of commercial use requesters, will not be charged for the first two hours of search time or the first 100 pages duplicated.

These proposed rules also implement the FOIRA provisions regarding fee waivers or reductions. Fee waivers will be warranted if the requester can satisfactorily demonstrate that the disclosure of requested information is in the public interest because it is likely to contribute significantly to the public's understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The Commission's rule concerning exemption 7 of the FOIA is being revised to reflect the new standard promulgated by the FOIRA. The general thrust of the revised standard is to broaden the scope of the exemption on law enforcement records or information. Exemption 7 is rarely used by the Commission in processing FOIA requests.

These proposed regulations would also update the Commission's current regulations. The revised authority section omits reference to a superseded Commission authorizing statute. Additionally, the charge for certification

of copies has been raised from $1.00 to $3.00, and the charge for duplication of paper records has been raised from $.03 to $.20. Finally, the provision granting appeal from the Solicitor's decision on fee waivers or reductions has been eliminated.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291. The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 45 CFR Part 704

Freedom of information.

Therefore, for the reasons set forth above, the Commission proposes to amend its Information Disclosure rules, 45 CFR Part 704, as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 is revised to read as follows:

Authority: 42 U.S.C. 1975–1975(f); 5 U.S.C. 552.

2. Section 704.1 paragraphs (e), (f)(1)(vii) and (f)(2) are revised to read as follows:

§ 704.1 Material available pursuant to 5 U.S.C. 552.

* * * * *

(e) Fees—(1) Definitions. The following definitions apply to the terms when used in this section:

(i) "Direct costs" means those expenditures which the Commission actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 704.1(d) of this Part. Direct costs include, for example, the salary of the employee(s) performing the work (the basic rate of pay for the employee(s) plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(ii) "Search" means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. However, an entire document will be duplicated if this would prove to be a more efficient and less expensive method of complying with a request than a more detailed manner of searching. "Search" is distinguished from "review" of material in order to determine whether the material is exempt from disclosure.

(iii) "Duplication" means the process of making a copy of a document necessary to respond to a request for disclosure of records. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(iv) "Review" means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) "Commercial use request" means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the Solicitor will determine the use to which a requester will put the documents requested. When the Solicitor has reasonable cause to doubt such intended use, or where such use is not clear from the request itself, the Solicitor will seek additional clarification before assigning the request to a specific category.

(vi) "Educational institution" means a school, an institution of higher education, an institution of professional education or an institution of vocational education, which operates a program or programs of scholarly research.

(vii) "Noncommercial scientific institution" means an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(viii) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. News media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(2) Costs to be included in fees. The direct costs included in fees will vary according to the following categories of requests:

(i) Commercial use requests. Fees will include the Commission's direct costs for searching for, reviewing, and duplicating the requested records.

(ii) Educational and noncommercial scientific institution requests. The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) Requests from representatives of the news media. The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (e)(1)(viii) of this section.

(iv) All other requests. The Commission will charge requesters who do not fit into any of the categories in paragraphs (e)(2) (i) through (iii) of this section fees which cover the direct costs of searching for and duplicating records that are responsive to the requests, except for the first two hours of search time and the first 100 pages duplicated. However, requests from persons for records about themselves will continue to be treated under the fee provision of the Privacy Act of 1974 and § 705.10 of this chapter.

(3) Fee calculation. Fees will be calculated as follows:

(i) Manual search. At the salary rate (basic pay plus 16 percent) of the employee(s) making the search.

(ii) Computer search. At the actual direct cost of providing the search, including computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) Review (commercial use requests only). At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(iv) Duplication. At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or

printouts), the actual cost of production, including operator time, will be charged.

(v) Additional services; certification. Express mail and other additional services that may be arranged by the requester will be charged at actual cost. The fee for certification or authentication of copies shall be $3.00 per document.

(vi) Assessment of interest. The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(vii) No fee shall be charged if the total billable cost calculated under paragraphs (e) (2) and (3) of this section is less than $10.00.

(4) Waiver or reduction of fees. (i) Documents will be furnished without charge, or at a reduced charge, where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) Whenever a waiver or reduction of fees is granted, only one copy of the record will be furnished.

(iii) The decision of the Solicitor on any fee waiver or reduction request shall be final and unappealable.

(5) Payment procedures. (i) Fee payment. Payment of fees shall be made by cash (if delivered in person), check or money order payable to the United States Commission on Civil Rights.

(ii) Notification of fees. No work shall be done that will result in fees in excess of $25.00 without written authorization from the requester. Where it is anticipated that fees will exceed $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the projected fees. The notification shall offer the requester an opportunity to confer with the Solicitor in an attempt to reformulate the request so as to meet the requester's needs at a lower cost. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(6) Advance payment of fees. When fees are projected to exceed $250.00, the requester may be required to make an advance payment of all or part of the fee before the request is processed. If a requester has previously failed to pay a fee in a timely fashion (i.e. within 30 days of the billing date), the requester will be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before a new or pending request is processed from that requester. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester has complied with this provision.

(7) Other provisions. (i) Charges for unsuccessful search. Charges may be assessed for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(ii) Aggregating requests to avoid fees. Multiple requests shall be aggregated when the Solicitor reasonably determines that a requester or group of requesters is attempting to break down a request into a series of requests to evade fees.

(iii) Debt Collection Act. The Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

(f) Exemptions (5 U.S.C. 552(b)).

(1) * * *

(vii) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings,

(B) Could deprive a person of a right to a fair trial or an impartial adjudication,

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis,

(E) Could disclose techniques and procedures for all enforcement investigations or prosecutions, or could disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) Could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

(2) Investigatory records or information. (5 U.S.C. 552(b)(7)). (i) Among the documents exempt from disclosure pursuant to § 704.1(f)(1)(vii) shall be records or information reflecting investigations which either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records or information would fall within the classifications established in paragraph (f)(1)(vii)(B) through (F) of this section.

(ii) Among the documents exempt from disclosure under paragraphs (f)(1)(vii)(D) and (f)(2)(i) of this section concerning confidential sources shall be documents which disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this subsection to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness could reasonably be expected to be inhibited by disclosure.

(iii) Whenever a request is made which involves access to records described in paragraph (f)(1)(vii)(A) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this section.

* * * * *

§ 704.1 [Amended]

3. Section 704.1(g)(1) is amended by removing the word "either" and the phrase "or denied waiver or reduction of fees under § 704.1(e)(2) or (3)."

4. Section 704.1(g)(2) is amended by removing the words "and (e)(2) or (3)" and "or waiver/reduction of fees."

Dated: January 31, 1989.

William H Gillers,

Solicitor.

[FR Doc. 89-2544 Filed 2-2-89; 8:45 am]

BILLING CODE 6335-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580, and 581

[Docket No. 89-4]

Equipment Interchange Agreements; Tariff Publication of Free Time and Detention Charges

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its domestic offshore tariff, foreign tariff and service contract filing regulations pertaining to the publication of free time and detention charges applicable to carrier equipment interchanged with shippers or their agents. This proposal is intended to simplify the filing of equipment interchange agreemments. The proposed rule provides guidelines for filing equipment interchange agreement tariffs and eliminates the necessity of filing a complete copy of an equipment interchange agreement that makes limited changes to the standard agreement. With respect to service contracts, procedures are established for the inclusion of equipment interchange provisions.

DATE: Comments due on or before March 20, 1989.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Commission published a Final Rule with respect to equipment interchange agreements ("EIA") in the **Federal Register** on February 26, 1988, with an effective date of March 28, 1988 (53 FR 5770). This Final Rule, issued in Docket No. 85–19–*Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers or Their Agents*, amended the Commission's domestic offshore and foreign tariff filing rules to require common carriers to publish in their tariffs the terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers and chassis) by shippers or persons acting on the shippers' behalf. The Final Rule requires common carriers to file a copy of each EIA they have with shippers or their agents. Under the Final Rule, the agreements must be published in the rules section of a carrier's EIA tariff in accordance with 46 CFR 550.5(b)(8)(xvii) (domestic trades) and 46 CFR 580.5(d)(21) (foreign trades).

On March 9, 1988, a petition was filed by several conferences of ocean common carriers requesting a 90-day stay of the effective date of the Final Rule. The purpose of the request was to allow additional time for compliance with the new regulations. The Commission granted that request, extending the effective date of the Final Rule to June 26, 1988 (53 FR 9629, March 29, 1988).

Because of continuing difficulties faced by the industry, the Commission granted a further 90-day extension of the Rule's effective date to September 30, 1988 (53 FR 23632, June 23, 1988). On August 30, 1988 (53 FR 33139), the Commission issued an indefinite stay of the effective date of the Final Rule to permit resolution of a number of remaining issues regarding compliance with various aspects of the EIA filing requirements.

The Final Rule in Docket No. 85–19 requires carriers and conferences to file each EIA *in its entirety*, if it differs from the carrier's standard terms and conditions. This would necessitate a number of nearly identical filings, as many EIA's differ only in minor respects, such as in their "free days and charges" provisions.

The rule proposed in this proceeding is intended to supplement the regulations issued in Docket No. 85–19 and simplify their implementation by easing tariff filing requirements. It does not affect the exemptions granted in Docket No. 85–19 for EIA's which do not affect the rates of the carrier. The overall purpose of the proposed rule is to provide a tariff filing methodology available to all carriers and conferences. This should facilitate compliance with the regulation and avoid the imposition of unnecessary and costly burdens on the industry with respect to the printing and filing of tariff pages. The proposed rule also clarifies the relationship of the EIA filing requirement to service contracts, guidelines which were not included in the Final Rule in Docket No. 85–19.

This proposed rule would: (1) Require publication of a separate EIA tariff only in those instances where an individual EIA differs from the carrier's standard EIA; (2) allow carriers to publish separately the free days or charges provisons in those instances where those provisions of an individual EIA differ from the standard; (3) permit the cross-referencing of foreign rate tariffs; (4) permit conferences to cross-reference an individual member's EIA tariff; and (5) clarify the filing requirements for service contracts. In those instances where non-standard EIA's differ from the standard EIA only with respect to the number of free days and/or charges, the proposed rule would provide that only the minimal EIA information required by the prescribed Section 1 of the EIA tariff be provided. (*See* Attached Exhibit Nos. 3 and 6, Domestic and Foreign respectively). Where the difference is in other provisons of the EIA, the entire EIA would have to be published in tariff format set forth in prescribed Section 2. (*See* Attached Exhibit Nos. 4 and 7, Domestic and Foreign respectively). In additon, an index to Section 2 would be required to include the name of the inland carrier; location of the free days and/or charges; equipment subject to the agreement; number of free days and/or charges; tariffs subject to the charges; and the tariff page where the agreement can be located.

The provisions of the proposed rule are applicable to vessel operating common carriers and non-vessel-operating common carriers. Furthermore, because the Docket No. 85–19 regulations on the use of carrier equipment apply to free time practices in foreign countries, carriers or conferences must comply with the EIA publication requirements with respect to foreign port operations.

Commenting parties are encouraged to submit, along with any comments, draft language for any changes suggested. The Commission is inviting comments only to the rule proposed in this proceeding. The Commission is not soliciting, nor will it entertain or consider, comments on issues raised and disposed of in Docket No. 85–19. The Commission further advises that by providing a procedure for the identification and publication of EIA's which vary from the standard, the Commission is not passing upon the legality of such variations under the anti-discrimination provisions of the Shipping Act 1916, 46 U.S.C. app. 801 *et seq.* or the Shiping Act of 1984, 46 U.S.C. app. 1701 *et. seq.*

The stay in Docket No. 85–19 will remain in effect pending completion of this proceeding.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission also finds that the rule proposed in this proceeding is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601. Section 601(2) of that Act excepts from

its purview any "rule of particular applicability to rates or practices relating to such rates * * *." As the proposed rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3503(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This represents a reduction in burden from the rule as stated in Docket 85-19. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Parts 550, 580 and 581

Maritime carriers, Rates and fares, Service contracts, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709 and 1716; secs. 18(a) and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817(a) and 841(a), and sec. 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, the Federal Maritime Commission proposes to amend Parts 550, 580 and 581 of Title 46 of the Code of Federal Regulations as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841, 843, 845a and 847.

2. Section 550.5 is amended by revising paragraph (b)(8)(xvii) as follows:

§ 550.5 Contents of tariffs.

* * * * *

(b) * * *

(8) * * *

(xvii) *Use of carrier equipment.* (A) The standard agreement terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers shall be published in tariff format (*see* Exhibit 5). Equipment Interchange Agreements (EIA's) that vary from the published standard terms and conditions governing the use of carrier-provided equipment, (*e.g.*, free time and charges or other agreement provisions), shall be included in a separately filed EIA tariff as provided in section 550.20. In these instances, Rule 17 in the rate tariff shall contain only a cross-reference to the EIA tariff.

(B) When an EIA tariff is filed, the applicable rate tariff shall make reference to the FMC number of the governing EIA tariff as permitted by § 550.14(a)(1). EIA's shall make reference to the tariffs to which they apply. Conferences shall cross-reference individual carrier EIA tariffs.

* * * * *

3. Section 550.14 is amended by revising paragraph (a)(1) to read as follows:

§ 550.14 Governing tariffs.

(a)(1) Rules, bills of lading/contracts of affreightment and EIA's may be separately published as a "rules tariff", "bill of lading tariff" or "Equipment Interchange Agreement Tariff" as provided in §§ 550.5(a)(8), (b)(7) and (b)(8)(xvii). For the purposes of this rule, classifications of freight, equipment registers, hazardous cargo rules and similar lengthy tariff matters are considered "rules tariffs."

* * * * *

4. A new § 550.20 is added which reads as follows:

§ 550.20 Equipment Interchange Agreement Tariffs.

(a)(1) EIA tariffs shall be filed as provided in §§ 550.5(b)(8)(xvii) and 550.14(a)(1) and in accordance with the other tariff filing requirements of Part 550 except as provided herein. Those EIA's that differ from the standard EIA as set forth in § 550.5(b)(8)(xvii) are to be included. When the difference is limited to the free time and/or charges, only the information set forth in Exhibit 3 is required. If the difference includes other provisions, the entire agreement shall be published in the governing tariff and an index of participating inland carriers shall be listed as set forth in Exhibit 4.

(2) The EIA tariff shall be arranged in the following order:

- Title Page
- Check Sheet (optional)
- Table of Contents
- Explanation of Symbols, Abbreviations and Reference Marks
- Tariff Rules and Regulations
- Free Time and Charges—List of Participating Inland Carriers That Differ From Rule 17
- Agreements—Index of Participating Inland Carriers With Equipment Interchange Agreements That Differ From Rule 17

(b) The rules section of the EIA tariff shall include Rules 1 (Scope, § 550.5(b)(8)(i)) and 17 (Use of Carrier Equipment, § 550.5(b)(8)(xvii)). A rule listing Governing Publications shall also be included as required by § 550.14. Rules 2 through 16 shall be noted as "Not Applicable." Free time and charges shall be included as the last item in Rule 17 and shall be arranged as set forth in Exhibit 5. Technical terms included in Rule 17 shall be defined.

5. Part 550 is amended by adding new Exhibits 3, 4 and 5 to follow § 550.20 reading as follows:

BILLING CODE 6730-01-M

EXHIBIT 3

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 550.20(a)

CAN MARINE LINES CO.
EQUIPMENT INTERCHANGE TARIFF - FMC-F NO. 1

ORIG/REV ORIGINAL | PAGE
CANCELS
EFFECTIVE DATE OCTOBER 30, 1988

BETWEEN: PORTS IN THE U.S. GULF AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO
(SPECIFIED IN RULE 1)

SECTION 1
FREE TIME AND CHARGES
LIST OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 17

INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	FREE DAYS	CHARGE	RATE TARIFF(S) FMC NO.	REPLACEMENT EIA
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED.
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. NUMBER OF FREE DAYS ALLOWED.
6. CHARGE FOR EQUIPMENT NOT RETURNED.
7. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
8. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 4

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 550.20(a)

CAN MARINE LINES CO. EQUIPMENT INTERCHANGE TARIFF - FMC-F NO. 1		ORIG/REV | PAGE ORIGINAL | CANCELS
BETWEEN: PORTS IN THE U.S. GULF	AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO	EFFECTIVE DATE OCTOBER 30, 1988

(SPECIFIED IN RULE 1)

SECTION 2

AGREEMENTS

INDEX OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 17

INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	RATE TARIFF(S) FMC NO.	TARIFF PAGE NUMBER	REPLACEMENT EIA NO.
[1]	[2]	[3]	[4]	[5]	[6]	[7]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED.
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
6. TARIFF PAGE NUMBER WHERE THE EQUIPMENT INTERCHANGE AGREEMENT BEGINS.
7. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 5

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 550.20(b)

CAN MARINE LINES CO. EQUIPMENT INTERCHANGE TARIFF - FMC-F NO. 1	ORIG/REV ORIGINAL	PAGE
	CANCELS	
BETWEEN: PORTS IN THE U.S. GULF (SPECIFIED IN RULE 1) AND: PORTS IN THE COMMONWEALTH OF PUERTO RICO	EFFECTIVE DATE OCTOBER 30, 1988	

RULE NUMBER	RULES AND REGULATIONS
RULE 17	USE OF CARRIER EQUIPMENT - (INSERT STANDARD EQUIPMENT INTERCHANGE AGREEMENT)

PORTS:	EQUIPMENT TYPE	FREE DAYS	CHARGE

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

BILLING CODE 6730-01-C

PART 580—[AMENDED]

6. The authority citation for Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

7. Section 580.5 is amended by revising paragraph (d)(21) and adding paragraph (g)(5) as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(21) *Use of carrier equipment.* The standard agreement terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers shall be published in tariff format (see Exhibit 8). Equipment Interchange Agreements (EIA's) that vary from the published standard terms and conditions governing the use of carrier-provided equipment, (*e.g.*, free time and charges or other agreement provisions), shall be included in a separately filed EIA tariff as provided in § 580.17. In these instances, Rule 21 in the rate tariff shall contain only a cross reference to the EIA tariff. A carrier is not precluded from publishing a separate EIA tariff even though it utilizes a standard EIA. When a separate EIA tariff is filed, the applicable rate tariff shall make reference to the FMC number of the governing EIA tariff as permitted by § 580.13(a). EIA tariffs shall make reference to the tariffs to which they apply. Conferences shall cross reference individual carrier EIA tariffs.

* * * * *

(g) * * *

(5) Reference may be made to an EIA tariff for free time allowed and detention or similar charges, if applicable.

8. Section 580.6 is amended by the addition of a sentence to paragraph (m)(1) as follows:

§ 580.6 Statement of rates and charges.

* * * * *

(m)(1) * * *. Conferences shall cross reference individual carrier EIA tariffs pursuant to section 580.17.

9. In § 580.13, the first sentence of paragraph (a) and paragraph (b) are revised to read as follows:

§ 580.13 Governing tariffs.

(a) Rules, bills of lading/contracts of affreightment and EIA's may be separately published as a "rules tariff", "bill of lading tariff" or "Equipment Interchange Agreement Tariff" as provided in § 580.5(c)(10), (d)(8) and (d)(21). * * *

(b) Except for EIA tariffs, no rate tariff shall refer to or be governed by another rate tariff.

* * * * *

10. A new § 580.17 is added which reads as follows:

§ 580.17 Equipment Interchange Agreement tariffs.

(a)(1) EIA tariffs shall be filed as provided in §§ 580.5(d)(21) and 580.13(a). They shall be filed in accordance with the tariff filing requirements of Part 580 except as provided herein. Those agreements that differ from the standard agreement as set forth in Rule 21 are to be included. When the difference is limited to the free time and/or charges, only the information set forth in Exhibit 6 is required. If the difference includes other provisions, the entire agreement shall be published in the governing tariff and an index of participating inland carriers shall be included as set forth in Exhibit 7.

(2) The tariff shall be arranged in the following order:

- Title page
- Check Sheet (optional)
- Table of Contents
- Explanation of Symbols, Abbreviations and Reference Marks
- Tariff Rules and Regulations
- Free Time and Charges—List of Participating Inland Carriers That Differ From Rule 21
- Agreements—Index of Participating Inland Carriers with Equipment Interchange Agreements That Differ From Rule 21

(b) The rules and regulations section of the EIA tariff shall include Rules 1 (Scope, § 580.5(d)(1)) and 21 (Use of Carrier Equipment, § 580.5(d)(21)). A rule listing Governing Publications shall also be included as required by § 580.13. Required Rules 2 through 20 shall be noted as "Not Applicable." Free time and charges shall be included as the last item in Rule 21 and shall be arranged as set forth in Exhibit 8. Technical terms included in Rule 21 that differ in meaning from their normally accepted meaning or are not usually associated with the shipping industry shall be defined.

11. Part 580 is amended by adding new Exhibits 6, 7 and 8 reading as follows:

BILLING CODE 6730-01-M

EXHIBIT 6

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 580.17(a)

CARLETON STEAMSHIP LINE EQUIPMENT INTERCHANGE TARIFF - FMC NO. 1		ORIG/REV | PAGE ORIGINAL | 1 CANCELS |
BETWEEN: PORTS AND POINTS IN THE U.S. GULF	AND: PORTS AND POINTS IN FOREIGN COUNTRIES	EFFECTIVE DATE OCTOBER 30, 1988
(SPECIFIED IN RULE 1)		

SECTION 1
FREE TIME AND CHARGES
LIST OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 21

INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	FREE DAYS	CHARGE	RATE TARIFF(S) FMC NO.	REPLACEMENT EIA
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED.
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. NUMBER OF FREE DAYS ALLOWED.
6. CHARGE FOR EQUIPMENT NOT RETURNED.
7. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
8. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 7

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 580.17(a)

CARLETON STEAMSHIP LINE EQUIPMENT INTERCHANGE TARIFF - FMC NO. 1		ORIG/REV | PAGE ORIGINAL | CANCELS EFFECTIVE DATE OCTOBER 30, 1988
BETWEEN: PORTS AND POINTS IN THE U.S. GULF	AND: PORTS AND POINTS IN FOREIGN COUNTRIES	
(SPECIFIED IN RULE 1)		

SECTION 2
AGREEMENTS
INDEX OF PARTICIPATING INLAND CARRIERS THAT DIFFER FROM RULE 21

INLAND CARRIER (CONCURRENCE)	EIA NO.	LOCATION	EQUIPMENT	RATE TARIFF(S) FMC NO.	TARIFF PAGE NUMBER	REPLACEMENT EIA NO.
[1]	[2]	[3]	[4]	[5]	[6]	[7]

NOTES

1. NAME OF INLAND CARRIERS ALPHABETICALLY ARRANGED.
2. CARRIER ASSIGNED EQUIPMENT INTERCHANGE AGREEMENT NUMBER.
3. LOCATION WHERE THE FREE DAYS AND CHARGES APPLY.
4. EQUIPMENT WHICH IS APPLICABLE TO THE FREE DAYS AND CHARGES.
5. RATE TARIFFS SUBJECT TO THE FREE DAYS AND CHARGES.
6. TARIFF PAGE NUMBER WHERE THE EQUIPMENT INTERCHANGE AGREEMENT BEGINS.
7. NUMBER OF THE REPLACEMENT EQUIPMENT INTERCHANGE AGREEMENT WHEN A NEW AGREEMENT IS NEGOTIATED.

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE

EXHIBIT 8

EQUIPMENT INTERCHANGE TARIFF PAGE
SECTION 580.17(b)

CARLETON STEAMSHIP LINE EQUIPMENT INTERCHANGE TARIFF - FMC NO. 1				ORIG/REV: ORIGINAL PAGE CANCELS
BETWEEN: PORTS AND POINTS IN THE U.S. GULF		AND: PORTS AND POINTS IN FOREIGN COUNTRIES		EFFECTIVE DATE: OCTOBER 30, 1988
(SPECIFIED IN RULE 1)				
RULE NUMBER	RULES AND REGULATIONS			
RULE 21	USE OF CARRIER EQUIPMENT - (INSERT STANDARD EQUIPMENT INTERCHANGE AGREEMENT)			
		EQUIPMENT TYPE	FREE DAYS	CHARGE
	USA PORTS:			
	FOREIGN PORTS: COUNTRY A COUNTRY B			
FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGE				

BILLING CODE 6730-01-C

PART 581—[AMENDED]

12. The authority citation for Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

13. Section 581.4 is amended by the deletion of "and" at the end of paragraph (a)(2)(i) and the addition of a new paragraph (a)(2)(iii) as follows:

§ 581.4 Form and manner.

(a) * * *

(2) * * *

(iii) If the terms and conditions (including free time allowed for detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers or their agents are fully set forth in the tariff of general applicability, the service contract and essential terms publication need only identify the tariff. If the terms differ from those set forth in the tariff of general applicability, such terms must be set forth in the carrier's EIA tariff, identifying the service contract to which they apply, and must be incorporated by reference in the service contract and related essential terms publication.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–2509 Filed 2–2–89; 8:45 am]

[BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 505

[GSAR Notice No. 5–223]

General Services Administration Acquisition Regulation; Publicizing and Response Times

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise section 505.203 to establish the same minimum requirement for publicizing in local newspaper acquisitions of leasehold interests in real property as is currently provided for acquisitions of real property appraisal services and to establish for leasehold interests in real property a minimum response time of 30 calendar days between issuance of the solicitation and receipt of initial offers. The Administrator of General Services has made a determination under section 18(c)(3) of the Office of Federal Procurement Policy Act that publicizing acquisitions of leasehold interests in real property and real property appraisal services in local newspapers is more appropriate than synopsizing in the *Commerce Business Daily*. The requirement to publicize leasehold interests in real property applies to blocks of space of 10,000 square feet or more (GSAR 505.101).

DATE: Comments are due in writing on or before March 6, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy Regulations (VP), 18th and F, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this proposed rule. The GSA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would simply amend the GSAR to provide internal operating procedures for GSA contracting activities responsible for publicizing acquisitions for real property appraisal services and leases of real property and to provide guidance for offerors concerning the limitations on response time for receipt of offers. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 505

Government procurement.

PART 505—[AMENDED]

1. The authority citation for 48 CFR Part 505 continues to read as follows:

Authority: 40 U.S.C. 486(c).

Subpart 505.2—Synopsis of Proposed Contracts

2. Section 505.203 is revised to read as follows:

§ 505.203 Publicizing and response time.

When publicizing acquisitions of real property appraisal services and leasehold interests in real property (see 505.101 and 505.202, the notice must appear in local newspapers at least 3 calendar days before issuance of the solicitation. The solicitation must be issued at least: (a) 10 calendar days before the date established for receipt of initial offers for real property appraisal services; or (b) 30 calendar days before the date established for receipt of initial offers for leasehold interests in real property.

Dated: January 24, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–2511 Filed 2–2–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 393

[FHWA Docket No. MC–89–4]

RIN 2125–AC–26

Parts and Accessories Necessary for Safe Operation; Emergency Warning Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FHWA is requesting public comment on several issues relating to the appropriate use of emergency warning devices, as well as the type allowed, for commercial motor vehicles. First, the FHWA requests public comment on the appropriate use of fuses as an alternative or supplement to bidirectional emergency reflective triangles. This action is required by section 9106 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Title IX, Subtitle B, of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 102 Stat. 4181).

Second, the FHWA requests comments on the elimination of 49 CFR 392.22(b)(2)(iii) which exempts drivers from the general requirement to place warning devices when the motor vehicle is stopped upon the traveled portion of a highway or the shoulder thereof if the vehicle is within a business or residential area during times when lighting is not required, or where lighting is sufficient to make a vehicle clearly discernable at a distance of 500 feet to persons on the highway. This action is being taken in response to a petition for a rulemaking change by Police Officer Thomas J. Magnan, Traffic Safety

Division, Motor Carrier Safety Assistance Program (MCSAP) Grant Coordinator, Metropolitan Police Department, St. Louis, Missouri.

Third, the FHWA is requesting comments on all aspects of emergency warning devices, including the types allowed, and exemptions, and/or conditions for use.

DATE: Comments must be received on or before March 20, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC–89–4, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or Wordstar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 9106 of the Truck and Bus Safety Regulatory Act of 1988 (the Act) requires the Secretary, not later than 60 days after the enactment, to "initiate rulemaking proceedings for the purpose of determining the appropriate use, as emergency warning devices for commercial motor vehicles, of fusees as an alternative or supplement to bidirectional emergency reflective triangles." Section 9106 further requires the Secretary to complete such rulemaking proceeding by October 31, 1989.

The current requirements regarding the use of fusees in the Federal Motor Carrier Safety Regulations (FMCSRs) are in §§ 393.95 and 392.22. Paragraph (f)(1)(i) of § 393.95, Emergency equipment on all power units, states that vehicles equipped with warning devices before January 1, 1974, may use until replacements are necessary: "Three liquid burning emergency flares which satisfy the requirements of SAE J597 'Liquid Burning Emergency Flares,' and three fusees and two red flags;" or other devices as specified in paragraphs (f)(1)(ii) thru (v). Paragraph (f)(2)(ii), Vehicles equipped with warning devices on and after January 1, 1974, states, "Fusees, liquid-burning emergency flares, and red electric lanterns that conform to paragraph (f)(1) of this section may be used to supplement the emergency reflective triangles required in paragraph (f)(2)(i) of this section."

Section 393.95(g), Flame producing devices prohibited on certain vehicles, states that, "Liquid-burning emergency flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any motor vehicle transporting explosives, Class A or Class B; any cargo tank motor vehicle used for the transportation of flammable liquids or flammable compressed gas whether loaded or empty; or any motor vehicle using compressed gas as a motor fuel."

Section 393.95(j), Requirements for fusees, states that, "Each fusee shall be adequate, reliable, capable of burning at least 15 minutes and shall comply with the specifications of the Bureau of Explosives, Association of American Railroads * * * dated February 1969. Each fusee shall be marked to show that it complies with the specifications of the Bureau of Explosives."

Paragraph (b)(2)(i), special rules—fusees of § 392.22, Emergency signals; stopped vehicles, states, "The driver of a vehicle equipped with liquid burning flares (pot torches) shall first place a fusee at the location specified in paragraph (b)(1)(ii) of this section before he places the liquid-burning flares as specified in paragraph (b)(1) of this section." Paragraph (b)(2)(iii), Business or residential districts, further states, "The placement of warning devices is not required within the business or residential district of a municipality, except during the time lighted lamps are required and when street or highway lighting is insufficient to make a vehicle clearly discernable at a distance of 500 feet to persons on the highway."

Police Officer Magnan states in his petition that, "When responding to accident calls or calls of stalled vehicles, it is most frustrating for commercial vehicles to be stalled in the center lane of an interstate highway or in the traffic lane of a busy street, and the driver is making no effort to warn the public that the vehicle is stalled. Many times these vehicles have no power, so the four way flashing signal lights cannot be used."

The petitioner further states that during rush hour traffic, it is difficult to determine if a vehicle in a traffic lane on a busy street or on an interstate highway is moving or parked. He also states, that with the "Federal Commercial Zones having been eliminated effective November 15, 1988, * * * this change will also enhance the safety of all the motoring public, and * * * there will be no unnecessary burden on the motor carrier industry."

Comments on the appropriate use of fusees as emergency warning devices is requested, in particular whether fusees should be used as an alternative or as a supplement to the bidirectional emergency reflective devices. Comments are further requested as to whether the exemption from the requirement to place warning devices when drivers are within a business or residential district during the time when lighted lamps are not required, should be revised.

Comments are also requested on all aspects of the use of emergency warning devices. The FHWA encourages commenters to submit suggested proposed regulatory language and enforcement activities with supporting information. Information on the costs and benefits of such proposals is especially requested. The FHWA would also appreciate comments on any documentation or other paperwork requirements needed to enforce regulations that may be issued to implement section 9106 of the Act or revisions to the existing requirements.

Below are several specific questions to which the FHWA would appreciate responses. Commenters should not limit their responses to these questions.

(1) Should fusees be authorized as an alternative to bidirectional emergency reflective triangles, or other emergency warning devices?

(2) Should fusees or other warning devices be restricted to supplemental use with bidirectional emergency reflective triangles only, as currently required?

(3) Are the current manufacturing standards for fusees adequate?

(4) Is the required minimum burning time of 15 minutes adequate?

(5) Should the use of fusees and/or other warning devices be required whenever a commercial vehicle is stalled or inoperative, whether or not it is in a residential or business district, or without reference to lighting conditions?

(6) Should the use of fusees or other warning devices within a business or residential area be required only in the event where the stalled vehicle is without power sufficient to activate its emergency signal lamps?

(7) What is the average time period for a vehicle to be stopped in the roadway or shoulder and require an emergency warning device?

Regulatory Impact

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

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rule on all individuals will be minimal.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Parts 392 and 393

Highway safety, Highways and roads, Motor carriers, Drivers, Reporting and recordkeeping requirements, and Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Issued on: January 23, 1989.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 89-2522 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-22-M

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49 CFR Part 396

[FHWA Docket No. MC-89-3]

RIN 2125-AC-25

Inspection, Repair and Maintenance; Brake Inspection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FHWA is requesting public comment concerning the development and implementation of Federal standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected. This action is required by section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Title IX, Subtitle B, of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181).

DATE: Comments must be received on or before April 4, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC-89-38, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or Wordstar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification or receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the Act) requires the Secretary, not later than December 31, 1990, to "issue regulations for the purpose of adopting improved standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees. At a minimum, such regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting such brakes and brake systems."

The FHWA believs that section 9110 applies only to persons who are employees of motor carriers. Section 9110 amends the Motor Carrier Safety Act of 1984 (MCSA) (49 U.S.C. App. 2501-2520) by adding at the end thereof a new section entitled "Maintenance and Inspection of Brake Systems." This action makes the definition of "employee" (contained in section 204 of the MCSA) aplicable to the term "employee" as used in section 9110 of the Act. Section 204 defines an employee as "(A) an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle); (B) a mechanic; (C) a freight handler; and (D) any individual other than an employer; who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or any political subdivision of a State who is acting within the course of such employment." "Employer" is also defined in section 204 of the MCSA as, "Any person engaged in a business affecting interstate commerce who owns or leases a commercial vehicle in connection with that business, or assigns employees to operate it, but such terms dose not include the United States, any State, any political subdivision of a State, or any agency established under a compact between States approved by the Congress of the United States." Therefore, the FHWA believes that persons who *are not* employees of motor carriers but who may inspect or maintain the brakes or brake systems of commercial motor vehicles *are not* covered by section 9110 and any subsequent regulations implementing that section. An example of this would be independent garage owners and their mechanics.

The FHWA also believes that this section does not apply to governmental inspectors at any level of government because the definitions of "employee" and "employer" in section 204 of the MCSA specifically exclude governmental employees.

Comments concerning the applicability of section 9110 of the Act are required. The FHWA is especially interested in comments regarding motor carriers' and their drivers' (both employee drivers and leased/contractor drivers) responsibilities under section 9110.

The FHWA is also interested in comments regarding the definition of the employee "responsible" for maintaining and inspecting brake systems. Should FHWA interpret this to mean the "mechanic" who performs the work or the "Chief Mechanic" or "supervisor" who is directly responsible for the mechanic and his/her work? The interpretation of "responsible" employee would have a major impact on the number of individuals covered by any regulations and the type of training they would receive.

Comments are requested on all aspects of section 9110 of the Act. The FHWA encourages commenters to submit suggested regulatory language and enforcement activities. The FHWA would also appreciate comments on any documentation and/or other paperwork requirements needed to implement and ensure compliance with any regulations that would be issued under section 9110 of the Act.

Below are several questions to which the FHWA would appreciate responses. However, commenters should not limit their responses to these questions.

1. What type of training is currently provided to brake inspectors and mechanics? How do employers determine the qualifications of these employees, i.e., what criteria or job performance standards are used?

2. It there an established certification program for brake inspectors or mechanics? Please provide information on such programs, i.e., purpose, scope, criteria, program sponsor and results.

3. Should there be multiple levels of inspector/mechanic qualifications depending on the "approved" type of work allowed, e.g., adjust brakes, replace and maintain complete brake systems, mechanic helpers, master mechanics?

4. How should new technologies be reflected in qualifications, training standards, and methods?

5. How often should qualifications be reviewed?

6. Should a certification program be mandated or established as recommended practice? If so, who should administer it—industry, States, Federal Government?

7. Should there be a grandfather provision? If so, how should it be structured and whom should it include?

8. What type of training/experience should be allowed/required to meet the minimum qualifications?

9. Should drivers be allowed to meet the qualifications without any additional qualifications or proof (other than being a qualified driver)?

10. Should the persons covered by this section be required to meet qualifications similar to those applicable to drivers regarding performance and knowledge testing, employment verification and physical qualifications, including being tested for use of controlled substances?

The FHWA is also interested in any information on the number of persons who would potentially be affected and the costs and benefits (qualified, if possible) associated with any regulation implementing this section of the Act.

Regulatory Impact

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

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking action on all individuals will be minimal.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 396

Highway safety, Highways and roads, Motor carriers, Drivers, Reporting and recordkeeping requirements, and Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Issued on: January 23, 1989.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 89-2521 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86-01: Notice 7]

RIN 2127-AC32

Motor Vehicle Theft Prevention; Reporting Requirements for Motor Vehicle Rental and Leasing Companies

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the requirements for annual theft data reports to be filed with this agency by self-insured rental and leasing companies with fleets of 20 or more motor vehicles. Those requirements currently provide that *all* such companies must file those reports annually. NHTSA estimates that there are approximately 4,000 rental and leasing companies currently subject to the reporting requirements.

However, the agency has learned of additional information that it believes will allow it to exempt most rental and leasing companies from these reporting requirements. This notice proposes to require theft reports only from rental and leasing companies with combined fleets of 50,000 or more vehicles. This proposed criteria would result in only 19 rental and leasing companies being required to file theft reports, instead of the approximately 4,000 companies currently required to file such reports. NHTSA has tentatively determined that reports from the 19 largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies, while reducing an unnecessary burden on small rental and leasing companies.

DATE: Comments on this notice must be received by this agency not later than March 20, 1989.

ADDRESS: Comments should refer to Docket No.T86-01; Notice 7, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Kurtz's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547; Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2021 *et seq.*; Cost Savings Act). Section 612 of the Cost Savings Act requires the submission of annual reports by insurers to NHTSA and specifies minimum content requirements for those reports. Section 612(b) requires NHTSA to periodically compile and publish the information set forth in the insurer reports, in a form that will be helpful to the public, including Federal, State, and local police and the Congress.

The required contents of the insurer reports are set forth in section 612(a)(2) of the Cost Savings Act. That section specifies that the reports include among other matters: Theft and recovery data; rating rules and plans used by insurers to establish premiums for comprehensive insurance coverage for motor vehicles; and actions taken to reduce premiums.

Section 612 defines the term "insurers" very broadly, and requires all such parties to file annual reports with NHTSA unless exempted by the agency. There are two groups which fall within that term. First, every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer under section 2(12) of the Cost Savings Act (15 U.S.C. 1901), regardless of the size of the business. Second, section 612(a)(3) specifies that, for the purposes of section 612, the term "insurer"

includes any person, which has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. Congress recognized that it is possible for the agency to draw valid conclusions about the anti-theft program based on data gathered from only a representative sample of insurers. Two provisions in section 612 authorize the agency to exempt certain insurers, particularly the smaller ones, from these reporting requirements.

Issuers of Motor Vehicle Insurance Policies

The first provision in section 612 that authorizes the agency to exempt smaller insurers from the reporting requirements is set forth in section 612(a)(5) (15 U.S.C. 2032(a)(5)). This section gives the agency authority to exempt *only* issuers of motor vehicle insurance policies from the reporting requirements, and only those issuers of motor vehicle insurance policies whose market share is less than a given percentage of the total market. NHTSA can exempt such insurers if it "finds that such exemption will not significantly affect the validity or the usefulness of the information collected and compiled under [section 612], nationally or State-by-State."

NHTSA identified 31 insurance groups that were not eligible for exemptions under section 612(a)(5), in the final rule establishing the insurer reporting requirements (52 FR 59; January 2, 1987). Because reports from these 31 insurance groups would represent a significant percentage of the national and individual State insurance premiums, NHTSA concluded that the reports of these 31 groups would provide NHTSA with representative data, both nationally and on a State-by-State basis, and that these data would be sufficient for the agency to carry out its activities and responsibilities under Title VI of the Cost Savings Act. Based on these conclusions, NHTSA exempted from the reporting requirements every issuer of motor vehicle insurance policies that was statutorily eligible for an exemption.

NHTSA used the data vountarily supplied by insurance companies to A.M. Best to determine the market shares nationally and in each State for the insurance groups. The agency determined that these data are both accurate and timely. Appendices A and B to Part 544 list those insurance groups that are required to file annual reports with NHTSA. Since eligibility for an exemption from the reporting requirements may vary annually with fluctuations in the market shares of the respective insurance groups, the NHTSA updates Appendices A and B annually, to reflect changes in market share reported by A.M. annually, to reflect changes in market share reported by A.M. Best. This procedure allowed the agency to exempt all eligible issuers of motor vehicle insurance policies from the reporting requirements.

Rental and Leasing Companies

The second provision in section 612 that allows NHTSA to exempt smaller insurers from the reporting requirements is set forth in section 612(a)(4). Exemptions under this section are statutorily available to all insurers, both issuers of motor vehicle insurance policies and any person that has a fleet of more than 20 vehicles used primarily for rental and lease and not covered by theft insurance policies issued by an insurer. For convenience, this latter group is referred to in this notice as "rental and leasing companies." Section 612(a)(4) authorizes NHTSA to exempt any insurer from these reporting requirements if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, *and*

(2) The insurer's report will not significantly contribute to carrying out the purposes of Title VI.

NHTSA believed that reports from a representative sample of rental and leasing companies would provide the agency with the necessary information to allow it to fulfill all its obligations under Title VI of the Cost Savings Act. Hence, NHTSA did not need additional information for it to find that reports by the many smaller rental and leasing companies would not significantly contribute to carrying out the purposes of Title VI. A representative sample of rental and leasing companies would provide NHTSA with the information it needed to carry out Title VI, and would avoid an unnecessary burden on the vast majority of the approximately 4,000 rental and leasing companies subject to the reporting requirements.

However, NHTSA did not have sufficient information to allow it to make the other statutory determination; i.e., that the cost of preparing furnishing such reports is excessive in relation to the size of the business of the insurer. Absent such information, NHTSA was unable to exempt rental and leasing companies from the reporting requirements, because the agency could not make the required statutory determinations.

Before issuing the notice of proposed rulemaking (NPRM) for the insurer reporting requirements, NHTSA tried to obtain from trade associations representing rental and leasing companies the information needed to structure a blanket exemption for all but the largest rental and leasing companies, similar to the blanket exemption proposed for all but the 31 largest insurance groups. However, each trade association contacted by the agency indicated that the market share data sought by NHTSA for rental and leasing companies either was not available or would not be disclosed to the agency. Title VI of the Cost Savings Act does not give NHTSA authority to require these trade associations to disclose market share information, and NHTSA knew of no other source from which to obtain such market share information.

Accordingly, the NPRM for the insurer reporting requirements that was published June 25, 1986 (51 FR 23095) proposed that all rental and leasing companies that satisfied the statutory definition of "insurer" be required to file annual reports. The NPRM expressly stated that NHTSA wanted to exempt the smaller rental and leasing companies from this reporting requirement and sought information from the public that would allow NHTSA to make the necessary statutory determinations to exempt smaller rental and leasing companies from these reporting requirements. Specifically, the agency asked the public to provide information on the number of rental and leasing companies subject to the reporting requirements, the size of the rental and leasing fleets operated by those companies, the costs of preparing and filing the annual reports, and the criteria the agency should use in deciding whether those costs were "excessive" in relation to the size of the business.

The commenters submitted a number of recommendations, ranging from exempting all rental and leasing companies or exempting all car dealers to requiring reports only from those rental and leasing companies that have a fleet of 20,000 or more vehicles. However, none of the commenters provided the information requested in the preamble to the NPRM, so the agency was unable to structure a blanket exemption for the smaller rental and leasing companies, as was done for the smaller insurance companies.

Therefore, the final rule published on January 2, 1987 (52 FR 59) required all of the approximately 4,000 rental and leasing companies subject to the

reporting requirements to file annual reports with the agency. Nevertheless, the following language appeared at 52 FR 63:

> However, NHTSA has no desire to impose an unnecessary burden on the smaller rental and leasing companies. Just as the agency believes it will obtain a representative sample of insurance companies by requiring reports only from large insurance companies, the agency believes that it would obtain a representative sample of rental and leasing companies by requiring reports only from the large rental and leasing companies. The agency has tried to obtain the necessary information to allow it to exempt these companies twice, before publishing the NPRM and in the NPRM itself. In neither instance has the agency been successful.
>
> Absent this information, this final rule must apply to all rental and leasing companies with 20 or more vehicles in their fleet. However, the agency will again try to obtain from the rental and leasing companies and their trade associations the information needed to exempt the smaller rental and leasing companies from this regulation before January 31, 1987. If NHTSA is successful in this effort and the information allows NHTSA to make the determinations required under section 612 to exempt rental and leasing companies, the agency will publish a rule exempting the small rental and leasing companies from this reporting requirement before January 31, 1987.

The agency was unsuccessful in its third effort to obtain the necessary information. Consequently, all rental and leasing companies subject to the statutory definition of "insurer" are presently required to file annual theft reports with NHTSA.

NHTSA received 145 petitions for exemption from the reporting requirements. Several petitions were filed by franchisees and licensees of large rental and leasing companies, such as Hertz and National Car Rental. Most of the petitions were filed by smaller rental and leasing companies, those that the agency had repeatedly tried to exempt from the reporting requirements. A recurring theme in the petitions was that NHTSA would not benefit from the petitioner's reports because zero to a few thefts would be reported, or that the companies had a small fleet size. Additionally, the petitioners alleged that the time, labor, and costs involved in preparing and furnishing annual insurer reports were not justified. Therefore, the petitioners concluded that their reports would not significantly contribute to carrying out the purposes of Title VI of the Cost Savings Act.

The Information Discovered by NHTSA and the Proposed Exemptions

In response to these petitions, NHTSA again sought information that would allow it to structure a blanket exemption from the reporting requirements for smaller rental and leasing companies. Although the trade associations representing the rental and leasing companies offered no more cooperation than they had previously, the agency was able to obtain information on the size of the fleets of rental and leasing companies and the market share for these companies. NHTSA learned that such data for the motor vehicle rental and leasing companies are voluntarily supplied to and tabulated by two national publications: *Automotive Fleet Magazine* (for both rental and leasing companies) and *Travel Trade Business Travel News* (for rental companies only).

Since 1984, *Automotive Fleet* has published an annual Fact Book which contains statistics, market analysis, and advertising for rental and leasing companies. Data for only rental companies have been tabulated since 1985 in the Annual Business Travel Survey published by *Travel Trade Business Travel News*. The survey ranks top rental companies in the United States by revenue, vehicles per company, States of operations, and number of locations.

Within the rental and leasing community, both publications are regarded as the most accurate data sources available for those businesses. However, NHTSA is aware that data from the two sources may differ because the companies reporting to these periodicals may inflate the size of their fleet for competitive marketing purposes. Thus, these sources may be the most accurate data sources available for rental and leasing companies, but they are not as accurate as the A.M. Best data for insurance companies. Notwithstanding this somewhat lesser degree of reliability, NHTSA has tentatively concluded that these sources are sufficiently accurate to determine which rental and leasing companies should be exempted from the theft reporting requirements. The public is invited to comment on this tentative conclusion, and asked to explain why the commenter agrees or disagrees with NHTSA's tentative conclusion.

From these two data sources, NHTSA learned that in 1987 more than 7,096,000 vehicles (not including government vehicles) were reported as rented or leased. For that same year, the 39 largest companies rented or leased about 2.6 million vehicles (about 37 percent of all vehicles in rental and leasing fleets). Of these 2.6 million vehicles, 55 percent were rented or leased by the 8 largest rental and leasing companies. The fleets for these companies ranged from 100,000 vehicles to 420,000 vehicles. The remaining 45 percent of these 2.6 million vehicles was broken down as follows: 29 percent was operated by 11 companies whose fleets ranged from 50,000 to 99,000 vehicles, 9 percent was operated by 8 companies with fleets of 20,000 to 49,000 vehicles, and 6 percent was operated by 12 companies with fleets of 10,000 to 19,000 vehicles. The remaining 4.5 million vehicles in rental and leasing fleets in 1987 were operated by about 3,961 companies, all of whom had fleets of fewer than 10,000 vehicles.

Furthermore, the data from these two sources suggest that the 39 largest rental and leasing companies (those with fleets of 10,000 or more vehicles) were a relatively stable grouping. That is, 26 of these 39 companies have been included in the list of the largest 39 companies for the three most current years for which data are available (1984, 1985 and 1987). Thus, the core group of companies that compose the largest 39 rental and leasing companies has remained stable, with other companies moving in and out of the 39 largest rental and leasing companies. This situation is similar to that of the insurance companies required to file annual reports, where some companies are added to or removed from the listing of companies required file annual reports, but the core group of insurance companies subject to the reporting requirements has remained relatively constant.

With this new information, NHTSA again considered the question of proposing a blanket exemption for smaller rental and leasing companies, similar to that which has been established for the smaller insurance companies. The structure of the rental and leasing companies is significantly different from that of the insurance companies. The rental and leasing industry is operated predominantly by purchase of franchises or issuance of licenses. According to the U.S. Department of Commerce, franchising is a form of licensing by which the owner (franchisor) of a product, service, or method obtains distribution through affiliated distributors (franchisees). In order to maintain the distinctiveness and uniformity of the service, the franchisor usually exercises some degree of continuing control over the operations of franchisees, and requires them to meet stipulated standards of quality. The extent of such control varies. In some cases, franchisees are required to conduct every step of their operation in strict conformity with a manual furnished by the franchisor.

Because of this structure, the agency was presented with the threshhold question of whether the franchisees and

licensees should be treated as separate rental and leasing companies or whether the franchisor or licensor should be treated as a single rental and leasing company, responsible for gathering the required data from its franchisees or licensees. The agency has tentatively concluded that franchisors or licensors should be treated as a single rental and leasing company, for two reasons.

First, NHTSA believes this tentative conclusion is consistent with the Congressional intent underlying section 612. The House Report on section 612 included the following sentence: "The Committee urges the [NHTSA] to devise a reporting system for insurance information with an eye toward imposing requirements which will be low cost and of minimal burden to the industry, but which will provide all the data required by this section." H.R. Rep. No. 1087, 98th Cong., 2d Sess., at 21 (1984). Applying this guidance, the agency has concluded that the most costly and burdensome requirement would be one that required every franchisee of the large rental and leasing companies to report directly to NHTSA on its theft experience. On the other hand, a requirement that franchisors report on the theft experience of all their franchisees would require a single report to the submitted to this agency. The franchisees generally submit periodic reports to the franchisor in any case. It would seem to be relatively simple to expand the existing reports to the franchisor to include information about the franchisees' theft experience. Accordingly, the agency has tentatively concluded that a requirement for franchisors to report on behalf of all their franchisees is consistent with the Congressional intent that these reporting requirements should impose the minimal burden on reporting parties.

Second, practical considerations oblige the agency to treat franchisors or licensors as a single entity. The two available data sources treat franchisors or licensors as a single entity. NHTSA has no data on the size of all franchisees and licensees, so the agency would be unable to propose any exemptions for the rental and leasing companies if it were to treat each franchisee or licensee as a separate rental and leasing company.

Commenters are invited to discuss this tentative decision to treat a franchisor and all of its franchisees as a single entity. Those commenters that disagree with this decision are asked to discuss how the agency could obtain information on the number and fleet size of franchisees, and to discuss whether the agency could structure an exemption from these reporting requirements for small rental and leasing companies while requiring reports from all franchisees of large franchisors. NHTSA is also interested in receiving any additional information the public can provide on the structure and procedures used by franchise operations in the car rental business.

Having reached the tentative conclusion that franchise operations should be treated as a single entity, the agency proceeded to consider how to structure an exemption from the reporting requirements for smaller rental and leasing companies. From the information in *Automotive Fleet Magazine* and *Travel Trade Business Travel News*, NHTSA learned that the 19 largest rental and leasing companies (those with 50,000 or more vehicles in their fleet) had 31 percent of the total vehicles in rental and leasing fleets. Of these companies, 9 were primarily leasing companies. These leasing companies typically do business in all 50 States out of one central location. Thus, the experience of these leasing companies would be geographically representative, since it would represent experience every State. Additionally, NHTSA has no reason to believe that the theft experience of the largest leasing companies would be significantly different from the theft experience of the smaller leasing companies. The data for companies that are primarily rental companies shows that ten of those companies had fleets of 50,000 or more vehicles. Of these ten companies, seven do business in at least 48 of the 50 States. Moreover, these ten companies have approximately 9,000 locations located in areas ranging from large metropolitan areas to rural areas. The information provided by these ten companies should, therefore, be geographically representative of the theft experience of rental companies throughout the United States. Again, the agency has no reason to believe that the theft experience of these rental companies would be significantly different from the theft experience of small rental companies.

Another point to be considered is that section 612 of the Cost Savings Act explicitly requires insurer reports to include information about vehicles other than passenger cars; i.e. information on trucks, multipurpose passenger vehicles, and motorcycles is required to be included in these reports. The two data sources NHTSA has tentatively chosen to use to determine fleet sizes of rental and leasing companies do not define the fleet composition very clearly. Vehicle types in the fleets are identified as either passenger cars or trucks. Passenger cars account for about 80 percent of the rental and leasing fleets. The other 20 percent of the vehicles are identified only as "trucks." If the agency is to exempt any rental and leasing companies from these reporting requirements, the agency must determine that the reports it receives from the non-exempted rental and leasing companies will provide a representative sample of the theft experience for "trucks" in rental and leasing fleets.

The available information leads the agency to tentatively determine that it will get a representative sample of the theft experience of vehicles other than passenger cars if it receives reports only from companies with fleets of 50,000 or more vehicles. The two best-known rental companies for vehicles other than passenger cars are U-Haul and Ryder with fleet sizes of 65,000 vehicles and 50,000 vehicles, respectively. Therefore, the reports from rental and leasing companies would include the theft experience of the two largest fleets of vehicles other than passenger cars in the rental and leasing industry. Additionally, rental and leasing companies with fleets of 50,000 or more vehicles are more likely to include vehicles other than passenger cars than are smaller rental and leasing fleets, many of which operate fleets of only passenger cars. Accordingly, NHTSA has tentatively concluded that requiring reports only from rental and leasing companies with 50,000 or more vehicles in their fleet will provide NHTSA with representative data on all vehicle types.

After considering these factors, NHTSA tentatively concludes that the theft experience of rental and leasing companies with 50,000 or more vehicles in their fleet would be sufficiently representative of the theft experience of all rental and leasing companies that theft reports by the smaller leasing companies would not significantly contribute to carrying out the purpose of Title VI of the Cost Savings Act. This is one of the statutory determinations the agency must make in order to exempt any rental and leasing companies from the theft reporting requirements. The other statutory determination NHTSA must make to exempt rental and leasing companies from the theft reporting requirements is that "the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer." In its previous considerations of this question, NHTSA stated that it did not have adequate information about the probable costs of preparing and filing such reports or

about the size of the business involved to make a determination that the costs would be "excessive."

With the information available from the two data sources proposed to be used to determine the fleet size of rental and leasing companies, the agency now has a basis for making the second statutory determination. NHTSA has tentatively determined that reports by rental and leasing companies with fleets of fewer than 50,000 vehicles are *not* needed to ensure that NHTSA obtains a representative sample of the theft experience of rental and leasing companies, nor are these reports necessary to allow the agency to carry out any other of its responsibilities under Title VI of the Cost Savings Act. Thus, such reports would not provide NHTSA with valuable information or insights into the theft experience of rental and leasing companies, nor would such reports otherwise further the purposes of Title VI of the Cost Savings Act.

The agency does not have enough information to determine the likely costs to rental and leasing companies with fewer than 50,000 vehicles in their fleet to prepare and furnish NHTSA with annual theft reports. However, regardless of what those costs are, NHTSA has tentatively concluded that those costs are excessive in relation to the size of the company's business, because reports by the smaller rental and leasing companies will not benefit the agency by providing further information or insights into the theft problem for rental and leasing companies. Further, the thousands of reports required by smaller rental and leasing companies will not otherwise further the purposes of Title VI of the Cost Savings Act. Any costs are "excessive" within the meaning of section 612 if those costs are incurred to prepare a report that will not in any way aid the agency in carrying out its responsibilities under Title VI.

NHTSA invites public comment on these tentative determinations, and is particularly interested in the reasons why commenters agree or disagree with these tentative determinations. Those commenters who disagree with NHTSA's tentative determination that the costs of preparing and furnishing such reports for smaller rental and leasing companies are excessive are asked to explain why they believe the purposes of Title VI are furthered by such reports.

In light of its tentative determinations that the costs of preparing and filing theft reports are excessive in relation to the size of the business of rental and leasing companies with fewer than 50,000 vehicles in their fleet and that such reports will not significantly contribute to carrying out the purposes of Title VI of the Cost Savings Act, NHTSA proposes to exempt all rental and leasing companies with fewer than 50,000 vehicles in their fleet (as reported by *Automotive Fleet Magazine* and *Travel Trade Business Travel News*) from the insurer reporting requirements. However, if there should be conflicting fleet size data reported, the agency will use *Automotive Fleet Magazine* as the principal source.

To implement this proposal NHTSA would use a structure similar to that which is already used for insurance companies. Appendix A to Part 544 consists of an annually updated listing of insurance companies that are subject to the reporting requirements in Part 544 for each State in which they do business. Appendix B to Part 544 consists of an annually updated listing of insurance companies that are subject to the reporting requirements in Part 544 only for the State or States identified in Appendix B. This notice proposes to add a new Appendix C to Part 544, which would consist of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in Part 544. All rental and leasing companies not listed in Appendix C would *not* be required to file a theft report under Part 544.

The list of rental and leasing companies included in proposed Appendix C in this notice was derived from the information in *Automotive Fleet Magazine* and *Travel Trade Business News* for the 1987 calendar year, the most recent year for which such data are available. The listed rental and leasing companies are the only rental and leasing companies that would be required to file reports under Part 544 in October 1989, reporting on theft experience in the 1988 calendar year. However, any final rule exempting rental and leasing companies from the reporting requirements will not be published before the 1987 theft reports are due from rental and leasing companies, in October 1988. Therefore, all rental and leasing companies were still required to file an annual report in October 1988, covering 1987 calendar year theft experience. After this report, NHTSA hopes to have a final rule in place that will exempt most rental and leasing companies from these reporting requirements.

The agency proposes to update Appendix C annually, to reflect changes in fleet size for the rental and leasing companies. A rental and leasing company that was not formerly subject to these reporting requirements and whose name is added to Appendix C by virtue of its fleet being reported as 50,000 or more vehicles would have to file a theft report in the year following the year in which its name was added to the Appendix. For example, if a rental and leasing company's name is added to Appendix C in November 1989, the company would have to file a report under Part 544 in October 1990. The annual updates to Appendix C would be made in the same notice that proposes the updates to Appendices A and B.

Part 544 limits the information that rental and leasing companies must provide in their theft reports, for the reasons explained in the final rule establishing Part 544 (52 FR 59, at 75; January 2, 1987). No changes are proposed to those requirements. The only changes proposed to the existing language of Part 544 are to make clear that the rule applies only to rental and leasing companies listed in Appendix C.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, the agency estimates the costs of these reporting requirements for applicable rental and leasing companies will be reduced from less than 4 million dollars (in the regulatory evaluation of Part 544) to less than $550,000 in the first year and lesser amounts in succeeding years. The agency believes that the data provided by those companies with over 50,000 vehicles will allow NHTSA to adequately evaluate the effect of the standard on rental and leasing companies. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order. The agency believes that it will be better able to assess the effectiveness of the theft prevention standard as a result of exempting all but 19 motor vehicle rental and leasing companies from theft reporting requirements. However, NHTSA cannot provide a quantified estimate of those benefits. A full regulatory evaluation was prepared for the final rule establishing 49 CFR Part 544. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. A copy of this evaluation may be obtained by any interested person by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC

20590, or by calling the Docket Section at (202) 426–2768.

Public comment is invited on the likely costs and benefits that would be associated with these reporting requirements. The agency is also interested in receiving suggestions about some means by which the agency could better estimate these costs and benefits.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The rationale for this certification is that this proposed rule would substantially reduce from approximately 4,000 to 19 (including licensees and franchisees) the number of affected motor vehicle rental and leasing companies, many of which are small businesses, required to file theft reports.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The proposed requirement that motor vehicle rental and leasing companies report certain information annually to this agency is an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements are being submitted to the OMB for this approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on this proposed information collection requirement should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket shown above for this proposed action.

5. Federalism

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

Public Comments

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

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

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

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

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

List of Subjects in 49 CFR Part 544

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

In consideration of the foregoing, it is proposed that 49 CFR Part 544 be amended to read as follows:

PART 544—[AMENDED]

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

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

2. Section 544.3 would be revised to read as follows:

§ 544.3 Application.

This part applies to the issuers of motor vehicle insurance policies listed in Appendices A or B, and to the persons (including licensees and franchisees) who have a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer of motor vehicles listed in Appendix C.

3. Section 544.6(a)(2) would be revised to read as follows:

§ 544.6 Contents of insurer reports.

(a) * * *

(2) In the case of the motor vehicle rental and leasing companies (including licensees and franchisees) listed in Appendix C, provide the information specified in paragraphs (c), (d)(2)(iv), and (g) of this section for each vehicle type listed in paragraph (b) of this section, for each State in which the insurer, including any licensee, franchisee, or subsidiary, did business during the reporting period.

* * * * *

4. A new Appendix C would be added to Part 544, to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
AMERCO
(U-Haul International, Inc.)
American International
Rent A Car Corp.
Automotive Rentals, Inc.
Avis, Inc.
Avis Car Leasing-USA
Avis Rent A Car System, Inc.
Budget Rent A Car Corp.
Dollar Rent-A-Car Systems Inc.
Enterprise Leasing Co.
Enterprise Fleets, Inc., and Rent A Car Co.
GE Capital Fleet Services
Hertz Corporation
Hertz Rent-A Car
Hertz Penske Truck Leasing, Inc.
Lease Plan, USA
Lend Lease
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Peterson, Howell & Heather, Inc.
Ryder Truck Rental (both rental and leasing operations)
Security Pacific Credit Corp.
United States Fleet Leasing Inc. (Subsidiary of Hertz Corp., Leasing)
Wheels, Inc.

Issued on: January 31, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-2577 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 22
Friday, February 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

Commodity Credit Corporation

1989 Common Program Provisions for Wheat, Feed Grains (Corn, Sorghum, Barley, Oats, and Rye), Rice, Upland and Extra Long Staple (ELS) Cotton Programs and 1989 Wheat Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1989 Common Program Provisions for Wheat, Feed Grains, Rice, Upland and ELS Cotton, and 1989 Wheat Program.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), with respect to the 1989 Price Support and Production Adjustment Programs.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4635.

The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination will be available on request from the above-named individual.

SUPPLEMENTAL INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles:	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065
Grain Reserve	10.067

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

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

General Information

General descriptions of the statutory basis for the determinations that are set forth in this notice are set forth in the **Federal Register** Vol. 53, No. 75, Page 12890; No. 130, Page 25518; No. 135, Page 26619; and No. 194, Page 39322.

Comments received during the specified comment period are summarized below for the 1989 Wheat Program and for provisions which are common to the 1989 Wheat, Feed Grain, Rice, Upland and ELS Cotton Programs.

Common Program and Wheat Comments. A total of 83 respondents commented on the 1989 Common Program and Wheat determinations. Thirty-eight of the respondents were individual producers and twenty were producer organizations.

Common Program Provisions

With respect to the specific comments for the common program provisions of the 1989 crops of Wheat, Feed Grains, Rice and Upland and ELS Cotton, the following are noted:

(a) *Approved Nonprogram Crops (ANPC) and Haying and Grazing on Acreage Conservation Reserve (ACR) and Conserving Use (CU) Acres.* Forty-three respondents opposed the authorization of ANPC on ACR and CU acres and 14 favored such action. Thirty-two respondents opposed haying and grazing on ACR and CU acreage and 34 favored such action. Planting of ANPC and haying of ACR and CU acreage will not be permitted, except under emergency conditions, because of the otherwise adverse economic effect such a determination would have on producers who already grow such crops. However, the haying prohibition may be waived if it is determined by the State Agricultural Stabilization and Conservation (ASC) committee that the additional haying will not have an adverse economic effect. Grazing of ACR and CU is permitted except during any 5-consecutive-month period between April 1 and October 31 as designated by the State ASC committees.

(b) *Cross Compliance.* Twenty respondents favored the implementation of limited cross compliance requirements and 5 respondents opposed such action, including 2 respondents who opposed limited cross compliance for ELS cotton. Limited compliance was implemented for wheat, corn, sorghum, barley, upland cotton and rice in order to ensure that desired levels of stocks for all program commodities are attained. Oats and extra-long staple cotton were exempted from limited cross compliance because those commodities are in short supply.

(c) *Offsetting Compliance.* Twelve respondents opposed the implementation of offsetting compliance requirements and 4 favored such action. These compliance requirements will not be implemented due to: (1) The statutory prohibition of such actions relative to rice and upland cotton and (2) the likely decrease in the level of program participation that otherwise would have occurred under the wheat, feed grains, and ELS cotton programs. The higher level of participation achieved by not

requiring offsetting compliance will likely result in greater overall program effectiveness.

(d) *Farm Acreage Base (FAB) Adjustment.* Twenty respondents favored the implementation of the 10 percent FAB adjustment provision and 5 opposed such adjustments. The FAB adjustment provision will not be implemented because: (1) Significant budget increases would occur as producers would be discouraged from reacting to appropriate market signals and instead seek to capitalize on favorable Government programs and (2) additional excess production would be stimulated in those commodities with favorable payment programs.

(e) *Advance Recourse Loans.* Four respondents favored the authorization of advance loans and 6 opposed the use of such loans. Advance recourse loans will not be offered because: (1) Sufficient operating funds are available for the 1989 crop and (2) such a program could place unnecessary encumbrances upon crops that have not been produced, resulting in increased financial stress for producers.

(f) *Multiyear Set-Aside Program.* Ten respondents favored the implementation of the multiyear set-aside program and 3 opposed such a program. This program will not be implemented because the expected acres idled under the Acreage Reduction Program (ARP), Paid Land Diversion (PLD), and Conservation Reserve Program (CRP) are considered adequate for the purpose of supply management of program commodities.

(g) Twenty-six comments were received that related to issues for which comments were not requested.

With respect to the specific comments for the 1989 Wheat Program the following are noted:

(a) *Acreage Reduction Program.* Twenty-eight respondents favored an acreage reduction level of less than 20 percent and 25 favored an ARP of 20 percent or more. The announced ARP level of 10 percent is 10 percentage points below the statutory maximum. The 1949 Act provides that an ARP of less than 20 percent may be implemented if it is determined that a carryin of less than 1 billion bushels of wheat will exist on June 1, 1989. When the ARP was announced, it had been determined that this carryover would be 796 million bushels. Based upon this estimate it was determined that an ARP of 10 percent would result in little change in carryover stocks while export demand could still be met.

(b) *Paid Land Diversion (PLD) Program.* Nine respondents favored a PLD and 7 opposed such a program. A PLD will not be implemented because the ARP level was determined to be sufficient to adequately manage stock levels.

(c) *Marketing Loan.* Five respondents favored the implementation of a marketing loan program and 3 opposed its implementation. A marketing loan will not be implemented because: (1) The loan rate was determined capable of maintaining competitive marketing positions and (2) implementation would have greatly increased program costs with only a marginal increase in export demand.

(d) *Inventory Reduction Program (IRP).* Two respondents opposed the implementation of the IRP and no respondent favored its implementation. Implementation of the IRP is dependent upon implementation of a marketing loan program. Because a marketing loan will not be implemented, the IRP will not be implemented.

This notice affirms the following determinations previously made and announced by the Secretary, beginning May 25, 1988, with respect to the 1989 Wheat Program and for provisions which are common to the 1989 Wheat, Feed Grain, Rice, Upland and ELS Cotton Programs.

Determinations

I. Common Program Provisions

1. *Haying and Grazing/Production of Approved Nonprogram Crops.* In accordance with sections 107D(c)(1), 107D(f)(4), 105C(c)(1), 105C(f)(4), 103A(c)(1), 103A(f)(3), 101A(c)(1), and 101A(f)(3) of the 1949 Act, it has been determined that haying of acreage designated as ACR on CU will not be allowed except under emergency conditions unless it is determined that based upon information submitted by a State ASC committee, haying will not result in an adverse economic effect in the State. Grazing of acreage designated as ACR and CU will be permitted except during any 5-consecutive-month period between April 1 and October 31 that is established for a State by the State ASC committee.

Haying and grazing of CRP acreage is prohibited. The Secretary has further determined that production of crops, program or nonprogram, will not be permitted on ACR or CU acreage.

2. *Cross and Offsetting Compliance.* In accordance with sections 107D(n)(2), 105C(n)(2), 103A(n)(2), and 101A(n)(2) of the 1949 Act, it has been determined that limited cross compliance will be required as a condition of eligibility for program benefits for wheat, feed grains (excluding oats), rice and upland cotton. The imposition of limited cross compliance will not apply for the 1989 crop of ELS cotton. In accordance with sections 107(D)(i), 105C(i), 103A(n)(1), and 103(h)(13) of the 1949 Act, it has been determined that offsetting compliance by wheat, feed grain and ELS cotton program participants will not be required as a condition of eligibility for program benefits. Sections 101A(n)(1) and 103A(n)(3) prohibit imposition of offsetting compliance for rice and upland cotton program participants.

3. *Establishment of Acreage Bases and Adjustments.* In accordance with section 503 of the 1949 Act, FABs will be established for the 1989 crop-year. Adjustments in crop acreage bases for the 1989 program as provided in section 505 will not be allowed.

In accordance with section 504 of the 1949 Act, it has been determined that limited adjustments in crop acreage bases may be approved when producers need to change cropping practices to carry out conservation compliance requirements on highly erodible land.

4. *Advance Recourse Commodity Loans.* In accordance with section 424 of the 1949 Act, it has been determined that advance recourse price support loans shall not be made available to producers since advance deficiency payments for wheat, feed grains, rice and cotton will substantially augment private lending to producers and, therefore, ease producer credit problems. Further, implementing this program could encourage producers to place additional encumbrances upon crops yet to be produced which could result in increased financial stress for producers after harvest.

5. *Multiyear Set-Aside Program.* In accordance with section 1010 of the Food Act of 1985 (the 1985 Act), it has been determined that there will be no multiyear set-aside program. It has been determined that the CRP and wetland conservation provisions protect the Nation's natural resources and provide program benefits to participants to carry out approved conservation practices.

6. *Establishment of Program Payment Yields.* In accordance with section 506 of the 1949 Act, it has been determined that the actual yield per harvested acre for the 1989 crop and subsequent crop years of wheat, feed grains, rice and upland cotton will not be considered in establishing subsequent year farm program payment yields.

7. *Advance Deficiency Payments.* In accordance with section 107C of the 1949 Act, the Secretary will make available to producers advance deficiency payments for the 1989 crop of wheat, feed grains, upland cotton, and rice. Producers may request 40 percent

of their projected deficiency payments when they enroll in the 1989 Wheat and Feed Grain Programs. Upland cotton and rice producers may request 30 percent of their projected deficiency payments when they enroll in the 1989 program. No advance deficiency payments will be offered to ELS cotton producers.

8. *Binding Contracts.* Contracts signed by program participants will be considered binding at the end of the signup period and will provide for liquidated damages if producers do not comply with contractual obligations. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

9. *Cost Reduction Options.* In accordance with section 1009 of the 1985 Act it has been determined that the Secretary will reserve the right to initiate cost reduction options if subsequent changes occur in supply and demand conditions.

II. Wheat

1. *Loan and Purchase Level for Wheat.* In accordance with section 107D(a)(1) of the 1949 Act, the price support loan and purchase level per bushel shall be $2.06 for wheat.

2. *Established (Target) Price for Wheat.* In accordance with section 107D(c)(1)(G) of the 1949 Act, the established ("target") price per bushel shall be $4.10 for wheat.

3. *Acreage Reduction/Paid Land Diversion Program for Wheat.* In accordance with section 107D(f)(1)(D) of the 1949 Act, the ARP has been established with respect to the 1989 crop of wheat at 10 percent. Accordingly, producers will be required to reduce their 1989 acreage of wheat for harvest from the crop acreage base established for wheat for a farm by at least this established percentage in order to be eligible for wheat price support loans, purchases, and payments.

4. *Set-Aside for Wheat.* In accordance with sections 107D(f)(1) and (3) and 105C(f)(1) and (3) of the 1949 Act, it has been determined that there will be no set-aside program for the 1989 crop of wheat.

5. *Marketing Loan for Wheat.* In accordance with section 107D(a)(5) of the 1949 Act, it has been determined that a marketing loan will not be implemented for the 1989 crop of wheat. The price support loan and purchase levels applicable to wheat have been lowered to the maximum extent possible and it has been determined that this action is sufficient to maintain a competitive market position. Also, the implementation of a marketing loan program for wheat would greatly increase program costs while program benefits would be minimal.

6. *Loan Deficiency Payment.* In accordance with section 107D(b) of the 1949 Act, it has been determined that, with respect to the 1989 crop of wheat, a loan deficiency payment will not be available. Since the marketing loan program is not being implemented, loan deficiency payments will not be available.

7. *Inventory Reduction Program.* In accordance with section 107D(g) of the 1949 Act, it has been determined that the IRP will not be implemented for the 1989 crop of wheat. Since the marketing loan program is not being implemented, inventory reduction payments will not be available.

8. *Farmer-Owned Reserve Program (FDR) for Wheat.* In accordance with section 110 of the 1949 Act, it has been determined that there will be no immediate entry into the FOR program for the 1989 crop of wheat. The lower limit on the size of the reserve for wheat is established at 300 million bushels. Actions to encourage participation in the program will be taken if reserve quantities fall below the minimum level and farm prices fall below 140 percent of the loan rate for wheat.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); Secs. 101, 101A, 103A, 103(h), 105B, 107C, 107D, 107E, 109, 110, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1363, as amended, 1448, 91 Stat. 950, as amended, 951, as amended 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1433c, 1441, 1441–1, 1444–1, 1444–b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445e, 1421, 1464 and 1465). Section 1009 of the Food Security Act of 1985, as amended, 49 Stat. 1453, as amended (7 U.S.C. 1308a).

Signed at Washington, DC on January 30, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–2531 Filed 2–2–89; 8:45 am]

BILLING CODE 3410-05-M

1989 Feed Grains Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1989 Feed Grains Program.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), the Food Security Act of 1985 (the "1985 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), with respect to the 1989 Feed Grains Price Support and Production Adjustment Programs.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Commodity Analysis Division, USDA–ASCS, Room 3748, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7924.

The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

	Numbers
Titles:	
Commodity Loans and Purchases	10.051
Feed Grains Production Stabilization	10.055

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

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

General Information

General descriptions of the statutory basis for the determinations that are set forth in this notice are set forth in the Federal Register No. 130, Page 25518.

Comments received during the specified comment period are summarized below for the 1989 Feed Grains Program.

Comments

A total of 6 respondents commented on the 1989 Feed Grains Program. Four of the respondents were trade organizations and two were producer organizations.

(a) *Target Price.* Three respondents favored setting the corn target price at its statutory minimum. One respondent favored increasing the target price and one respondent favored a target price of $3.03 per bushel for corn. The target price for corn is set at its statutory minimum. This target level ($2.84 per bushel) is well above the projected U.S. 1989–crop average variable cash cost of production ($1.06 per bushel), thereby ensuring program participants an adequate safety net for farm income. The target prices for sorghum ($2.70/bu.), barley ($2.43/bu.), and oats ($1.50/bu.) are determined on the basis of being fair and reasonable in relation to that for corn.

(b) *Acreage Reduction Program (ARP).* Two respondents favored an ARP of less than 5 percent. One respondent favored an ARP between 10 and 20 percent. One respondent favored an ARP of 12.5 percent and one respondent favored an ARP of 20 percent. Two respondents favored eliminating the ARP for barley. One respondent favored a 0 percent ARP for oats. The ARP for corn, sorghum and barley is set at 10 percent and for oats, 5 percent, the statutory maximum. The stock level for corn is below the statutory target carryover level (2 billion bushels), thus authorizing the Secretary to implement an ARP between 0 and 12.5 percent. The 1988 drought raised several concerns when making the 1989 ARP decision: (1) Corn production is down by about 40 percent from pre-drought estimates; and (2) crop quality is unknown, especially regarding aflatoxin mold. After taking into consideration these concerns it has been determined that a 10 percent ARP for corn, grain sorghum and barley and a 5 pecent ARP for oats will maintain the U.S. competitive posture in the export market, provide adequate feed and food supplies for domestic and foreign utilization, and support farm income.

(c) *Optional Paid Land Diversion (PLD).* One respondent favored a 10 percent PLD. One respondent favored the PLD payment being made in cash. One respondent opposed a bid procedure and one respondent opposed a PLD for barley. Because of the substantial reduction in the 1988/89 feed grain supplies it has been determined that an additional 10 percent PLD for corn, sorghum and barley is not necessary to maintain an adequate supply of corn, sorghum, and barley during the 1989/90 marketing year.

(d) *Marketing Loan and Loan Deficiency Payments.* One respondent opposed implementing a marketing loan program. Marketing loans for feed grains have not been authorized because (1) their respective loan and purchase rates are determined to be capable of maintaining competitive market positions, and (2) implementation of marketing loans would increase program costs, while increases in export demand would only be marginal.

(e) *Inventory Reduction Program (IRP).* No comments were received. Since the marketing loan program is not being implemented, inventory reduction payments will not be available.

(f) *Inclusion of Corn Grain Equivalent in Loans and Purchases Program.* No comments were received. Loans and purchases will not be made available to producers of corn silage, since the costs associated with such an option outweigh any benefits which may exist.

Determinations

1. *Loan and Purchase Level for Feed Grains.* In accordance with section 105C(a) of the 1949 Act, the price support loan and purchase level per bushel shall be $1.65 for corn, $1.57 for sorghum, $1.34 for barley, $0.85 for oats, and $1.40 for rye. These levels were selected because they will allow for the maintenance of competitive market positions for feed grains and the loan and purchase rates are well above the projected U.S. 1989 crop average variable cash costs of production. These costs are $1.06 per bushel for corn, $0.94 per bushel for grain sorghum, $0.90 per bushel for barley, and $0.60 per bushel for oats.

2. *Established (Target) Price for Feed Grains.* In accordance with section 105C(c)(1) of the 1949 Act, the established ("target") price per bushel shall be $2.84 for corn, $2.70 for sorghum, $2.43 for barley, and $1.50 oats.

3. *Acreage Reduction/Paid Land Diversion Program for Feed Grains.* In accordance with section 105C(f)(1) of the 1949 Act, the ARP has been established with respect to the 1989 crops of corn, sorghum, and barley at 10 percent and of oats at 5 percent. In accordance with section 105C(f)(5) an optional 10 percent PLD will not be offered. Accordingly, producers will be required to reduce their 1989 acreage of feed grains for harvest from the crop acreage base established for feed grains for a farm by at least the respective established percentage in order to be eligible for feed grain price support loans, purchases, and payments.

4. *Marketing Loan and Loan Deficiency Payments for Feed Grains.* In accordance with sections 105C(a) and 105C(b) of the 1949 Act, it has been determined that the marketing loan provision will not be implemented and loan deficiency payments will not be available for the 1989 crop of feed grains.

5. *Inventory Reduction Program (IRP).* In accordance with section 105C(g) of the 1949 Act, it has been determined that the IRP will not be implemented for the 1989 crop of feed grains.

6. *Inclusion of Corn Silage Grain Equivalent in Loans and Purchases Program.* In accordance with section 403 of the 1985 Act, it has been determined that loans and purchases will not be made available to producers of corn silage.

7. *Eligibility of Barley Under the Feed Grains Program and ARP Requirements for Producers of Malting Barley.* In accordance with section 105C of the 1949 Act, it has been determined that barley will be included in the 1989 feed grains program and that malting barley producers will not be excluded from ARP requirements. ARP requirements for barley and not excluding malting barley producers from ARP requirements will improve the effectiveness of the production adjustment program and help to balance 1989/90 marketing year barley supply with demand.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b and 714c); Secs. 101, 105C, 107C, 107E, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1395, as amended 1446, as amended, 1448, 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1441, 1444e, 1445b–2, 1445b–4, 1421, 1464 and 1465).

Signed at Washington, DC, on January 25, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–2530 Filed 2–2–89; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Saddle Timber Sale; Plumas National Forest, Plumas County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement to disclose the environmental consequences of the proposed Saddle Timble Sale.

The Saddle Timber Sale is on the Oroville Ranger District, near Quincy, Plumas County, California. Quincy is approximately seventeen air miles to the east. The Bucks Lake Wilderness boundary is approximately 1 air mile north and 3 air miles east of the sale area boundary. The Bucks Lake drainage forms the southern boundary and Forest Service roads 24N24 and 24N35 form the northern boundary of the sale area. The sale is located in T.24N., R.6E., all or portions of sections 13, 14, 23, and 24, Mount Diablo Meridian.

The proposed actions would use helicopter and tractor yarding systems to harvest approximately 14.9 MMBF of timber. The silvicultural prescription would be designed for uneven-aged management, as specified in the Plumas National Forest Land and Resource Management Plan. This prescription would consist of single tree selection and small group selection with openings up to two acres, and with occasional openings of five acres. Approximately 1,100 acres would be treated. No new road construction would be required. However, 1.25 miles of road may require reconstruction.

A range of alternatives will be considered. One of these will consider skyline yarding versus helicopter yarding. Another would be helicopter yarding but with more intensive fuels treatment than the Proposed Action. We will also consider the no action alternative.

We invite other Federal agencies, state and local agencies, and interested individuals 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.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official

The analysis is expected to take about 5 months. The draft environmental impact statement should be available for public review by july 1989. The final environmental impact statement is scheduled to be completed by November 1989.

Written comments and suggestions concerning the analysis should be sent to Dewey Riscioni, District Ranger, Oroville Ranger District, 875 Mitchell Avenue, Oroville, CA 95965, by February 28, 1989. Questions about the proposed action and environmental impact statement should also be directed to him. The telephone number is (916) 534–6500.

John E. Palmer,

Deputy Forest Supervisor, Plumas National Forest.

January 25, 1989.

[FR Doc. 89–2512 Filed 2–2–89; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:30 p.m., on March 14, 1989 at the Capitol Plaza Hotel, #405 Wilkerson Road, Frankfort, Kentucky. The purpose of the meeting will be to conduct a community forum to receive information identifying issues, developments and programs concerning the principles of nondiscrimination and equal opportunity with regard to the employment of minorities and women in Kentucky State government.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or William F. Muldrow, Acting Director of the Central Regional Division (816) 426–5253, (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–2543 Filed 2–2–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: June 1989 Fertility Supplement
Form Number: CPS–1, CPS–260
Agency Approval Number: 0607–0610
Type of Request: Reinstatement
Burden: 484 hours
Number of Respondents: 29,000
Avg Hours per Response: Approximately 1 minute
Needs and Uses: The data collected in this Current Population Survey supplement will be used mainly by government and private analysts to establish socioeconomic profiles of mothers with newborn children, analyze fertility trends, and make policy decisions.
Affected Public: Individuals or households
Frequency: Annual
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1989

Edward Miichals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2585 Filed 2–2–89; 8:45 am]

BILLING CODE 3510–07–M

Estimates of the Voting Age Population for 1988

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, 2 U.S.C. 441(e), I hereby give notice that the estimates of the voting age population for July 1, 1988, for each state, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam, and the Virgin Islands are as shown in the following table.

I have certified these estimates to the Federal Election Commission.

Dated: January 27, 1989.

Donna Tuttle,

Acting Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, THE DISTRICT OF COLUMBIA AND SELECTED OUTLYING AREAS: JULY 1, 1988

[In thousands]

Area	Population 18 and over
United States	
Total	181,962
Alabama	3,012
Alaska	346
Arizona	2,514
Arkansas	1,771
California	20,678
Colorado	2,421
Connecticut	2,482
Delaware	494
District of Columbia	482
Florida	9,581
Georgia	4,624
Hawaii	806
Idaho	695
Illinois	8,542
Indiana	4,114
Iowa	2,120
Kansas	1,834
Kentucky	2,740
Louisiana	3,123
Maine	903
Maryland	3,497
Massachusetts	4,539
Michigan	6,845
Minnesota	3,186
Mississippi	1,846
Missouri	3,827
Montana	583
Nebraska	1,178
Nevada	794
New Hamsphire	822
New Jersey	5,888
New Mexico	1,060
New York	13,543
North Carolina	4,889
North Dakota	480
Ohio	8,048
Oklahoma	2,379
Oregon	2,056
Pennsylvania	9,179
Rhode Island	765
South Carolina	2,544
South Dakota	518
Tennessee	3,665
Texas	11,796
Utah	1,061
Vermont	414
Virginia	4,527
Washington	3,430
West Virginia	1,406
Wisconsin	3,585
Wyoming	330

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, THE DISTRICT OF COLUMBIA AND SELECTED OUTLYING AREAS: JULY 1, 1988—Continued

[In thousands]

Area	Population 18 and over
Outlying Areas	
Puerto Rico	2,038
Guam	79
Virgin Islands	61
American Samoa	20

[FR Doc. 89-2519 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-BP-M

Bureau of Export Administration

[Docket No. 90128-9028]

Sputtering Equipment; National Security Override Negotiations

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of the retention of U.S. export controls on sputtering equipment.

SUMMARY: This notice advises that negotiations conducted pursuant to section 5(f)(4) of the Export Administration Act of 1979, as amended (EAA), have eliminated until May 31, 1989, the availability from foreign countries to controlled countries of magnetically-enhanced sputtering equipment, the export of which is controlled under the EAA for national security reasons. Accordingly, the export of such equipment remains subject to the licensing requirements in the Export Administration Regulations, and no rulemaking is required at this time.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230 (Telephone (202) 377-8074).

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) is required by sections 5 (f) and (h) of the Export Administration Act of 1979, as amended (EAA), to review claims of foreign availability on items controlled for national security purposes.

Under section 5(f)(1), if the Secretary determines that there is foreign availability to a controlled country, the Secretary may not require a validated license for the export of such goods or technology, unless the President determines that the absence of the export control would prove detrimental to the national security of the United States. Such a determination is a National Security Override.

Pursuant to section 5(f)(4), in any case in which the President decides to retain the export control on an item notwithstanding a determination of foreign availability, the President is to actively pursue negotiations with the government of any country that is a source of the item for the purpose of eliminating such availability. Initially, the President has six months to pursue the negotiations, and the President can extend the negotiations for an additional 12 months. At the conclusion of the negotiations, the Department of Commerce can control the item only to the extent that the foreign availability has been eliminated.

In 1986, OFA completed an assessment on, and found foreign availability for, magnetically-enhanced sputtering equipment controlled under ECCN 1355A. (See paragraph (b)(1)(vi) of the "List of Equipment Controlled by ECCN 1355A" of the Commodity Control List (Supplement No. 1 to 15 CFR 799.1).)

On June 24, 1987, notwithstanding the determination of foreign availability, in conformance with the National Security Override provision of the EAA, the President determined that the absence of export controls on sputtering equipment would be detrimental to the national security of the United States. Therefore, the President directed the Secretary of Commerce to maintain the controls on magnetically-enhanced sputtering equipment. The President also directed the Secretary of State to negotiate with the government of any country which the Department of Commerce identified as a source of availability.

As directed, the Secretary of State initiated the negotiations which continued for six months. Pursuant to the June 24, 1987, Presidential determination, on December 24, 1987, the negotiations were extended for an additional 12 months, with the negotiating period to expire on December 24, 1988, and the Under Secretary of Commerce for Export Administration so notified Congress.

The negotiations resulted in a temporary removal of foreign availability, at least until May 31, 1989. Therefore, at present, the Secretary of Commerce will not make any changes to the export controls for magnetically-enhanced sputtering equipment. However, at the expiration of the period of temporary removal of foreign

availability, the Secretary of Commerce will make the appropriate changes, if any, to the export controls reflecting the foreign availability of magnetically-enhanced sputtering equipment at that time.

Dated: January 23, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

[FR Doc. 89-2205 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 426]

Resolution and Order Approving the Application of the Natrona County International Airport Board of Trustees for a General-Purpose Foreign-Trade Zone in the Casper, WY, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Natrona County International Airport Board of Trustees, filed with the Foreign-Trade Zones Board (the Board) on November 2, 1987, and amended on March 22, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Natrona County, Wyoming (Casper area), at the Natrona County International Airport, a Customs User Fee Airport, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is initially given for a restricted period until the issue of reimbursability at Customs user fee airports is resolved, approves the application for one year from the date of activation, subject to extension upon application to the Board.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in the Casper, WY, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Natrona County International Airport Board of Trustees (the Grantee) has made application (filed November 2, 1987, FTZ Docket 30–87, 52 FR 43780, and amended March 22, 1988, 53 FR 10136) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Natrona County, Wyoming (Casper area), at the Natrona County International Airport, a Customs User Fee Airport;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied if approval is initially given subject to the time limit in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 157, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, the one-year time limit in the resolution accompanying this action, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 19th day of January 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 2515 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-803]

Final Determination of Sales at Less Than Fair Value; Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that light-walled welded rectangular carbon steel tubing (LWRT) from Taiwan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threatening material injury to, a United States industry.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Kathleen McNamara, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0405 (Williams) or 377–3434 (McNamara).

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that LWRT from Taiwan is being, or is likely to be, sold in the United States at less than fair value, pursuant to section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On November 14, 1988, we made an affirmative preliminary determination (53 FR 46900, Nov. 21, 1988). The following events have occurred since the publication of that notice.

We verified the questionnaire response from Ornatube Enterprise Inc., Ltd. (Ornatube) in Taiwan between December 5 and 8, 1988.

On January 4, 1989, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of December 28, 1988 and in their post-hearing briefs of January 11, 1989. Interested members of the public submitted additional comments dated December 28, 1988, December 29, 1988, and January 5, 1989 regarding China Steel Corporation's two-tier pricing policy.

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 U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) 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). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The products covered by this investigation are light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, which are currently provided for under HTS item number 7306.60.5000.

Period of Investigation

The period of investigation for LWRT from Taiwan extends from January 1, 1988 through June 30, 1988.

Fair Value Comparisons

To determine whether Ornatube's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price with foreign market value, using the data provided in Ornatube's responses.

To determine whether Yieh Hsing's or Vulcan's sales in the United States of LWRT from Taiwan were made at less than fair value, we compared United States price, based on the best information available, with foreign market value, also based on the best information available. We used the best information available for Yieh Hsing and Vulcan, as required by section 776(c) of the Act, because appropriate responses were not submitted.

United States Price

For Ornatube, we based United States price on purchase price (PP), in accordance with section 772(b) of the Act, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on the C&F, C&F&C, CIF, or CIFC packed prices to U.S. customers. We made deductions from purchase price for ocean freight, marine insurance, brokerage, port charges and discounts, where appropriate. We then added to this adjusted U.S. price value-added taxes incurred on merchandise sold in the home market which are rebated, or which are not collected, by reason of the exportation of the merchandise to the United States. We then made a deduction from the tax-inclusive price for inland freight.

We disallowed a claimed duty drawback for the China Steel rebate on the cost of steel coils. Instead, we accounted for this payment to Ornatube as a circumstance-of-sale adjustment (*see* adjustments to foreign market value). We disallowed a claimed "waiting charge" adjustment to inland freight charges on export sales, because we were unable to verify to which sales, or to how many, this waiting charge applied.

Since neither Yieh Hsing nor Vulcan responded to our questionnaire, we did not have specific data as to the quantities and prices of the subject merchandise sold to the United States by the two companies. Therefore, we used the price information provided in the petition as the best information available, pursuant to section 776(c) of the Act. We used the U.S. purchase price in the United States as specified in the petition and made deductions for freight, insurance, handling charges, and U.S. customs duty.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated Ornatube's foreign market value (FMV) based on delivered C&F packed prices to unrelated purchasers in Taiwan. We made a deduction from these prices for inland freight. In order to adjust for any differences in packing between the two markets, we deducted Taiwanese packing costs from FMV and added U.S. packing costs, using packing costs submitted in Ornatube's questionnaire response and information received during verification.

In accordance with 19 CFR 353.15 of our regulations, we made circumstance-of-sale adjustments to FMV for differences in credit expenses and commissions. During verification, Ornatube was not able to provide adequate documentation for the home-market credit expenses it reported in its response. Therefore, we made no deduction from FMV for home-market credit expenses. We added to FMV the full amount of credit and banking expenses incurred on U.S. sales. We added U.S. commissions and deducted indirect selling expenses (adjusted to reflect verified salesmen's salaries) incurred on home market sales up to the amount of any commission expense incurred on sales to the United States, in accordance with 19 CFR 353.15(c) of our regulations. With respect to the indirect selling expenses used as an offset to U.S. commissions, we disallowed the portion of these expenses attributable to sales management salaries, because we consider management costs part of general and administrative expenses. We verified that the job duties of sales management personnel include responsibility for foreign sales as well as administrative functions unrelated to sales in the home market.

In addition, we made circumstance-of-sale adjustments to FMV for expenses incurred in purchasing "free" allotment for exports to the United States and for the rebate Ornatube received from China Steel on its purchases of raw material used in LWRT exported to the United States. We prorated this rebate to reflect the fact that Ornatube uses imported steel (not subject to the rebate)

as well as coils from China Steel in the production of LWRT.

We adjusted FMV for the estimated value-added tax burden on U.S. sales.

We did not make any difference-in-merchandise adjustment because, although Ornatube based its price comparisons in some cases on merchandise with slightly different physical characteristics, it did not specify any cost differences between the merchandise.

Finally, we disallowed an adjustment to inland freight expenses for split shipments.

As we did not have specific data with respect to the quantities and prices of the subject merchandise sold in Taiwan by Yieh Hsing and Vulcan, we used the constructed value of the merchandise provided in the petition as the best information available, in accordance with section 776(c) of the Act. The constructed value calculated in the petition was based on domestic production costs adjusted for differences in manufacturing costs in Taiwan, with the statutorily mandated addition of 10 percent of the cost of manufacture for general expenses and 8 percent of the cost of manufacture and general expenses for profit.

Currency Conversions

For comparisons involving purchase price transactions, we used the official exchange rates in effect on the dates of sale, in accordance with 19 CFR 353.56(a)(1) of the Commerce regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by Ornatube.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of LWRT from Taiwan. Under section 735(a)(3) of the Act, the Department must determine if:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Based on our analysis of the Department's import data, we find that imports of LWRT from Taiwan have not been massive over a relatively short period of time and there has been no substantial increase in imports following the initiation of this investigation.

Although imports decreased over the prefiling period and increased subsequent to the filing, a similar pattern is observed in 1987. It is also true that aggregate imports for the post-filing period exceed imports of LWRT for the same period in 1987. However, the same relationship is evident for the pre-filing period in 1988 and the same period one year earlier. Thus it appears this trend is one of year-to-year increase in imports of LWRT from Taiwan and is unrelated to the filing of the petition. Moreover, imports in the five months following the initiation of this investigation exceed imports in the five months previous to the filing by only 4.11 percent. For these reasons, we determine that the requirements of section 735(a)(3)(B), and thus of section 735(a)(3), are not met. Critical circumstances do not exist with respect to imports of LWRT from Taiwan.

Interested Party Comments

General Comments

Comment 1: Both petitioner and respondent argue that the dumping margin we calculated for purposes of our preliminary determination for all other manufacturers, producers, and exporters was incorrect. Petitioner argues that the margin should not be based solely on Ornatube's margin, but rather on the weighted average of the margins for Ornatube, Vulcan, and Yieh Hsing. Respondent argues that the "all other" margin should be based not on Ornatube's margin, but on the highest margin found in the investigation (*i.e.*, the margin for Yieh Hsing and Vulcan).

DOC Position: We agree with petitioner that a weighted average should be used to calculate the rate for all other manufacturers, producers, and exporters. Normally, the Department uses this methodology to calculate a margin for all other manufacturers, producers, and exporters. However, as there is no information on the record in this investigation which would allow us to reasonably calculate a weighted average, we have used a straight average of the respondents' margins for "all others."

Comment 2: Ornatube states that a circumstance-of-sale adjustment should be made for the steel coil price rebate Ornatube receives from China Steel Corporation upon the export of merchandise produced from steel purchased from China Steel. Respondent argues that circumstance-of-sale adjustments for similar rebate programs have been made in previous LTFV determinations, and that there has been no recent proliferation of two-tiered pricing schemes to warrant reevaluation by the Department of its treatment of such programs. In fact, respondent states, the courts have sustained the authority of the Department to make adjustments for such rebates in the past. Ornatube asserts that the rebate is received only on proof of export and that the rebate is directly related to each particular export transaction. Further, respondent states that the economic effect of the rebate is identical to the economic effect of a duty drawback, a program for which we would make an adjustment.

Petitioner argues that the rebate is not a circumstance of sale, but rather a difference in production costs for the products in the two markets. Petitioner argues further that granting the circumstance-of-sale adjustment for this rebate would undermine the policies underlying the antidumping and countervailing duty laws, and DOC's regulations. Petitioner asserts that DOC's authority to grant this adjustment is discretionary, and that DOC should exercise this discretion and disallow the adjustment.

The Department has allowed circumstance-of-sale adjustments for similar input price rebates in the past. *See Certain Welded Carbon Steel Standard Pipe and Tube From India, Final Determination of Sales At Less Than Fair Value,* 52 FR 9089, March 17, 1987. At the time of the preliminary determination, the Department had become concerned that allowing such circumstance-of-sale adjustments might indirectly facilitate the maintenance of barriers to trade that give rise to such two-tiered pricing schemes. For that reason, we announced our intention to reconsider this practice, and requested comments from interested parties. We received several comments on this issue from interested members of the public. Interested parties state that the

legislative history of the circumstance of sale provision makes clear that the intent of Congress in enacting this provision was that circumstance-of-sale adjustments would be made only for expenses or services that are a direct result of selling the product. They contend that export payments such as receipt of a lower price in a two-tiered pricing system, unlike the specific kinds of circumstances of sale enumerated in the Commerce regulations, do not reflect differences in selling expenses. The interested parties assert that export payments are additional revenues or benefits to exporters and do not affect the terms of the transactions between the seller and its customers. They contend the rebate is intrinsically a part of the seller-supplier relationship, rather than the seller-buyer relationship. Further, they state that counting the rebate as a circumstance of sale will only serve to encourage trade barriers which protect domestic industries and distort trade. For these reasons, interested members of the public state that the Department should exercise its discretionary authority (an authority upheld in the past by the Court of International Trade, *see Sawhill Tubular Div., Cyclops Corp. v. United States*, 666 F. Supp. 1550 (CIT 1987)) and disallow the rebate from China Steel as a circumstance of sale.

DOC Position: After considering the arguments presented by the parties and other interested persons, we are not persuaded that we should depart from the precedent in *Sawhill Tubular Div., supra*, 666 F. Supp. 1550. The export rebate received by Ornatube is directly related to and, in fact, directly contingent upon the export sale of the merchandise. Therefore, we have made a circumstance-of-sale adjustment to FMV for the steel coil price rebate, in accordance with 19 CFR 353.15 of our regulations.

The Department is aware of the argument that the granting of a circumstance-of-sale adjustment in this type of situation could encourage higher foreign tariffs and two-tier pricing. However, at this time, administrative consistency requires granting the adjustment. Other fora and other legal processes, such as the rulemaking currently contemplated by the Department, exist to address the issue of whether, in fact, adjustments in this and similar situations are appropriate.

Comment 3: Petitioner and respondent both note that the Department should correct certain errors made in its calculations of the margins in the preliminary determination. These errors involve the gross home market price and gross U.S. price used in our calculations, the calculation of commissions on U.S. sales and indirect selling expenses on home market sales, and the calculation of the credit costs on U.S. sales.

DOC Position: We agree with all but one of these comments and have corrected these calculations in the final determination. Regarding respondent's comment that we incorrectly converted indirect selling expenses to New Taiwan dollars, these expenses were in fact converted to U.S. dollars.

Comment 4: Respondent claims that circumstance-of-sale adjustments should not be made for interest charges reported as "credit expenses" in the response and miscellaneous bank charges reported as "direct expenses" which were incurred on sales in the United States. Ornatube asserts that these expenses were not incident to bringing the merchandise to the place of delivery and, therefore, no adjustment should be made for such expenses. Petitioner asserts that the adjustment for credit expenses is correct because the charges are directly related to the sale of the merchandise.

DOC Position: We consider these expenses to be directly related to the sale of LWRT to the United States. Therefore, we have included them in our circumstance-of-sale adjustments.

Comment 5: Respondent states that if the Department makes a circumstance-of-sale adjustment using credit expenses on U.S. sales, it should use the credit expenses as reported in the response, rather than an allocation formula. Respondent states that it reported actual expenses for each sale and that the method used in calculating those expenses were verified. Therefore, there is no justification for imputing costs.

Petitioner contends that the U.S. credit expenses reported by Ornatube do not appear to account properly for imputed credit expenses between the date of shipment and the date of payment. Petitioner states that the Department's credit methodology used in the preliminary determination properly accounted for actual and imputed credit expenses, using the interest rate provided by Ornatube.

DOC Position: We verified that the credit expenses claimed on U.S. sales as reported in the response were accurate. Therefore, we have made a circumstance-of-sale adjustment using credit expenses incurred on U.S. sales as they are reported in the response, rather than using imputed credit expenses.

Comment 6: Petitioner states that Ornatube's home market indirect selling expense claim improperly includes the salaries of sales management personnel in addition to salesmen's salaries. Petitioner argues that expenses for sales management personnel should be considered general expenses and, therefore, should be not be included as an offset to U.S. market commissions. Ornatube asserts that the Department should use the amount reported in the response for indirect selling expenses. This amount includes both salaries of sales management personnel and salesmen's salaries.

DOC Position: We agree with petitioner and have disallowed sales management salaries as an adjustment. We consider management expenses to be general and administrative expenses which should not be included in indirect selling expenses.

Comment 7: Petitioner states, with regard to critical circumstances, that the requirements of section 735(a)(3)(B) of the Act are met. Petitioner contends that there has been a substantial increase in the volume of imports of LWRT from Taiwan within a relatively short period. Respondent argues that there have not been massive imports and that any increase in the second half of 1988 is a seasonal effect and not a surge connected with this investigation.

DOC Position: We agree with respondent that the requirements of section 735(a)(3)(B) of the Act are not met. There was no substantial surge in imports of this material from Taiwan during the period subsequent to the initiation of this investigation.

Comment 8: Petitioner states that the requirements of section 735(a)(3)(A)(ii) of the Act are met with regard to critical circumstances. Petitioner argues that even if margins are below 25 percent in this case, a finding of critical circumstances is still justified because the Department has found in two previous investigations that LWRT from Taiwan was sold at LTFV in the United States. While neither investigation resulted in a final affirmative injury determination, petitioner argues that these cases still provided imputed knowledge to importers that LWRT from Taiwan was being sold at LTFV in the United States.

Respondent states that critical circumstances do not exist in this case because the requirements of subsections 735(a)(3)(A) (i) or (ii) of the Act are not met. Respondent argues that prior findings of sales at less than fair value (LTFV) do not satisfy section 735(a)(3)(A)(i); rather, there must be prior findings of dumping, *i.e.*, both sales at LTFV and injury. Regarding subsection (ii), Ornatube contends that,

because the International Trade Commission found no injury in previous investigations of this merchandise from Taiwan, importers had no reason to believe that the subject merchandise was being sold injuriously at LTFV in the United States.

DOC Position: The Department has found that the requirements of section 735(a)(3)(B) of the Act are not met. Accordingly, critical circumstances do not exist in this case.

Petitioner's Comments

Comment 9: Petitioner argues that we should disallow the credit expense claimed on home market sales. Petitioner contends that the respondent bears the burden of substantiating any claimed adjustments to FMV, and in this case, the Department was unable to verify home market credit expenses. According to petitioner, Ornatube's company-wide accounts receivable figures are not accurate indicators of Ornatube's home market credit expenses and, therefore, should not be used as "best information available" to determine credit expenses incurred on LWRT sold in the home market.

DOC Position: We agree. During verification, the Department realized that Ornatube was unable to *determine* and document *which* home market sales incurred credit expense. Furthermore, Ornatube claimed that up to half of its home market sales were on a cash basis. Consequently, the use of any average expense for all sales would have been highly distortive.

Comment 10. Petitioner argues that we incorrectly calculated the indirect tax burden for U.S. sales. Petitioner notes that, under 19 U.S.C. 1677a(d)(1)(C), an adjustment is to be made only for those indirect taxes that the exported merchandise would have borne if sold in the home market, and asserts that, if the merchandise had been sold in the home market, it would not have incurred movement charges.

DOC Position: The Department's position is the VAT tax should be applied to exported merchandise in exactly the same way that it is applied to goods sold in the home market. Under the Taiwanese law, merchandise is taxed at the gross price to the customer, inclusive of all services and expenses, such as inland freight. We agree with petitioner, however, that offshore movement charges could not have been incurred in a home market sale. We have adjusted our calculation by subtracting ocean freight, marine insurance, brokerage and port charges from U.S. price before determining the estimated tax burden. We did not deduct inland freight before determining the tax-inclusive price, because inland freight expenses can be incurred on a home market sale.

Comment 11: Petitioner states that the Department should deny Ornatube's request that split shipment and waiting charges be added to inland freight expenses for sales to Central Taiwan. Petitioner argues that the company's request should be denied because Ornatube was not able to provide documentation on which shipments, if any, incurred these extra charges.

DOC Position: We agree. We have disallowed any addition to inland freight expenses for split shipment and waiting charges.

Comment 12: Petitioner asserts that if the Department decides to make a circumstance-of-sale adjustment for China Steel's two-tiered pricing of coil, then to be consistent it must also make a circumstance-of-sale adjustment for expenses incurred through the buying of "free" allotment. (Under the Taiwan export licensing program, an approved applicant may pay a specified amount to the Taiwan Steel and Iron Industry Association to be allowed to export additional tonnage of certain steel products, above and beyond the company's regular allotment for steel exports. During the period of investigation, Ornatube participated in this program and paid for the ability to export additional tonnage of steel pipe under the "free" allotment provision of the program.)

DOC Position: We agree. In our calculations, we made a circumstance-of-sale adjustment for the expense incurred in buying "free" allotment for exports to the United States.

Comment 13: Petitioner states that total salesmen's salaries should be allocated over total home market sales of all products, not just home market LWRT sales.

DOC Position: We verified that sales personnel responsible for LWRT sales in the home market also sell water pipe in the home market. Additional salesmen are responsible for selling other products in the home market. Therefore, in our calculations, we allocated salesmen's salaries over both LWRT and water pipe in the home market.

Ornatube's Comments

Comment 14: With regard to section 735(a)(3)(A)(ii) of the Act, Ornatube argues that the Department's use of the 25 percent dumping margin as a test of importers' knowledge of LTFV sales is an abuse of its discretionary powers. Respondent states that it is unrealistic to expect importers to know that the exporter is selling the subject merchandise in the United States at LTFV when the importer has no knowledge of the exporter's home market prices. Respondent points to errors in the Department's preliminary determination calculations of dumping margins as evidence of the difficulty of determining whether LTFV sales exist.

DOC Position: Section 735(a)(3)(A)(ii) of the Act requires us to determine whether importers knew or should have known that the merchandise was being sold at less than fair value. For purposes of consistency, the Department's practice has been to consider estimated margins of 25 percent or greater to be sufficient to impute knowledge of dumping.

Comment 15: Ornatube asserts that in its calculations the Department should use the verified packing expenses as reported in the response, rather than another method of calculation.

DOC Position: We agree.

Comment 16: Ornatube contends that the proper amount for credit expense on transaction #3 in the verification report is the amount reported for the sale in the response. The company asserts that an extra charge included on verification documents is not associated with the particular sale and, therefore, should not be included as a credit expense.

DOC Position: We verified that the credit expenses incurred were as stated in Ornatube's response.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of LWRT from Taiwan that are entered or withdrawn from warehouse, for consumption, on or after November 21, 1988, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Ornatube Enterprise	5.51
Vulcan Industrial Corp	40.97
Yieh Hsing Industries, Ltd	40.97
All Other Manufacturers/Producers/ Exporters	29.15

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. 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 suspension of liquidation will be refunded. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on LWRT from Taiwan as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

January 30, 1989.

[FR Doc. 89-2584 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-807]

Initiation of Countervailing Duty Investigation; Fresh, Chilled, and Frozen Pork From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Canada of fresh, chilled, and frozen pork as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of fresh, chilled, and frozen pork from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before March 31, 1989.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, 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 and (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On January 5, 1989, we received a petition in proper form from the National Pork Producers Council, 13 state pork producer associations, the National Pork Council Women, ConAgra Red Meats, Inc., Dakota Pork Industries, Inc., Farmstead Foods, IBP, Inc., Illinois Pork Corporation, Thorn Apple Valley and Wilson Foods, Inc. This petition is filed on behalf of the U.S. industry producing fresh, chilled, and frozen pork. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers and exporters of fresh, chilled, and frozen pork in Canada receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, the U.S. industry.

Petitioners have alleged that they have standing to file the petition. Specifically, petitioners have alleged that they are an interested party as defined under section 771(9)(G) of the Act and that they have filed the petition on behalf of the U.S. industry producing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

On January 25, 1989, we received additional information concerning some of the programs alleged in the petition. We did not have sufficient time to take this submission into account for purposes of our initiation. We will examine this submission and take appropriate action.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on fresh, chilled, and frozen pork from Canada and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Canadian producers, or exporters of fresh, chilled, and frozen pork, as described in the "Scope of Investigation" section of this notice, receive subsidies. However, we are not initiating an investigation for certain programs because the petition failed to allege the elements necessary for the imposition of a duty or in some instances failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before March 31, 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 U.S. tariff schedules were fully converted to this 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 will be classified solely according to the appropriate HTS item number(s).

The products covered by this investigation are fresh, chilled, and frozen pork, currently provided for under TSUSA item numbers 106.4020 and 106.4040, and currently classifiable under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage and ground pork.

Allegations of Subsidies

Petitioners list a number of practices by the Government of Canada and the ten provincial governments which allegedly confer subsidies on producers or exporters of fresh, chilled, and frozen pork. In this regard, pursuant to section 771B of the Act, any subsidies found to be provided to either producers or processors of the product shall be

deemed to be provided with respect to the manufacture, production, or exportation of the processed product if (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and (2) the processing operation adds only limited value to the raw commodity. The petition in this case provides evidence which indicates that the economic relationship of hog producers and pork packers satisfies the requirements of section 771B. During the course of this investigation, we will determine whether these requirements are met. If so, any subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product. We are initiating an investigation of the following programs:

A. *Federal Program*
   Agricultural Stabilization Act
B. *Joint Federal-Provincial Program*
   1. Canada/Alberta Subsidiary Agreement on Agriculture Processing and Marketing
   2. Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement
C. *Provincial Programs*
   1. British Columbia Swine Producers Farm Income Plan
   2. Manitoba Hog Income Stabilization Plan
   3. New Brunswick Hog Price Stabilization Program
   4. Newfoundland Hog Price Support Program
   5. Nova Scotia Pork Price Stabilization Program
   6. Prince Edward Island Price Stabilization Program
   7. Quebec Farm Income Stabilization Insurance Program
   8. Saskatchewan Hog Assured Returns Program
   9. New Brunswick Swine Assistance Program
   10. New Brunswick Livestock Incentives Program
   11. New Brunswick Hog Marketing Program
   12. Nova Scotia Swine Herd Health Policy
   13. Nova Scotia Transportation Assistance
   14. Ontario Farm Tax Reduction Program
   15. Ontario (Northern) Livestock Improvement and Transportation Assistance Programs
   16. Prince Edward Island Hog Marketing and Transportation Subsidies
   17. Prince Edward Island Swine Development Program
   18. Prince Edward Island Interest Payment on Assembly Yard Loan
   19. Quebec Meat Sector Rationalization Program
   20. Saskatchewan Livestock Investment Tax Credit Program
   21. Quebec Productivity Improvement and Consolidation of Livestock Production
   22. Quebec Regional Development Assistance
   23. Nova Scotia Improved Sire Policy
   24. Newfoundland Grants to Regional Slaughter Facilities
   25. Newfoundland Weanling Bonus Incentive Policy
   26. Newfoundland Hog Stabilization Programs
   27. Newfoundland Hog Production Subsidies
   28. Ontario Pork Industry Improvement Plan
   29. Ontario Export Sales Aid
   30. Ontario Marketing Assistance Program for Pork
   31. Ontario Small Food Processors Assistance Program
   32. Saskatchewan Livestock Facilities Tax Credit Program
   33. British Columbia Food Industry Development Program
   34. Prince Edward Island Swine Incentive Policy
   35. British Columbia Feed Grain Market Development Program
   36. New Brunswick Swine Assistance Policy on Boars

We are not initiating an investigation of the programs listed below. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a) and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. All the programs listed below were alleged to confer domestic subsidies. The elements which must be alleged for a domestic subsidy program are (1) specificity (i.e., the program is limited to a specific enterprise or industry or group of enterprises or industries) and (2) provision of a countervailable benefit (i.e., a subsidy paid or bestowed directly or indirectly on the manufacturer, producer or exporter of any class or kind of merchandise). For upstream subsidies, the initiation threshold is higher. Under section 701(e) of the Act, the Department must have reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A of the Act, is being paid or bestowed upon merchandise under investigation. For the programs listed below, the requirements of section 702(b) or 701(e) of the Act were not fulfilled in the petition.

We have divided the programs listed below into four groups. Before each group we have provided the specific reasons why the programs in that group have not met the statutory standard for initiating an investigation.

Petitioners allege that the following general agricultural programs provide benefits to pig producers. We have previously determined that programs which benefit all of agriculture are not limited to a specific enterprise or industry or group of enterprises or industries. (See *Final Negative Countervailing Duty Determination: Fresh Asparagus from Mexico*, 48 FR 21618, May 13, 1983). We are not initiating on the programs below because petitioners have not made a sufficient allegation or provided evidence in the exhibits to the petition which indicates that these programs benefit a specific enterprise or industry or group of enterprises or industries.

   1. Federal Agricultural Products Board Act Programs
   2. Alberta Marketing of Agricultural Production Act Programs
   3. Ontario Soil Conservation and Environmental Protection Assistance Program

We are not initiating on the following programs because the petitioners have not made a sufficient allegation with respect to how the programs provide a quantifiable benefit on the production or exportation of the subject merchandise. Furthermore, supporting documentation submitted by petitioners do not clearly demonstrate how these programs benefit the production or exportation of the subject merchandise.

   1. Alberta Semen and Embryo Producers' Assistance Program
   2. National Workshop on Hog Marketing Alternatives Study/ Programs
   3. New Brunswick Agricultural Fairs Grants Policy
   4. New Brunswick Assistance to Livestock Exhibitors at the Royal Agricultural Winter Fair
   5. Nova Scotia Breeders' Guarantee Policy
   6. Newfoundland Swine Breeding Stations Program
   7. Prince Edward Island Assistance to Livestock Exhibitors to Out-of-Province Exhibitions
   8. Prince Edward Island Assistance to Livestock Breed Associations
   9. Ontario Swine Sales Assistance Policy

10. Ontario Livestock Shows Assistance Program
11. Ontario Transportation of Livestock Exhibits Assistance Program
12. Ontario (Northern) Agricultural Development Programs
13. Alberta Livestock Shows and Congress Assistance Program
14. British Columbia Livestock Financial Assistance Program
15. British Columbia Exhibitions and Fall Fairs Programs
16. Alberta Competitiveness Assistance Initiatives
17. Canada/Nova Scotia Miscellaneous Pork Grants
18. Canada/Ontario Canadian Western Agribition Livestock Transportation Assistance Program
19. Canada/Alberta Swine Herd Improvement Research Study
20. Special Canada Grains Program
21. Canada/Newfoundland Livestock Feed Initiative
22. Canada/Prince Edward Island Livestock Feed Initiative

Petitioners allege that the following programs provide benefits to growers of various feedgrains. Petitioners do not allege that these programs directly provide benefits to producers of pigs. We believe that any benefit received by the producers of pigs under these programs would be in the nature of an upstream subsidy under section 701(e) of the Act, because they do not meet the standards of section 771B. We are not initiating on these programs because petitioners have not made an upstream subsidy allegation.

1. Federal Prairie Grain Advance Payments Act Program
2. Federal Canadian Wheat Board Act Initial Payments Program
3. Federal Western Grain Stabilization Act Program
4. Federal Western Grain Transportation Act Programs
5. Federal Feed Freight Assistance Program
6. Agriculture Canada Livestock Feed Board Programs
7. Alberta Crow Benefit Offset Program

We are not initiating on the following programs because they were previously found not countervailable. (See *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 FR 25097, June 17, 1985, and *Live Swine from Canada: Final Results of Countervailing Duty Administrative Review*, 54 FR 651, January 9, 1989). Petitioners have not provided any new evidence nor alleged changed circumstances with respect to these programs.

1. Quebec Special Credits for Hog Producers
2. Saskatchewan Financial Assistance for Livestock and Irrigation
3. Saskatchewan Livestock Cash Advance Program
4. Record of Performance Program

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it 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.

Preliminary Determination by ITC

The ITC will determine by February 20, 1989, whether there is a reasonable indication that imports of fresh, chilled, and frozen pork materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

January 25, 1989.

[FR Doc. 89-2516 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of hearings to solicit input on (1) two proposed measures to be included in a regulatory amendment to the regulations implementing the Sea Scallop Fishery Management Plan (FMP) and (2) six proposals for possible inclusion in Amendment 3 to the FMP. Individuals may comment in writing to the Council if they are unable to attend the hearings.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates, time, and locations of the hearings. The public comment period for the proposed regulatory amendment will close February 28, 1989. The comment period for the other six proposals for possible inclusion in Amendment 3 will close March 18, 1989.

ADDRESS: All written comments and requests for hearing documents should be addressed to Chairman, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617-231-0422.

SUPPLEMENTARY INFORMATION: A proposed regulatory amendment to the FMP would include (1) a mandatory call-in requirement at least 12 hours prior to landing, and (2) a twelve-hour time window for landing sea scallops. The Council also seeks input from the public on six proposals made by industry organizations and individuals for possible inclusion in Amendment 3 to the FMP. Common elements to several proposals include an annual declaration by each vessel to enter the Sea Scallop fishery, trip catch limits and limited layover days. Other proposals advocate a moratorium on any new vessels entering the fishery, continuation of the current meat count/shell height standard, a minimum size for landed scallops, a seasonal closure, and a minimum participation of 3 months per year.

The dates, time, and locations of the public hearings are scheduled as follows:

February 13, 1989, 7:00 p.m. to 11:00 p.m., Holiday Inn, High Street, Ellsworth Maine.

February 14, 1989, 7:00 p.m. to 11:00 p.m., Skipper Inn, 110 Middle Street, Fairhaven, Massachusetts.

February 16, 1989, 7:00 p.m. to 11:00 p.m., Grand Hotel, Oceanfront and Philadelphia Avenue, Cape May, New Jersey.

February 17, 1989, 7:00 p.m. to 11:00 p.m., Norfolk International Airport, Conference Room A, Norfolk, Virginia.

February 18, 1989, 10:00 a.m. to 1:00 p.m., Beaufort County Courthouse, 112 West Second Street, Superior Court Room, 2nd Floor, Washington, North Carolina.

Dated: January 31, 1989.

Alan Dean Parsons,

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

[FR Doc. 89-2596 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and the Council's advisory entities will convene public meetings at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI, as follows:

Council—at its 64th meeting on February 16–17, 1989, at 9 a.m., will hear routine fisheries reports from State, Territorial and Federal Government representatives on the Council, as well as from private sector Council members from Hawaii, Guam, American Samoa, and from the Commonwealth of the Northern Mariana Islands. The status of fishery management plans (FMPs) for crustaceans, bottomfish, seamount groundfish, and precious corals will be discussed. It is anticipated that the Council will review an application for an experimental fishing permit (EFP) to dredge for precious coral, and make a recommendation on whether the application should be approved, approved with conditions, or denied.

The Council will also be briefed on: (1) The status of the annual report requirement of the FMP covering the fisheries for pelagic species; (2) composition and percentage of bycatches in the rapidly growing Hawaii longline fishery for tunas; (3) recent status of the South Pacific fisheries (troll and gillnet) for albacore tuna; (4) review program planning activities with regard to a five-year program of data and research needs; (5) general administrative matters; (6) discuss reauthorization of the Magnuson Fishery Conservation and Management Act, and (7) discuss other routine Council business.

Fishermen's Forum—Also, during the Council's 64th public meeting, a Council-sponsored Fishermen's Forum will begin at 3:15 p.m., on February 16, 1989. Subjects of discussion will be: (1) Applicability of the 1988 amendments to the Marine Mammal Protection Act to Hawaii's commercial fisheries; (2) the national policy of observer coverage of domestic fishing vessels; (3) drift gillnet fisheries in the Pacific; (4) Hawaii's tuna longline transshipment operation, and (5) petition of recreational fishermen in Hawaii regarding bycatches of billfish and other species in the domestic longline fishery.

Standing Committees—The Council's Standing Committees will convene on February 15, 1989, at 9 a.m.

Scientific and Statistical Committee (SSC)—The Council's SSC will convene its 44th public meeting on February 13–14, 1989, at 9 a.m. The SSC will review the status of programmatic projects in support of the FMPs for bottomfish, crustaceans, precious corals, and pelagic species, will also review reports of the Plan Monitoring Team for each FMP, and formulate recommendations for the Council. In particular the SSC will: (1) Review the status of the limited entry program for bottomfish; (2) review an application for an EFP for dredging for precious corals; (3) review the status of annual reports covering the fisheries for pelagics species, and (5) discuss "frameworking" the FMP for crustaceans.

The SSC also will begin working on a five-year plan regarding data and research needs for the FMPs, and discuss implications of the FMP planning process resulting from changes to National Standards 1 and 2.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: January 31, 1989.

Alan Dean Parsons,

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

[FR Doc. 89–2597 Filed 2–2–89; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Issuance of Permit; State of New Hampshire, Fish and Game Department (P422)

On August 16, 1988, notice was published in the **Federal Register** (53 FR 30856) that an application had been filed with the National Marine Fisheries Service by the State of New Hampshire, Fish and Game Department, Douglas E. Grout and John I. Nelson, 37 Concord Road, Durham, NH 03824, for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific purposes.

Notice is hereby given that on January 27, 1989, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1407), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to State of New Hampshire, Fish and Game Department, Douglas E. Grout, and John I. Nelson subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act.

The Permit is available for review in the following Offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930.

Date: January 27, 1989.

Nancy Foster,

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

[FR Doc. 89–2561 Filed 2–2–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit: The National Aquarium in Baltimore (P261C)

On September 8, 1988, notice was published in the **Federal Register** (53 FR 34806) that an application had been filed by the National Aquarium in Baltimore for a permit to take nine (9) Atlantic bottlenose dolphin (*Tursiops truncatus*) for public display.

Notice is hereby given that on January 27, 1989, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that the National Aquarium in Baltimore offers an acceptable program for education or conservation purposes. The Baltimore facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm

Street, Federal Building, Gloucester, Massachusetts 01930; and
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: January 27, 1989.

Nancy Foster,

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

[FR Doc. 89-2562 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Ringling Bros.-Barnum and Bailey Circus (P384)

Modification No. 1 to Permit No. 567

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 567 issued to the Ringling Bros.-Barnum and Bailey Circus, 3201 New Mexico Ave., NW., Washington, DC 20014, on October 15, 1986 (51 FR 37623) is modified as follows:

Section B.1 is changed to read:

B.1 The animals authorized in Section A.1 shall be imported, exported to Japan and reimported into the United States as described in the application and the authorization request of December 20, 1988.

Section B.4 is changed to read:

B.3. The authority to import and maintain the marine mammals authorized herein, shall extend from the date of issuance through December 31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective on January 1, 1989.

Documents pertaining to the Permit and modification are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910.
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415;
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702;
Director, Northeast Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and
Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: January 30, 1989.

Nancy Foster,

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

[FR Doc. 89-2563 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

January 31, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral textile agreement between the Governments of the United States and the People's Republic of China establishes a sublimit under Category 651 for Category 651-B. A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissoner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 31, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable five textiles and textile products, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on February 7, 1989, the directive of December 6, 1988 is being amended to establish a level of 104,500 dozen [1] for man-made fiber textile products in Category 651-B [2], a sublimit of Category 651.

Imports charged to Category 651-B for the period January 1, 1988 through December 31, 1988 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisons 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2559 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcing 1989 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend, and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong; Correction

January 31, 1989.

On page 46911 of the **Federal Register** notice published on November 21, 1988 (53 FR 46910), make the following changes:

In column 1, the description for Categories 338/339 should read "shirts

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 651-B, only HTS numbers 6107.22.0015 and 6108.32.0015.

and blouses, other than tops, including tank tops, knit."

In column 1, the description for Categories 338/339(1) should read "tops, including tank tops, knit."

In column 2, footnote,[3] add 6114.20.0005 and 6114.20.0010.

In column 2, footnote,[4] change 6103.42.2020 to 6103.42.2025 and add 6203.42.2090 and 6211.32.0025.

In column 3, footnote,[6] add 6203.43.2090, 6203.49.1090 and 6211.33.0017.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2558 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DR-M

Permitting Entry of Certain Textile Products Exported from Brazil

January 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain shipments.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Goods produced or manufactured in Brazil and exported from Brazil during the period February 1-28, 1989 shall be permitted entry if accompanied by the old visa issued by the Government of the Federative Republic of Brazil prior to February 1, 1989.

See 49 FR 21974, published on May 24, 1984; and 54 FR 456, published on January 6, 1989.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

January 30, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the export visa arrangement established under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15, 1988 and September 19, 1988, between the Governments of the United States and the Federative Republic of Brazil, I request that, effective on February 1, 1989, you permit entry of textiles and textile products, produced or manufactured in Brazil and exported from Brazil during the period February 1, 1989 through February 28, 1989 which are accompanied by either the old or new visa provided the old visa is issued prior to February 1, 1989.

Goods produced or manufactured in Brazil and exported from Brazil on and after March 1, 1989 must be accompanied by either the new visa or a visa waiver.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2560 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

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

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 23 and November 28, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 37024 and 47850) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1989:

Grounds Maintenance, Naval Weapons Station, Areas 13-22, Yorktown, Virginia
Janitorial/Custodial, Naval Amphibious Base, Except Building 3504, Little Creek, Norfolk, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-2574 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

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

ACTION: Committee additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

DATES: Comments must be received on or before March 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

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

It is proposed to add the following commodity and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodity

Tarpaulin, 8340-00-485-3012

Services

Grounds Maintenance, Hill Air Force Base, Utah

Janitorial/Custodial, U.S. Army Reserve Centers at the following locations:
500 West 24th Street, Chester, Pennsylvania
6th and Kedron Avenue, Folsom, Pennsylvania
Huntingdon, Pennsylvania
7 West Delaware Avenue, Marcus Hook, Pennsylvania
1522-24 Wingohocking Street, Philadelphia, Pennsylvania
200 Wissahickon Avenue, Philadelphia, Pennsylvania
State College, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-2575 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DOT.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Tuesday and Wednesday, February 28 and March 1, 1989, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202 373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552(b)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 31, 1989.

[FR Doc. 89-2589 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Closed Meetings

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on March 14, 1989 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 31, 1989.

[FR Doc. 89-2586 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Procurement With a Global Technology Base; Closed Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force and Defense Procurement with a Global Technology Base will meet in closed session on February 27, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the management, technology transfer, and program acquisition issues associated with balancing national security and international trade in the mutual interests of the DoD and the defense industrial base.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

January 31, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-2587 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on National Space Launch Strategy; Closed Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on National Space Launch Strategy will meet in closed session on March 2-3, 1989 at Science Applications International Corp., Falls Church, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the US national security space launch strategy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: January 31, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-2588 Filed 2-2-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 30, 1989.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on March 1, 1989, from 8:00 a.m. to 5:00 p.m., at Delta Airlines, Atlanta, Georgia and on March 2-3, 1989, from 8:00 a.m. to 5:00 p.m., at the Warner Robins Air Logistics Center, Robins AFB, Georgia.

The purpose of this meeting will be to obtain information on their Damage Tolerance Analysis/Certification Program. The meeting at Warner Robins Air Logistics Center will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be close to the public.

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

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-2535 Filed 2-2-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 30, 1989.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on March 22-23, 1989, from 8:00 a.m. to 5:00 p.m., at the Oklahoma City Air Logistics Center, Tinker AFB, Oklahoma.

The purpose of this meeting will be to obtain information on their Damage Tolerance Analysis/Certification Program. The meeting at Oklahoma City Air Logistics Center will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

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

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-2536 Filed 2-2-89; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Public Meeting; Draft Feasibility Study for Remediation of Landfill, Hamilton Air Force Base, Novato, CA

The US Army Corps of Engineers will conduct a public meeting on February 17, 1989, to receive comments on the Draft Feasibility Study for Remediation of Landfill 26, Hamilton Air Force Base, Novato, California. The meeting will begin at 1:00 p.m. in the base theater, Bldg. 507, Palm Drive, Hamilton Field. A two hour recess is planned at 5:00 p.m. with the meeting resuming at 7:00 p.m. to allow interested people unable to attend the daytime meeting the opportunity to provide their comments on the feasibility study. Scheduled Federal attendees at the public meeting include Congressional Representative Barbara Boxer, Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health, Lewis D. Walker, representatives from the Presidio of San Francisco who manage Hamilton Field and representatives from the Corps of Engineers.

Public tours of the landfill and other areas of interest at Hamilton are scheduled by the Corps of Engineers February 14 and 15 at 9:00 a.m., 10:30 a.m., 1:00 p.m., and 2:30 p.m. Anyone interested in going on the one-hour tour should call the Installation Manager, Mr. Larry Gallagher at Hamilton Field (415) 561-5849/(415) 883-3734.

The feasibility study, released January 9th, specifically describes and addresses possible remedial alternatives to clean up the sale property landfill. The landfill was identified in the 1987 remedial investigation at Hamilton AFB as a site containing soil and refuse that, in some locations, exceeds criteria developed by the State of California for identification of hazardous waste.

The Draft Feasibility Study major findings include:

Landfill 26 presents insignificant health risks (both toxic and carcinogenic effects) to persons currently living or working at Hamilton AFB.

Left in its current condition, Landfill 26 will continue to pose no threat to human health. Development of Landfill 26 for residential or other purposes may require extensive remediation within guidelines determined by Federal and State regulatory agencies to assure protection of human health.

The Draft Feasibility Study describes eight remedial alternatives for addressing contamination in the soil/refuse. These alternatives range from no action (requiring continued groundwater monitoring) to excavation and disposal of contaminated soil/refuse in appropriate commercial landfills and range in costs from $2.8 million to $53.5 million.

Remediation of soil/refuse will subsequently require localized groundwater remediation at the landfill. The Draft Feasibility Study describes six groundwater remedial alternatives utilizing various processes ranging in cost from $4.7 million to $18 million.

The Corps of Engineers has been conducting environmental investigation of the sale property at Hamilton AFB since May, 1985. To date, clean up actions on the sale propery have included removal of containerized hazards (1985) and removal of 65 underground fuel structures (1986). Total cost expenditure for the Hamilton AFB cleanup and investigations to date has been $13.8 million.

Copies of the Draft Feasibility Study for Landfill 26 may be obtained by calling the Sacramento District Corps of Engineers, (916) 551-2254, or by writing the Sacramento District Corps of Engineers, ATTN: CESPK-ED-M, 650 Capitol Mall, Sacramento, California 95814-4794. A limited number of copies of the study will also be available at the Hamilton Army Airfield Installation Manager's Office, Building No. 501, Hamilton Army Airfield.

Due to its large size, the remedial investigation report for the landfill referenced in the feasibility study is available for review by the public at the following locations:

Marin County Library, Civic Center, San Rafael, California

Santa Rosa City Library, Main Branch, Santa Rosa, California

Building 501, Hamilton Army Airfield, Novato, California

6th Army Public Affairs Office, Bldg. 38, Presidio of San Francisco, San Francisco, California

Presidio of San Francisco Public Affairs Office, Bldg. 37, Presidio of San Francisco, San Francisco, California.

All interested individuals, organizations, and agencies are invited to attend the meeting and present their comments orally or in writing. Written comments may also be mailed to the Corps of Engineers' Sacramento address. Comments received by 10 March will become part of the official record of the meeting.

Timothy P. Mason,

Corps of Engineers, Deputy District Engineer.

[FR Doc. 89-2633 Filed 2-2-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Award Based on Acceptance of an Unsolicited Application; University of the District of Columbia

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.14, it intends to award a grant to the University of the District of Columbia based on an unsolicited application submitted by that institution. The objective of the research to be supported under this grant is to provide information on water quality and planning with a knowledge of the fate of triphenyltin compounds. This advanced information will enable those making decisions about water quality to better assess the potential impact of these hazardous chemicals on the environment allowing for better regulation of the use of these chemicals.

FOR FURTHER INFORMATION CONTACT: Dan E. Stamer, U.S. Department of Energy, Chicago Operations Office, Technology Management Division, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972-2381.

SUPPLEMENTARY INFORMATION: Funding for this effort is provided through DOE's Historically Black Colleges and Universities (HBCU) Program in support of Executive Order 12320. The research capability of this HBCU will be strengthened and student research opportunities will be stimulated as a result of this award. This unsolicited application was accepted because of its unique and innovative approach to researching the speciation of triphenyltin compounds. Mossbauer spectroscopy, a tool not generally used in routine environmental research, will be employed to examine the amount of triphenyltin specias residing in sediment samples. By using Mossbauer spectroscopy, the original organotin species can be studied rather than derivative species, which possibly could prevent the masking of the species.

The project period for the grant will cover a three year period beginning in February 1989. DOE plans to provide the University of the District of Columbia with approximately $282,199 for the project period and the university intends to cost share an additional $49,800 for the project period.

Issued in Chicago, Illinois on January 24, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89-2592 Filed 2-2-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 89-3: Nuclear Engineering Research

AGENCY: Department of Energy (DOE), Idaho Operations Office.

ACTION: Notice inviting grant applications.

SUMMARY: DOE's Office of Energy Research announces its interest in receiving applications from colleges and universities for Special Research Grants that will support research efforts aimed at advancing the state-of-the-art in the field of nuclear engineering. University investigations who are no more than five years beyond the receipt of their doctoral degrees are especially encouraged to apply. Applications should be directed to state-of-the-art research that contributes to the following areas: applied nuclear sciences, advanced conventional reactors, nuclear reactor materials and operations, reactor neutronics, nuclear thermal hydraulics and non-conventional reactor applications. The research to be supported should be innovative and revolutionary rather than evolutionary. Incremental improvements in technologies related to conventional light water reactor (LWR) technologies or research typically supported by the Nuclear Regulatory Commission will not be supported.

(1) The *applied nuclear sciences* include research applications of radiation and research reactors, including improved instrumentation or measurement techniques for health physics or biomedical research and the use of research reactors for fundamental studies.

(a) Improved instrumentation for health physics or biomedical applications focuses on the development of dosimetry techniques for monitoring of radiation exposures due to neutrons and other radiation in medical application of radiation sources.

(b) The use of research reactors for fundamental studies focuses on the development of novel research capabilities using research reactors or the application of radiation from reactors to probe matter in pursuit of basic knowledge in areas such as condensed matter physics, chemical kinetics, or biotechnology.

(2) *Advanced conventional reactor* research includes advanced research for Liquid Metal Reactors (LMR), including the Integral Fast Reactor (IFR), Light Water Reactors (LWR) and High Temperatures Gas Reactors (HTGR).

(a) LMR research focuses primarily on breakthroughs in technology leading to significant cost and/or safety improvements. Research on the Integral Fast Reactor (IFR) concept should focus on improvements in ternary metal fuel (U-Pu-Zr) performance, blanket or reprocessing technology development, or automated control and diagnostic systems, as related to passively safe response to upsets.

(b) LWR research focuses on innovative design concepts, systems or components with the potential of improved performance and safety, particularly "passive" or "inherent" safety. Also included would be improvements in design of safety systems or components related to improved seismic performance of plants.

(c) HTGR research focuses on improved instrumentation and materials for high temperature operation, typically above 850-900 degrees Celsius.

(3) *Nuclear reactor materials and operations* research includes innovative application of engineering sciences to improvements in the safety and reliability of nuclear reactor operation, including, but not limited to advances in reactor control and instrumentation, improved materials for plant life extension, advances in real-time instrumentation for multiphase flow or to detect the onset of embrittlement and the modeling of corrosion and erosion in the radiation environment.

(a) Advances in reactor control and instrumentation includes the application of human factors engineering and/or expert systems to improve monitors and displays for the control room environment and the application of real-time signal analysis and processing to improve fault detection in reactor instrumentation and components.

(b) Improved materials for plant life extension includes research in the development of materials with resistance to degradation during service in the high temperature and radiation reactor environment.

(c) Advances in real-time instrumentation includes improvements in the measurement of multiphase flow conditions and the development of nuclear or non-nuclear methods to detect in real time the radiation embrittlement of nuclear reactor vessel materials.

(d) The modeling of corrosion and erosion in the radiation environment focuses on degradation of materials due to the presence of coolant materials, and may include evaluation of the effects of biocorrosion.

(4) *Reactor neutronics* focuses on improvements in reactor computational methodologies in the light of continuing dramatic improvements in computational hardware. Research focus will be on improvements in core neutronics, reactor kinetics, radiation transport, fission product behavior, nuclear fuel management and fuel cycle optimization.

(5) *Nuclear thermal hydraulics* focuses on improvements of models and analysis of thermal hydraulic behavoir in a nuclear reactor system, including applications to multiphase flow, convective and conductive heat transport, degraded core cooling and emergency coolant flow.

(6) *Non-conventional reactor applications* focuses on research related to the identification and application of nuclear reactor concepts which do not fall under category 2. This includes, but is not limited to, research focusing on advanced converter reactors, concepts for nuclear materials generation, and non-power or non-terrestrial applications of nuclear reactors. Areas of emphasis for applications of nuclear reactors in space include the following:

(a) New materials developments applicable to high temperature space reactors.

(b) Advanced fuels technologies for space nuclear applications, including code development and modeling activities.

(c) Advanced technologies which could significantly enhance space power developments in any of the following areas: Safety, cost, survivability, reproducibility, and mass minimization.

(d) Power converter technologies leading to significant cost, performance or survivability advantages for thermoelectrics, thermionics, Brayton, and Stirling conversion systems.

DATES: To permit timely consideration for awarding during FY 1989, applications submitted in response to this notice should be received by the Idaho Operations Office, Contracts Management Division by March 27, 1989.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Idaho Operations Office, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402, ATTN: Nuclear Engineering Research.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy A. Thorne, R&D Contracts Branch, Idaho Operations Office, USDOE, Idaho Falls, Idaho 83402.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $2M will be available for grant awards during FY 1989, and that awards will range from $50K to $250K per year, with a typical requested project duration of two to three years. However, note that future fiscal year awards will be subject to the availability of funds.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide and in 10 CFR Part 605. The application kit and Guide is available upon written request from the U.S. Department of Energy, Idaho Operations Office (see address above). It is specifically requested that the "Detailed Description of Research Work Proposed" section of the proposal not exceed fifteen double-spaced pages. The Catalog of Domestic Assistance Number for this program is 81.049.

In accordance with the recommendation in the conference report of the Energy and Water Development Appropriation Act, 1989, eligibility for this solicitation is limited to university nuclear engineering programs.

Issued in Idaho Falls, Idaho, on January 12, 1989.

H. Brent Clark,

Director, Contracts Management Division, Idaho Operations Office, U.S. Department of Energy.

[FR Doc. 89-2593 Filed 2-2-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-688-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

January 30, 1989.

Take notice that on January 23, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP89-688-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Wyoming Gasmark, Inc., a marketer, under CIG's Blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 1,000 Mcf per day, for Wyoming Gasmark, Inc., pursuant to a Transportation Service Agreement dated October 1, 1988, between CIG and Wyoming Gasmark, Inc. CIG would receive gas from an existing point of receipt in Wyoming, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for the account of Wyoming Gasmark, Inc., in Wyoming.

CIG further states that the estimated average daily and annual quantities would be 900 Mcf and 328 MMcf, respectively. Service under § 284.223(a) commenced on October 1, 1988, as reported in Docket No. ST89-346-000.

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 Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 89-2580 Filed 2-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-343-000]

Northern States Power Co.; Filing

January 30, 1989.

Take notice that on December 20, 1988, Northern States Power Company (NSP) amended its filing in this docket by filing signed settlement agreements with various of its customers concerning its rates at issue in this docket. The signed settlement agreements also apply to the proceedings in Docket No. EL88-17-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 8, 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. 89-2581 Filed 2-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-38-001]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

January 30, 1989.

Take notice that on January 23, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Substitute Forty-Sixth Revised Sheet No. PGA-1 to its FERC Gas Tariff reflecting certain technical corrections to its current quarterly PGA effective for the period January 1, 1989 through March 31, 1989, pursuant to 18 CFR 154.308 and 154.310, computed in accordance with technical suggestions by the Commission Staff, including correction in the manner of display of Ringwood's surcharge adjustment.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

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 385.215, 385.211). All such motions or protests should be filed on or before February 2, 1989. Protests will be considered by the Commission in determining the appropriate action to the 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. 89-2582 Filed 2-2-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3514-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 16, 1989 through January 20, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-AFS-K70004-CA, Rating EC1, Mono Basin National Forest Scenic Area, Comprehensive Management Plan, Implementation, Inyo National Forest, Mono County, CA.

SUMMARY: EPA expressed environmental concerns that the preferred alternative may not adequately protect wetlands and fisheries from adverse grazing impacts.

ERP No.: D-BLM-J02014-WY, Rating EC2, Amoco Carbon Dioxide Projects, Construction and Operation, Plan Approval, Big Horn, Carbon, Fremont, Hot Springs, Lincoln, Natrona, Park, Washakie and Sweetwater Counties, WY.

SUMMARY: EPA requested that the final EIS include site specific geologic date pertaining to pipeline routes and wellfield reinjection sites, additional aquifer mapping and hydrologic information, additional information on potential groundwater impacts associated with the pipeline cathodic protection system and additional information on air emissions/modelling for expected plant upset.

ERP No.: D-FHW-D40239-MD, Rating EC2, US 1 Improvements, Sliver Spring Road to MD-152, Funding and 404 Permit, Baltimore and Harford Counties, MD.

SUMMARY: EPA believes that the Four Lane Alternative should be presented in comparison to the selected alternative, and that Kingsveille Option E appears to be the most environmentally sound. Potential sites for wetland mitgation should also be identified in the final EIS.

ERP No.: D-FHW-E40717-FL, Rating EC2, US 19/FL-55 Upgrading, FL-694/ Gandy Boulevard to FL-595/Alternate US 19, Funding, Pinellas and Pasco Counties, FL.

SUMMARY: EPA has concerns with potential noise impacts, lack of mitigation to minimize noise impacts, and the lack of a detailed wetland mitigation plan for unavoidable wetland losses.

ERP No.: D-MMS-L01007-AK, Rating EO2 1989 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Leasing Offerings, AK.

SUMMARY: EPA has environmental objectives to the lease alternatives. This document concludes that mining in the lease sale area will result in violation of Federal water quality criteria for trace metals, especially mercury. EPA has no additional data to refute this conclusion. The water quality data used in the analyses in this document are limited and erroneous. EPA is not aware of any operational modification or alternative mining technology that would allow mining to occur without violating Federal water quality criteria. Based on the analyses in the draft EIS, EPA's issuance of a permit for discharges from the mining dredge is unlikely.

Final EISs

ERP No.: F-AFS-K65083-00, Lake Tahoe Basin Management Unit National Forest, Land and Resource Management Plan, Implementation, El Dorado, Placer and Alpine Counties, CA and Washoe and Douglas Counties, NV.

SUMMARY: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No.: F-BLM-L767019-AK, Birch Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, Steese National Conservation Area, Yukon-Tanana, AK.

SUMMARY: EPA requested that the Record of Decision include more detail on uniform performance standards or criteria to be used in developing specific mitigation requirements.

ERP No.: F-COE-C36062-00, Passaic River Basin Flood Control Plan, Implementation, Passaic, Bergen, Morris, Essex and Hudson Counties, NJ and Rockland and Orange Counties, NY.

SUMMARY: EPA has resolved its concerns about the project's impact to aquatic ecosystems, groundwater, hazardous waste sites and water quality. Due to outstanding concerns regarding adequate mitigation for unavoidable wetlands impacts, EPA signed a memorandum of agreement with the U.S. Army Corps of Engineers that addresses the wetlands mitigation issue. Therefore, EPA is confident that concerns about this issue will be addressed.

ERP No.: FS–DOI–A90065–00, Undeveloped Coastal Barriers, Coastal Barrier Resources System Proposed Changes, Implementation, ME, MA, RI, CT, NY, MS, AL, DE, SC, TX, VA, GA, LA, NC and FL.

SUMMARY: EPA supports additions of aquatic habitat, including wetlands, to the Coastal Barrier Resources System; however, EPA remains concerned about conclusions regarding the lack of requirements for Federal consistency with the Coastal Barrier Resources Act, the methodology and rationale for delineation of boundary lines and recommended deletions from the system.

Amended Notices

ERP No.: DS–AFS–L65101–OR, Rating EC2, Deschutes National Forest, Land and Resource Management Plan, Additional Alternative and Specific Management Requirements Analysis, Implementation, Klamath, Deschutes, Jefferson and Lake Counties, OR.

SUMMARY: EPA is concerned that the No Change Alternative does not include specific standards and guidelines for water quality protection.

Correction—The above summary published in January 23, 1989 FR Notice should read No Change Alternative.

Dated: January 31, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–2598 Filed 2–2–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3514–4]

Environmental Impact Statements: Availability

Responsible Agency:

Office of Federal Activities, General Information (202) 382–5076 or (202) 382–5075.

Availability of Environmental Impact Statements Filed January 23, 1989 Through January 27, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890016, Final, EPA, LA, Houma Navigation Canal, Ocean Dredged Material Disposal Site Designation, Terrebone Parish, LA, Due: March 6, 1989, Contact: Norm Thomas (214) 655–2260.

EIS No. 890017, Draft, COE, NC, West Onslow Beach and New River Inlet Beach (Topsail Beach), Erosion Control and Hurricane Wave Protection Plan, Implementation, Pender and Onslow Counties, NC, Due: March 20, 1989, Contact: John A. Baden (919) 251–4754.

EIS No. 890019, Draft, COE, MI, Village of Ontonagon Flood Control Plan, Implementation, Ontonagon Counties, MI, Due: March 20, 1989, Contact: William J. Patrick (202) 274–3232.

EIS No. 890020, Draft, FHW, IL, FAP–413 Construction, I–270 at the Northern Terminus of I–255 to IL–267, Funding and 404 Permit, Madison County, IL, Due: March 23, 1989, Contact: Jay W. Miller (217) 492–4600.

Amended notices

EIS No. 880416, Final, FHW, GA, SC, Bobby Jones Expressly Extension, Old Savannah Road in Augusta to US 1, Funding, 404 Permit and Coast Guard Permit, Richaramond County, GA and Aiken County, SC, Due: February 3, 1989, Contact: Louis Papet (404) 347–4751.

Published FR 12–23–88–Review period extended.

Dated: January 31, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–2599 Filed 2–2–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3514–7]

Science Advisory Board; Research and Development Program Assessment Subcommittee of the Research Strategies Advisory Committee; Open Meeting on February 16, 1989

Under Pub. L. 92–463, notice is hereby given that a meeting of the Research and Development Program Assessment Subcommittee of the Research Strategies Advisory Committee of the Science Advisory Board will be held on February 16, 1989 in the Conference Room #908, West Tower, 401 M Street SW., Washington, DC 20460. This meeting will start at 9:00 a.m. and will adjourn no later than 5:00 p.m. and is open to the public.

The main purpose of this meeting will be to review and prepare a report on the Environmental Protection Agency (EPA) Research and Development Program as reflected in the Fiscal Year 1990 President's Budget.

An Agenda for the meeting is available from Mary L. Winston, Staff Secretary, Science Advisory Board (A101F), U.S. EPA, 499 South Capitol Street SW., Washington, DC 20460. Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Research and Development Program Assessment Subcommittee, by telephone at (202) 382–2552, or by mail to the SAB (A–101F) U.S. EPA, 499 South Capitol Street SW., Washington, DC 20460 no later than c.o.b. February 13, 1989. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by the date noted above. The SAB expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: February 1, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–2657 Filed 2–2–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. DS–189; DA 89–32]

Home Box Office Inc.; Petition for Reconsideration of Commission's Order Denying GE American Communications, Inc.'s Modification Request for Its K–3 Satellite

January 25, 1989.

On December 30, 1988, Home Box Office, Inc. (HBO) filed a petition for reconsideration of this Commission's Order in the matter, GE American Communications, Inc., 3 FCC Rcd 6871 (GE American Order). GE American Communications, Inc. (GE American) and HBO formed Crimson Satellite Associates (CSA) to provide various video programming services to its subscribers including direct-to home users. GE Americom proposed to operate its 12/14 GHz K–3 satellite from the 85° W.L. geostationary orbital location with 60 watt traveling wave tube amplifiers, half CONUS (contiguous U.S.), concentrated transmission beams and transponders capable of operating with 27 MHz or 54 MHz of usable bandwidths. It also proposed to co-locate a modified K–4 satellite at 85° W.L. at a future date. In response to considerable opposition and comment from the satellite industry regarding this proposal, the Commission released the GE Americom Order which resolved the dispute by creating a bifurcated high power density arc—an eastern segment at 75° W.L.–79° W.L. and western segment between 132° W.L.–136° W.L. Because GE Americom asserted that it would not operate its proposed high power density satellite outside of the 85° W.L.–106° W.L. orbital arc, the Commission denied its modification request to operate its high power density satellite at 85° W.L. HBO now petitions the Commission to reconsider its decision in the GE Americom Order asserting that the K–3/K–4 satellite

combination at 85° W.L. would not cause unacceptable levels of interference to adjacent and neighboring satellites according to GE Americom's technical analysis.

Parties wishing to file oppositions or comments to HBO's petition should do so at the Commission no later than February 21, 1989. Reply comments should be filed no later than March 7, 1989.

Parties are requested to serve copies of the comments upon International Transcription Services, Inc. at their offices in Room 246, 1919 M Street, NW., Washington, DC 20554, and upon Cecily Holiday, Chief, Satellite Radio Branch, Room 6324, 2025 M Street, NW., Washington, DC 20554.

Copies of the petition and related documents may be obtained from International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20036, (202) 857–3800. The documents are also available for public inspection and copying in Room 6218, 2025 M Street, NW., Washington, DC 20554.

For further information, contact Wilbert E. Nixon at (202) 634–1624.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–2461 Filed 2–2–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). No prior information collection packages were published directly by FSA. (Previous packages were done collectively by the Department.)

Following is the first **Federal Register** submission by FSA:

(For a copy of package, call the FSA, Reports Clearance Officer on 202–252–5597.)

Interim Final Rule on Targeting in Income and Eligibility Verification System (IEVS)—NEW—allows States administering AFDC and Aid to Aged, Blind, or Disabled programs of the Social Security Act, to allocate their resources to those categories of information items which are most cost-effective for follow-up and establishes procedures for submitting follow-up plans for approval. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: 1; Average Burden per Response: 40; Estimated Burden: 2,160 hours.

OMB Desk Officer: Justin Kopca

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Date: January 31, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89–2595 Filed 2–2–89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89N–0034]

Human Health Risks Associated With the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed; Availability of Report

AGENCY: Food and Drug Adminstration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report from the National Academy of Sciences (NAS)/Institute of Medicine (IOM) entitled "Human Health Risks with the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed."

DATE: Comments by May 4, 1989.

ADDRESS: Written requests for copies of the report should be submitted to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Staff in processing your request.) The report is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday. Written comments should be submitted to the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Division of Compliance Policy (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2390.

SUPPLEMENTARY INFORMATION: On September 30, 1987, FDA contracted with the NAS/IOM to examine currently available data with respect to the potential human health consequences of feeding subtherapeutic levels of penicillin and the tetracyclines to food-producing animals and to prepare a formal, quantitative risk assessment. To address the public health issues which have been raised, the NAS/IOM was charged with validating reports of data on human health consequences of subtherapeutic uses of pencillin and the tetracyclines and identifying any factors resulting from this use that affect human health, as well as sources of uncertainty inquantifying such factors, in arriving at a documented and justified estimate of risk.

The NAS/IOM study has now been completed and a report entitled "Human Health Risks with the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed" has been submitted.

The report summarizes the available data and presents a risk model from which estimates are derived. FDA is making the NAS/IOM report available to the public on request, and is soliciting comments on the report. The agency will consider the comments it receives in assessing the report and the need for any future actions based on an evaluation of the public health issues involved.

A copy of the report is available for review at the Dockets Management Branch (address above). Requests for individual copies of the report should be addressed to the Industry Information Staff (address above).

Interested persons may, on or before May 4, 1989 submit to the Dockets Management Branch (address above) written comments regarding the report. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments and other information on this topic have been placed on file and may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 1, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–2682 Filed 2–2–89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89E-0009]

Determination of Regulatory Review Period for Purposes of Patent Extension; Voltaren®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Voltaren® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Voltaren® (diclofenac sodium) which is indicated for acute and chronic treatment of the signs and symptoms of rheumatoid arthritis, osteoarthritis, and ankylosing spondytitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Voltaren® (U.S. Patent No. 3,652,762) from Ciba-Geigy Corp., and requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Voltaren® is 3,082 days. Of this time, 1,399 days occurred during the testing phase of the regulatory review period, while 1,683 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 21, 1980. The applicant claims that the investigational new drug application (IND) for the drug became effective on January 22, 1980. However, FDA records indicate that the IND did not become effective until February 21, 1980. (See 21 CFR 312.40(b).)

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 20, 1983. The applicant claims that the new drug application (NDA) for Voltaren® (NDA 19-201) was initially submitted December 19, 1983. However, FDA did not receive the application until December 20, 1983. (See 21 CFR 60.22(d).)

3. *The date the application was approved:* July 28, 1988. FDA has verified the applicant's claim that NDA 19-201 was approved July 28, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 4, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 2, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.)

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 30, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-2569 Filed 2-2-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Consensus Development Conference on Therapeutic Endoscopy and Bleeding Ulcers; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Therapeutic Endoscopy and Bleeding Ulcers," sponsored by the National Institute of Diabetes and Digestive and Kidney Diseases in collaboration with the NIH Office of Medical Applications of Research. The conference will be held on March 6-8, 1989, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Upper gastrointestinal bleeding remains a common cause of emergency hospitalizations in the United States. It has been estimated that more than 100,000 patients a year bleed from peptic ulcer disease. Upper GI bleeding is a major clinical problem with significant morbidity and mortality despite improvements in surgical and medical care in the past two decades. Fiberoptic endoscopy provides direct access to bleeding lesions and opportunity for treatment. Other techniques that show promise include laser photocoagulation, electrical coagulation, thermal coagulation with heater probe, and injection sclerotherapy.

There is a great deal of controversy about which of these techniques is most appropriate in the management of bleeding ulcers. This conference will review the data on these treatment modalities in an effort to reach a consensus on the most appropriate ways to manage hemostasis of bleeding ulcers.

This conference will bring together gastroenterologists, surgeons, internists, nurses, family practitioners, pharmacists, other health care professionals, and the public.

Following a day and a half of presentations by medical experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- Which bleeding ulcer patients are at risk for rebleeding and thus emergency surgery?
- How effective is endoscopic/hemostatic therapy?
- How safe is endoscopic/hemostatic therapy?
- Which bleeding patients should be treated?
- What further research is required?

On the final day of the meeting, the Consensus Panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Susan Wallace, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland, (301) 468–6555.

Dated: January 24, 1989.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89–2513 Filed 2–2–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 27, 1989.

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. St. George, Utah, Cancer Screening and Detection Project —0925–0289—The data is required to carry out research mandated under Pub. L. 98–558 in the development of cancer screening and research project on the over 40 population in St. George, Utah. Data will be used to determine attitudes and practices related to cancer patients and to follow up and track patients with suspicious or positive findings. Respondents: Individuals or households, small businesses or organizations, businesses or other for-profit.

	Number of respond-ents	Number of hours per re-sponse	Number of re-sponses per respond-ent
Participant forms....	12,000	.14	1.2
Physician forms.....	55	.076	178

Total annual burden—2,684 hours.

2. *National Library of Medicine Reader Service Document Request Form—0925–0169*—Each request form transmits essential bibliographic identification information for each document that a requestor desires to see or obtain from the National Library of Medicine. Requestors consist of health professionals, practitioners, educators, researchers, and other members of the public who visit the Library. Respondents: Individuals or households, State or local governments, small businesses or organizations, businesses or other for-profit, Federal agencies or employees, non-profit institutions; Number of Respondents: 25,000; Number of Responses Per Respondent: 12; Average Burden Per Response: .03 hours; Estimated Annual Burden: 9,000 hours.

3. *Huntington's Disease Research Roster—0925–0280*—A research roster of Huntington's Disease patients and their families will be maintained and expanded. The Roster was essential for the identification of the Huntington's Disease gene marker and was essential for the identification of the gene itself, and other research to prevent or cure Huntington's Disease. Respondents: Individuals or households; Number of Respondents: 2,347; Number of Responses Per Respondent: 1; Average Burden Per Response: .94 hours; Estimated Annual Burden: 2,209 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 30, 1989.

Steven A. Grossman,

Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–2527 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–17–M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4–101, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law. A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods

specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines. Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from January 1 through January 25, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute:

1. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions Received

1. William D. and Dixie Little, III on Behalf of William Kerry Little, Lindale, Texas, Claims Court Docket Number 89–01 V
2. Shelly Wiggins on Behalf of Michael Wiggins, Crystal Falls, Michigan, Claims Court Docket Number 89–02 V
3. Regina and Michael McClarrinon on Behalf of Jessica Lynn McClarrinon, Sacramento, California, Claims Court Docket Number 89–03 V
4. Rickey T. Anderson and Deborah Anderson Rochester on Behalf of Gaylene L. Anderson, Sacramento, California, Claims Courts Docket Number 89–04 V
5. Elizabeth B. and Michael B. Rodee on Behalf of Andrew Glen Rodee, Wichita, Kansas, Claims Courts Docket Number 89–05 V
6. Tom and Diane King on Behalf of Jesse Thomas King, Tonganoxie, Kansas, Claims Courts Docket Number 89–06 V

Dated: January 31, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–2565 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–15–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; Delegation of Authority; Director, Bureau of Health Professions

Notice is hereby given that in furtherance of the delegation of authority of December 28, 1988, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated the authorities delegated to him under Part A (42 U.S.C. 300aa–10 *et seq.*) and Part D (42 U.S.C. 300aa–31 *et seq.*), Subtitle 2 of Title XXI of the Public Health Service Act, as amended, to the Director, Bureau of Health Professions, Health Resources and Services Administration.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective on December 28, 1988.

Date: December 28, 1988.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 89–2526 Filed 2–2–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Preparation of a Settlement Roll of Indians of the Reservation; Correction

January 19, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: This document is to correct errors in the notice, published in the **Federal Register** on Friday, December 9, 1988 (53 FR 49795), that the Superintendent of the Northern California Agency of the Bureau of Indian Affairs is preparing a settlement roll of Indians of the Reservation pursuant to section 5 of the Hoopa-Yurok Settlement Act of October 31, 1988.

The deadline date for filing application forms for inclusion on the settlement roll of Indians of the Reservation which appeared under the headings of **DATE** and **SUPPLEMENTARY INFORMATION** is corrected by changing "March 29, 1989," to "April 10, 1989," on page 49795, second column, line 6 and page 49796, first column, lines 29 and 30, respectively. Application forms are to be filed with the Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049, and must be postmarked, if mailed, or received, if delivered, no later than close of business on April 10, 1989. Application forms filed after April 10, 1989, will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility, except that plaintiffs determined to be an "Indian of the Reservation" in the *Short* cases, will, if they otherwise meet the requirements of the Act, be included on the roll.

Under the heading of **SUPPLEMENTARY INFORMATION,** on page 49796, first column, lines 44 and 48, Part "62" is corrected by changing to Part "61". To provide procedures for BIA personnel to follow, a rulemaking document amending Part 61 of Title 25 of the Code of Federal Regulations will be published at a later date in the **Federal Register.**

Also, under the heading of **SUPPLEMENTARY INFORMATION,** on page 49795, second column, line 36, "Charline" is corrected by changing to "Charlene".

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–2525 Filed 2–2–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CO-010-9-4121-12]

Final Environmental Impact Statement for the Northwest Colorado Coal Preference Right Lease Applications

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the final Environmental Impact Statement (EIS) for the Northwest Colorado Coal Preference Right Lease applications and plan amendment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management has prepared a final EIS on two coal preference right lease applications (PRLAs) in northwest Colorado. This final EIS also serves as a proposed plan amendment for the White River Resource Area Management Framework Plan.

DATES: The final EIS will be available on or before March 6, 1989. Comments on the final EIS should be submitted to: Roger Wickstrom, Project Coordinator, Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641; telephone (303) 878-3601.

Protests to the proposed land use planning decision amendment must be filed within 30 days of the publication of the Notice of Availability by the U.S. Environmental Protection Agency in the **Federal Register**. Protests should be sent to Director (760), Bureau of Land Management, Premier Building, Room 906, 1725 I Street, NW., Washington, DC 20240.

Availability: Single copies of the abbreviated final EIS and the draft EIS are available at the White River Resource Area Office (address and phone number are listed above).

FOR FURTHER INFORMATION CONTACT: Roger Wickstrom, Project Coordinator, Bureau of Land Management, White River Resource Area, Meeker, Colorado 81641; telephone (303) 878-3601.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has prepared an abbreviated final EIS on two coal Preference Right Lease Applications, Chapman-Riebold C-0125366 north of Rangely, Colorado and Jensen-Miller C-4275 northeast of Meeker, Colorado. The abbreviated final EIS must be read in conjunction with draft EIS to constitute a full final document. The final EIS also serves as the analysis for amending the White River Resource Area Management Framework Plan by applying the unsuitability criteria (43 CFR Part 3460) to the project areas.

Formal section 7 Consultation has been initiated with the U.S. Fish and Wildlife Service concerning threatened and endangered fish in the Upper Colorado River Basin.

Tom Walker,

Associate State Director.

Date: January 20, 1989.

[FR Doc. 89-2161 Filed 2-2-89; 8:45 am]

BILLING CODE 4310-JB-M

[CA-050-09-4410-10]

Intent To Prepare Resource Management Plan; Redding Resource Area, CA; Change in Dates

AGENCY: Bureau of Land Management, Interior.

ACTION: Change in December 15 notice of intent to prepare Resource Management Plan.

SUMMARY: The notice of intent published in the December 15, 1988 **Federal Register** listed dates for public scoping meetings and comment period. These dates have been changed.

Comment Period: Comments relating to the identification of issues and planning criteria will be accepted until March 31, 1989.

Meeting Dates: Meetings to determine the scope of the Resource Management Plan, and to obtain input on issues and planning criteria will be held in Redding, at the Red Lion Inn at 7:00 p.m. on February 13, 1989; in Red Bluff, at the City Council Chambers at 7:00 p.m. on February 15, 1989; in Chico, at the Holiday Inn, at 7:00 p.m. on February 21, 1989; in Yreka, at the Community Center Theatre, at 7:00 p.m. on February 23, 1989; and in Weaverville, at Lowden Part Recreation Hall, at 7:00 p.m. on February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Morse, Area Manager, or Barron Bail, Chief of Lands and Resources, Redding Resource Area, (916) 246-5325.

Date: January 20, 1989.

Mark T. Morse,

Area Manager.

[FR Doc. 89-2510 Filed 2-2-89; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Request for Information on African Elephant Conservation Programs and Ivory Trading Practices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The African Elephant Conservation Act directs the Secretary of the Interior (Secretary) to request information on the African elephant conservation program of each ivory producing country, in order to determine whether each should be subject to a moratorium on ivory exports to the United States. It also establishes provisions for moratoria on ivory exports from intermediary countries to the United States.

The Service requests submission of information by all interested parties pertaining to African elephant conservation programs and compliance of ivory producing and intermediary nations with the provisions of the Act.

DATES: Comments must be received on or before June 5, 1989.

ADDRESSES: Comments and materials concerning this notice should be mailed to the Office of Management Authority, Arlington Square—4th Floor, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240. Comments and materials may be delivered directly to the same office, Room 3024, Main Interior Department Building, 18th and C Streets, NW., Washington, DC, between the hours 8:00 AM and 4:00 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For Management Authority issues, Mr. Marshall P. Jones, Chief, Office of Management Authority, at the above address, telephone (202) 343-4968 until 10 March 1989, or (202) 343-4646 after that date. For Scientific Authority issues, Dr. Charles W. Dane, Office of Scientific Authority at (703) 358-1708.

SUPPLEMENTARY INFORMATION: On October 7, 1988, the President signed into law the African Elephant Conservation Act (Act), Title II of the Endangered Species Act of 1973, Appropriations Authorizations for Fiscal Years 1988-1992 (Pub. L. 100-478, 102 Stat. 2306). Section 2004 establishes that it is the policy of the United States to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Pursuant to section 2201(b), the U.S. Fish and Wildlife Service (Service) must review the conservation program of each ivory producing country and determine whether it meets the following criteria:

(A) The country is a party to CITES and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

Pursuant to section 2202(a), if the Service determines that an ivory producing country fails to meet any one of these criteria it must declare a moratorium on import of ivory from that country into the United States. Any moratorium established by the Service is subject to being suspended under section 2202(c) if subsequent information reveals that the country meets all the criteria.

The Act defines "ivory producing country" to mean any African country within which is located any part of the range of a population of African elephants. The Service has determined that the following countries meet this definition: Angola, Benin, Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote D'Ivoire, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Liberia, Malawi, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Tanzania, Togo, Uganda, Zaire, Zambia, and Zimbabwe.

Through this notice the Service requests detailed information relative to each ivory producing country on:

1. The amount of available elephant habitat; its condition and carrying capacity, including:

a. Present extent of habitat, categorized according to the relative value of the habitat and degree of protection for elephants, to the extent possible (maps would be helpful);

b. Habitat trends, rate of increase or decrease, and factors affecting future carrying capacity;

c. Programs and future plans for habitat protection and enhancement;

d. Size of present populations in relation to habitat carrying capacity (relate to habitat categories used in response to question 1a. above), areas of overpopulation and effects on the habitat, and areas of underpopulation;

e. Ongoing and future plans for research/investigations into habitat and carrying capacity.

2. Present population and population trends, including:

a. Best estimate of past and present populations and likely trends over the near future, categorized according to habitat categories and degree of protection afforded used in response to question 1a. above;

b. Census methods, reliability, and completeness (for each of the estimates in 2a. above);

c. Percent and/or number of elephants under effective protection within and outside of preserve;

d. Distribution of elephant populations, noting size of separate herds, management programs for each herd and protection afforded each herd;

e. Long range goal for population levels related to human problems;

f. Present and future research on elephant population status.

3. Annual reproduction and mortality, including:

a. Present rate of reproduction;

b. Present and future trend in rate of mortality;

c. Age and sex structures of present populations;

d. Extent of annual mortality, categorized according to natural, illegal, and legal, including sport hunting, culling (designed to stabilize a herd within its habitat), cropping (controlled harvest for economic reasons), and control hunting (to protect lives and property);

e. Methods and reliability of data;

f. Present and planned studies to assess the rate of reproduction and mortality.

4. Status of efforts to control poaching, including:

a. Present rate and trend of illegal kill;

b. Magnitude of movement of illegal ivory across the frontiers;

c. Source of the poachers, whether local or from outside the country;

d. Number of rangers assigned to elephant protection, annual expenditures for protection, problems with protection, and present and future plans;

e. Estimated loss of revenue due to poaching;

f. Reliability of data on illegal kill.

5. Basis for ivory quotas, as reported to the CITES Ivory Control System:

a. Amount of ivory exported in 1986, 1987, 1988, and the anticipated 1989 export;

b. Whether the quota is part of the country's elephant conservation program;

c. Whether the amount of illegal harvest is considered in the establishment of export quotas;

d. What proportion of the legal ivory obtained during the last two years, is from trophy hunting, found from natural mortality, culling, cropping, and control hunting;

e. To what extent the quota is based on other factors, including present and future desired elephant population levels, expected confiscations, stocks on hand, and interception of illegal ivory coming across the borders;

f. What the disposition is of raw ivory, including;

(1) Internal consumption,

(2) Converted to worked ivory for export,

(3) Exported as raw ivory,

g. Whether funds derived from any elephant harvest are used for conservation and management of elephants and other wildlife;

h. What the trend is in ivory consumption and expected change in the ratios of f(1)(2) and (3) above.

This list is not necessarily all inclusive and the Service is requesting any information that will assist it in determining whether a moratorium on the importation of ivory from a producing country must be established. Section 2201(b)(1) requires the Secretary to make such determination for each country no later than October 7, 1989. However, section 2201(b)(2) allows a delay until December 31, 1989, if the Service determines that additional information is required.

The Department of the Interior, through the Department of State, is requesting by letter the above information from each of the ivory producing countries. Information will also be requested from the Secretariat of CITES.

In addition, the Act has provisions relating to intermediary countries, defined as countries which export raw or worked ivory originating in another country (an ivory producing nation may thus also be an intermediary country in some cases). Section 2202(b) requires the establishment of a moratorium on any intermediary country which:

1. Is not a party to CITES;

2. Does not adhere to the CITES Ivory Control System;

3. Imports raw ivory from a country that is not an ivory producer;

4. Imports raw or worked ivory from a country not a party to CITES;

5. Imports raw or worked ivory that originates in an ivory country in

violation of the laws of that ivory producer;

6. Substantially increases its imports of raw or worked ivory from a country that is subject to moratorium during the first 3 months of that moratorium; or

7. Imports raw or worked ivory from a country subject to a moratorium after the first 3 months of that moratorium, unless that ivory is imported by vessel during the first 6 months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of that moratorium.

The Service has established a moratorium under section 2201(b)(1)(A) and 2202(b)(1) on import of ivory from all countries which are not parties to CITES. That moratorium became effective on December 27, 1988 (53 FR 52242). The Service is now seeking information from all interested parties on whether any intermediary country should be considered for establishment of a moratorium under the other provisions of section 2202(b). The Service contemplates rapid action to establish appropriate moratoria, if such information is received confirming that one or more of the criteria have not been met, in order to maximize the effects of these provisions on control of illegal trade in ivory.

This notice was prepared by Frank McGilvrey, U.S. Fish and Wildlife Service, Office of Management Authority.

Date: January 30, 1989.

Frank Dunkle,

Director.

[FR Doc. 89-2564 Filed 2-2-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Concession Contract Negotiations; Genet Expeditions Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to negotiate a concession permit with Genet Expeditions, Inc. authorizing it to continue to provide mountaineering guide services for the public at Denali National Park and Preserve, Alaska for a period of four (4) years from January 1, 1989, through December 31, 1992.

EFFECTIVE DATE: April 4, 1989.

ADDRESS: Interested parties should contact the National Park Service, Alaska Regional Office, Concessions Division, 2525 Gambell Street, Anchorage, Alaska 99503, (907) 257-2595 for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.1.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice in the **Federal Register** to be considered and evaluated.

Date: December 14, 1988.

Boyd Evison,

Regional Director, Alaska Region.

[FR Doc. 89-2571 Filed 2-2-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31366]

Logansport & Eel River Short-Line Co., Inc.; Acquisition and Operation Exemption; the Logansport & Eel River Railroad Museum, Inc.

Logansport & Eel River Short-Line Co., Inc. (Logansport), a non-carrier, has filed a notice of exemption to acquire by purchase and to operate approximately 2.2 miles of rail line of The Logansport & Eel River Railroad Museum, Inc. (Museum). The line to be acquired extends from the Van Tower on the west side of Logansport, IN to a point 110 feet west of the Horney Creek Bridge on the east side of Logansport, IN. The transaction is expected to be consummated on or before January 31, 1989.

This transaction will also involve the issuance of securities by Logansport, which will be a Class III carrier. The issuance of these securities will be an exempt transaction under 49 CFR 1175.1.

This notice is related to Finance Docket No. 31367 in which Logansport has filed a petition seeking exemption under 49 U.S.C. 10505 from the requirements of Subtitle IV of Title 49 in connection with its acquisition and operation of the 2.2-mile line.

Any comments must be filed with the Commission and served on: Wayne Jackson, R.R. #4, Logansport, IN 46947 and James M. Prickett, Beers, Mallers, Backs, Salin & Larmore, 1100 Fort Wayne National Bank Building, Fort Wayne, IN 46802.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 25, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2431 Filed 2-2-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-276)]

CSX Transportation, Inc.; Abandonment Between Beam and Kane in Marion, Nelson, Larue and Taylor Counties, KY; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 55.26-mile rail line from milepost LC-33.22 at Beam (near Lebanon Jct.) to milepost LC68.63 at or near C&O Jct.; and from milepost LI-67.77 at or near C&O Jct. to the end of the line, milepost LI-87.62, at or near Kane, in Nelson, Larue, Marion, and Taylor Counties, KY. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 89-2430 Filed 2-2-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Number: 1031-88]

Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Amends September 8, 1987 Public Notice of INS procedures for verifying an alien's immigration status for various federal benefit programs, funds and services.

SUMMARY: This final notice provides technical amendments to the September 8, 1987 Public Notice describing the Systematic Alien Verification for Entitlements (SAVE) Program as it relates to section 121 of the Immigration Reform and Control Act of 1986 (IRCA) which requires immigration status verification of alien applicants under certain federally subsidized entitlement programs. Section 121 required the establishment of a centralized data base specifically designed to capture information contained in INS records which when used by the entitlement issuing authority will allow it to verify the alien's immigration status. This verification will assist the federal or state issuing authority in determining the eligibility of the alien applicant to receive federally subsidized benefits.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Neville W. Cramer, Deputy Assistant Commissioner, Employer and Labor Relations/SAVE Branch, Immigration and Naturalization Service, 425 "I" Street NW., Room 7025, Washington, DC 20536, Telephone: (202) 633-2317.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act, Pub. L. 99-603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment in 1952 of the Immigration and Nationality Act, 66 Stat. 166, reflects a resolve to control illegal immigration. One of the themes in this legislation is to reduce incentives for aliens to come and remain in the United States illegally. Aside from the deterrence created by employer sanctions, illegal aliens must also be prevented from obtaining public assistance while in the United States. Section 121 of IRCA, "Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs," provides for the establishment and implementation of a system to verify the status of aliens applying for federally funded entitlements.

The Systematic Alien Verification for Entitlements (SAVE) Program is an intergovernmental information-sharing initiative designed to prevent unentitled aliens from receiving federally subsidized entitlement benefits. The INS has been operating long-term SAVE pilots throughout the United States and its territories for several years, and estimates that billions of dollars in benefits are granted to aliens who are either in the United States illegally or, by reason of their status, are unentitled to the benefits.

The Administration strongly supports efforts to curb waste, fraud, and abuse within federally funded entitlement programs. Section 121 of IRCA mandates that the INS develop a cost-effective alien status verification system for use by entitlement agencies. Agencies that already have effective systems will be allowed to request and/or receive a waiver from this provision of IRCA in accordance with paragraph (c)(4) "Use of Verification System Not Required for a Program in Certain Cases" of section 20 "Payment for Implementation of Immigration Status Verification System." SAVE allows federal and state eligibility workers to verify both alien documentation and status within seconds of accessing the data base, and should prove to be a strong deterrent to those aliens attempting to gain benefits illegally.

Introduction to Public Comments

The INS wishes to express its appreciation for the numerous comments received in response to the Public Notice on the Systematic Alien Verification for Entitlements (SAVE) system. Commentators included representatives of governmental entities at the federal, state, and local level; advocacy groups; and INS regional and district offices. This publication which includes the revised procedures should clarify several concerns expressed by these commentators.

For further information relating to the Systematic Alien Verification for Entitlements Program, a manual has been created that explains how to obtain access to the data base, estimated costs per access method and a familiarization of the primary and secondary functions of the system. The manual is available upon request from Neville W. Cramer, (202) 633-2317.

Comments Received

Since publication on September 8, 1987, of the Public Notice, INS has received several public comments expressing the opinion that it was unduly cumbersome and duplicative to have five federal agencies publishing their own separate regulations on the use of SAVE. The five federal agencies and the INS agree that the INS has no statutory authority to issue policy for implementation of verification requirements for programs administered by the affected agencies under section 121 of IRCA. However, the INS has implied statutory authority as IRCA amends federal statues pertaining to the designated agencies; for example, the statutory program authority of the Social Security Act for the AFDC, Medicaid and the territorial assistance programs, as well as the statutes of other agencies. With this notice, the INS has issued a description of SAVE procedures, not a policy statement. The statute requiring verification of immigration documentation is contained in section 121 of the Immigration and Nationality Act (INA).

Some comments reflect the fear that SAVE will be used for administrative law enforcement, such as locating and removing aliens from the United States based solely on immigration residency status. Although the INS will be made aware of such information when an illegal alien is verified through the automated and/or manual SAVE process, the INS will not attempt to locate, arrest or institute deportation proceedings. The INS is limited to pursuing violations of a criminal nature, such as the use of fraudulent and/or counterfeit documentation, uncovered by the SAVE system. Information relating to unentitled aliens will be forwarded to the appropriate Inspector General's office.

Concerns were raised that the SAVE program would be doomed to a low operation priority in light of the various IRCA related tasks. The position of Immigration Status Verifier was created with the sole function of adjudicating document verification requests submitted by users of the SAVE verification system. Our highly trained specialists are required to respond to the user agency within ten working days after receipt of the request and attached photocopies. The notice has been amended to reflect this change.

Verification Procedures

1. Citizenship or Alienage Declaration

No comment was received regarding this section.

2. Documentary Requirements of Aliens

With regard to the questions concerning acceptable documentation as proof of alien status, the INS has the authority and expertise to verify only documentation that has been issued by the INS. This notice describes the INS system of verification and relates to aliens under the jurisdiction of the United States Immigration and Naturalization Service. Section 264(e) of the Immigration and Nationality Act requires all aliens over 18 years of age to be in possession of their registration documentation at all times.

3. Maintaining Photocopies

Several comments relating to the requirement and the cost of photocopying the alien registration documentation were received. While it is true that photocopying is not a requirement of IRCA, the presentation of and verification of alien registration documentation is. In order to conduct this verification through the manual SAVE system or the secondary process, the submission of photocopies is a requirement. The photocopies are returned to the entitlement authority upon completion of the verification process. With the exception of photocopies of fraudulent or counterfeit documents which constitute a criminal offense, no copies received from the requesting agency are retained in the INS A-file. In the case of fraudulent or counterfeit documents, the INS shall notify the appropriate authority of the entitlement agency. The acquisition of photocopying equipment falls under the authority of the appropriate entitlement issuing agency. Section 121 provides 100 percent reimbursement for costs of implementation and operation of the immigration status verification system. Questions regarding the regulations and authorization of these funds should be addressed to the appropriate federal overseeing agency.

4. Immigration Documentation (Examples)

The list of documents has been amended to include any INS-issued document which is proof of immigrant status containing an alien registration number.

5. Access to the Alien Status Verification Index (ASVI)

The request to better define "Alien Registration Number" was made: The Alien Registration Number, commonly referred to as the A-Number, may consist of a seven- or eight-digit number that has been assigned to an alien at the time his or her alien file has been created. The alien file refers to the history file containing data and documentation pertaining to an individual alien. An A-File is created or amended when any one of several INS actions occurs, for example, application for permanent resident status or for a Certificate of Citizenship. Alien Registration Numbers are assigned at the local File Control Office (FCO) processing the initial action. Each FCO has a set of pre-numbered folder jackets. The lower numbered folders are used first. Upon gaining entry into ASVI, the A-Number is used to access the information contained in the A-File.

6. ASVI Data Elements

Commentators believe that the status displays appear to be incomplete with respect to alien's employemt record in the United States. SAVE is to be used to verify an alien applicant's immigration documentation, and present work authorization status, not the alien's employment history.

The INS would like to clarify the intent of this section. If SAVE confirms the applicant's alien status as one who is a lawful permanent resident yet there is some discrepancy in noncritical data such as the date of birth, it is the prerogative of the State agency to submit the document for verification if the agency considers it to be questionable.

Secondary Verification

1. Definition of "Secondary Verification"

Several comments were made pertaining to the suggestion that secondary verification be instituted when a document appears to have characteristics such as photo substitution, ink discoloration, etc. The INS does not wish to impose an additional requirement or assign an enforcement role to the eligibility worker above and beyond what is presently required. On the contrary, much of the guess work will be eliminated by using SAVE in conjunction with other expert systems presently at their disposal. While it is true that there is no basis in the law compelling the eligibility worker to determine whether or not a document is fraudulent, many do examine documents and forward them to the INS. If an eligibility worker feels that a document has been altered or a photo-substitution has been made, there is no statutory preclusion to forwarding a copy of the document to INS under secondary procedures.

With respect to the instructions pertaining to secondary verification, the language describing the procedure has been amended to require its institution: (1) When the initial access to ASVI results in the instruction to initiate secondary review; (2) when the agency has determined that the documentation presented is questionable; or (3) when it is known that the category of the applicant's alien status is not maintained on the ASVI database. The SAVE manual contains specific and detailed instruction pertaining to this issue.

2. Use of Document Verification Request Form G-845A and G-845B

Since the publication of the public notice, the INS has revised and consolidated the Document Verification Request Form G-845; it is now one document. This version shall be used to request all secondary verifications. The SAVE manual describes in full the procedures on how to obtain a secondary verification and an explanation of the appropriate responses. Further, a category has been added to help determine whether or not an alien is permanently residing under color of law.

3. INS Response to Secondary Verification

In response to the many comments expressing concern about the time required by INS to process a G-845, the procedures have been reviewed and a turnaround time of within ten working days of receipt of the request has been mandated.

Types of Access to the Alien Status Verification Index

1. Access to ASVI

Comments were received pertaining to the need for each user agency to negotiate an individual Memorandum of Understanding in order to access ASVI. This requirement is determined by the overseeing Federal agency. To date, only the Departments of Health and Human Services and Agriculture have such a requirement.

Privacy Act

1. Privacy Act Compliance

This section has been amended by replacing "Authorization Code" with "Alien immigration status at the time of inquiry."

2. Record of Disclosure for Documentation Which Does Not Contain an Alien Registration Number

No comments were received pertaining to this section.

3. Routine Use of Information

It has been stated that this section is in direct conflict with the provisions of the Food Stamp Act of 1977, which requires that State agencies must "limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this Act, regulations issued pursuant to this Act, Federal assistance programs, or federally assisted State programs, except that (A) such safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law, and (B) notwithstanding any other provision of law, all information obtained under this Act from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this Act or any regulation issued under this Act."

Access to the record of disclosure created by INS shall be severely restricted. No information relating to the individual's application for program benefits covered under the Food Stamp Act of 1977 shall be disclosed to any person or agency not directly connected with the administration or enforcement of the provisions of the Food Stamp Act as amended by the Immigration Reform and Control Act of 1986, or the applicants themselves.

Federal Entitlement Programs and Federally Assisted Entitlement Programs Implementation

Several commentators objected to the inclusion of this language into the final notice for the following reasons: (1) This section does not describe SAVE, and (2) the responsibility for the implementation of the SLIAG program rests with the Secretary of Health and Human Services (HHS). Since the publication of these procedures, HHS has published regulations relating to this issue. Therefore, this section has been omitted from the final SAVE notice.

Verification Procedures

(1) Citizenship or Alienage Declaration

All applicants for benefits under the designated programs in section 121 of IRCA will be required to declare under penalty of perjury whether they are citizens or nationals of the United States, or aliens.

(2) Documentary Requirements of Aliens

All aliens in the United States must present original alien registration documentation or other source of documentation that the issuing agency determines is reasonable evidence of the alien's immigration status. The documentation should contain an alien registration number or admission number. The Alien Registration Number, commonly referred to as the A-Number, may consist of a seven- or eight-digit number that has been assigned to an alien at the time his or her alien file has been created. The alien file refers to the history file containing data and documentation pertaining to an individual alien. An A-File is created or amended when any one of several INS actions occurs, for example, application for permanent resident status or for a Certificate of Citizenship. All applicants must present acceptable documentation or furnish a receipt from the INS indicating that an application for replacement documentation has been made.

(3) Maintaining Photocopies

INS suggests that the overseeing Federal agencies require that all original documentation presented by alien applicants be photocopied (front and back) and maintained with the alien's application for benefits or other suitable location that allows for the agency's immediate retrieval. If an office does not have access to photocopy equipment, suitable arrangements should be made to copy the original (front and back) immigration documentation presented by the applicant.

(4) Immigration Documentation (examples)

Immigration documentation includes, but is not limited to, the following:

(a) Form I–151. Alien Registration Receipt card with photograph (for permanent resident aliens). This card was in use prior to 1979;

(b) Form I–551. Resident Alien card (for permanent resident aliens);

(c) Form I–551. Resident Alien card (Conditional). This card expires.

(d) Form AR–3a. Alien Registration Receipt card (Issued during 1941–1949 for permanent resident aliens);

(e) Form I–94. Arrival-Departure Record—(Annotated either "Section 207" or "Refugee," or "Section 208" or "Asylum");

(f) Form I–94. Arrival-Departure Record—Parole Edition (Annotated "Section 212(d)(5)," or "Conditional Entry" or "Section 203(a)(7)");

(g) Form I–94. Arrival-Departure Record (Annotated "Section 243(h)");

(h) Form I–94. Arrival-Departure Record (Annotated Cuban-Haitian Entrant);

(i) Form I–688. Temporary Resident card, Department of Justice, Immigration and Naturalization Service (Card issued pursuant to IRCA. Document expires);

(j) Form I–688A. Employment Authorization card, Department of Justice, Immigration and Naturalization Service (Card issued pursuant to IRCA. Document expires);

(k) Fee Receipt Form I–689. Issued to applicants under the amnesty and SAW programs. This document expires.

(l) Form I–181a. A temporary identification document issued by an INS field office when an alien has been granted lawful permanent resident. Contains annotation of work authorization (Does not contain a photograph);

(m) Form I–327. Re-Entry Permit. Issued to lawful permanent resident aliens before they leave the United States for a one- to two-year period. This document expires.

(n) Form I–571. Refugee Travel Document. This document expires.

(o) A receipt from INS indicating that an application for replacement documentation has been made.

(p) Any document issued by the Immigration and Naturalization Service.

All immigration documentation presented that does not contain a photograph or other information describing the individual (i.e., height, weight, age) should be accompanied by another identity document bearing a photograph or containing other information sufficient to identify that individual.

(5) Access to the Alien Status Verification Index (ASVI)

The alien registration number located on the document shall be used to access ASVI. Alien registration numbers are either seven or eight numerical digits preceded by the letter *A*.

(6) ASVI Data Elements

ASVI verifies some or all of the following biographical data pertaining to the alien applicant. Each agency should identify, under separate regulation, the critical data elements that constitute a valid ASVI verification.

(a) "Last name"

(b) "First name"

(c) "Date of birth"

(d) "Country of birth" (not nationality)

(e) "Social Security Number" (if known)
(f) "Date of entry" (for last status entered into system)
(g) One of the following status displays:
(i) "Lawful Permanent Resident—Employment Authorized"
(ii) "Cuban/Haitian Entrant—Termporary Employment Authorized"
(iii) "Section 245(A) of IRCA Temporary Resident—Temporary Employment Authorized"
(iv) "Section 210 of IRCA Temporary Resident—Temporary Employment Authorized"
(v) "Institute Secondary Verification"

The biographical data and status information located in the ASVI should correspond to the data located on the original documentation presented by the alien applicant. Overseeing federal agencies will regulate the elements that constitute a sufficient alien status verification using ASVI.

Copies of documented proof of immigration status that do not contain an alien registration number, copies of documented proof that do not correspond to the data in the ASVI, or documented alien registration numbers that result in the ASVI instruction "Institute Secondary Verification" should immediately be forwarded to the INS under the secondary verification procedures described below.

Secondary Verification

(1) Definition of "Secondary Verification"

Secondary verification signifies the forwarding of fully readable photocopies of original immigration documents attached to Document Verification Request Form G–845 to a designated INS field office for review. It is instituted when the initial access to ASVI instructs the user to "Institute Secondary Verification." The user agency, at its discretion, may institute secondary verification regardless of the ASVI response, i.e., one of the employment authorized messages is returned, if they feel that the documentation submitted has been altered in some fashion such as obvious photo-substitution, ink discoloration, erasures, or that the documentation warrants further review by the INS. INS then completes the response portion of Form G–845, and returns both the form and the attached photocopies to the submitting office. The INS retains those records necessary to comply with the Privacy Act. Copies of any documents submitted to INS, i.e., counterfeit or altered documentation, may be duplicated. Copies of documentation that indicate criminal misuse of government documents may be forwarded to the Investigations Divsion of INS, or other federal and state law enforcement agencies.

(2) Use of Document Verification Request Form G–845

Form G–845 must be used by all agencies requiring immigration status and document verification. A full-explanation of the responses to the G–845 is contained in the SAVE manual.

(3) INS Response to Secondary Verification

The INS Records Division will process all secondary verifications. Forms G–845 shall be returned to the submitting agency within ten working days after receipt by INS. The maximum response time should not exceed 21 work days. Delays in processing Form G–845 should not result in a denial, termination, or reduction of benefits. G–845 forms sent to the INS without photocopies of the original immigration documentation will be returned to the submitting agency without a status determination.

Denials

(1) Benefit Denial Responsibility

Denial of benefits based on alien status and the establishment of a fair hearing process are the responsibility of the issuing agency.

Types of Access to the Alien Status Verification Index

(1) Access to ASVI

Each overseeing federal agency will determine the methods of access to ASVI as it will ultimately be responsible for these costs in accordance with section 121 (b) "Providing 100 Percent Reimbursement for Costs of Implementation and Operation." ASVI may be used in one or more of the following methods:

(a) User system to ASVI data base via dedicated telecommunication line (CRT display).

(b) User agency "personal computer" with modem to ASVI data base (CRT display).

(c) "Point-of-sale" equipment to ASVI data base (LED or LCD display). (Point-of-sale machines are key-pad terminals with digitial response displays that use standard telephone lines and require cards with magnetic information strips to access data base.)

(d) Touch-tone telephone access to ASVI data base (Computerized voice data response).

(e) Magnetic tape match against ASVI data base (Magnetic tape response or paper print-out of results).

(f) For those States and jurisdictions with a small number of aliens, a manual system of verification is available. This is achieved by sending a Document Verification Request Form G–845 to the INS. The SAVE manual describes in full the manual procedures.

Access to ASVI may be achieved only after user agency is issued a security access number. User agencies will be provided a manual which will describe the Systematic Alien Verification for Entitlements Program and the use of the ASVI.

Privacy Act

(1) Privacy Act Compliance

A "record of disclosure" shall be made on all alien registration numbers checked through the ASVI and will be maintained by the INS. This will allow the INS to fully comply with the requirements of section (c)(1), (3) and (4) of the Privacy Act (5 U.S.C. 552a). The following records will be maintained and disclosed in accordance with the Privacy Act:

(a) Alien Registration Number
(b) Date and time of disclosure
(c) Agency accessing ASVI
(d) Alien immigration status at the time of inquiry.

INS will protect an individual's privacy to the maximum degree possible, in accordance with the Immigration Reform and Control Act of 1986 and any other applicable statutes.

(2) Record of Disclosure for Documentation Which Does Not Contain an Alien Registration Number

If an immigration document does not contain an alien registration number, INS will run computer checks against all available INS data systems to determine the status of the alien applicant shown on the documentation. If an alien registration number exists for that applicant, the document appears bona fide, and the alien's status requires a disclosure accounting, INS will make the necessary "record of disclosure."

(3) Routine Use of Information

The records of disclosure created by checks made against the ASVI will be available according to the provisions of the Food Stamp Act and Privacy Act restrictions as outlined in 5 U.S.C. 552a.

Audit Trails

(1) Profiles in Audit Trails

Audit trails identify inordinate and extraordinary use of alien registration numbers, i.e., alien registration numbers checked several times in multiple localities within a short period of time,

or non-existent alien registration numbers. This information may be used by the INS and other Federal and State fraud enforcement entities for investigation of possible criminal activity. It will not be used for non-criminal, administrative immigration enforcement purposes. Participating agencies and INS, through secondary verifications, will establish reporting procedures indicating cost avoidance figures and the number of aliens denied benefits.

Dated: September 1, 1988.

James L. Buck,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 89-2573 Filed 2-2-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Regster** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
CT89-1(Jan. 6, 1989) ..... p.402.
Maryland:
MD89-1(Jan. 6, 1989) ..... pp.411-414.
New Hampshire:
NH89-2(Jan. 6, 1989) ..... p.591.
New York:
NY89-2(Jan. 6, 1989) ..... p.685.
Pennsylvania:
PA89-17(Jan. 6, 1989) ..... pp.964,968.
PA89-18(Jan. 6, 1989) ..... p.970.
PA89-22(Jan. 6, 1989) ..... p.1002.
PA89-23(Jan. 6, 1989) ..... p.1006.
West Virginia:
WV89-2(Jan. 6, 1989) ..... pp.1210,1219.
Listing by location (index) ..... p.xxviii.

Volume II

Michigan:
MI89-2(Jan. 6, 1989) ..... pp.448-453. pp.457-458.
Minnesota:
MN89-5(Jan. 6, 1989) ..... pp.558-564.
MN89-7(Jan. 6, 1989) ..... pp.568-573.
MN89-8(Jan. 6, 1989) ..... pp.588-602.
MN89-15(Jan. 6, 1989) ..... pp.618-626b.

Volume III

Colorado:
C089-2(Jan. 6, 1989) ..... p.116.
Oregon:
OR89-1(Jan. 6, 1989) ..... pp.308-310-314.
Utah:
UT89-1(Jan. 6, 1989) ..... pp.342-349.
Washington:
WA89-2(Jan. 6, 1989) ..... pp.390-391.
WA89-3(Jan. 6, 1989) ..... p.402.
WA89-7(Jan. 6, 1989) ..... p.418.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year,

regular weekly updates will be distributed to subscribers.

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

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-2353 Filed 2-2-89; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Information Collection Request Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The National Archives and Records Administration (NARA) has submitted the following proposal for collection of information to OMB for clearance under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Divided Records Data Form.

Affected public: Archival institutions.

Respondents/burden hours: The questionnaire will be sent to approximately 1,500 archival institutions. The one-time collection of information will require between 20 minutes and 1 hour per respondent depending on the number of record collections that meet the information collection criteria. The total reporting burden for this information collection is estimated at 800 hours.

Description of information collection request: NARA has established a cooperative project with state archives to survey public and private archival institutions likely to have records of Federal programs, territorial records, and records of parallel Federal, state, and local functions. Descriptive information identified in this data collection will be entered into a national online data base (RLIN) and included in the "related records" citations in the revised *Guide to the National Archives of the United States.* The information on the location of these dispersed records will provide a valuable service to both researchers and archivists.

DATE: Comments on this proposed information collection should be submitted to OMB within 30 days.

ADDRESSES: Requests for information, including copies of the questionnaire and supporting documentation, should be made to Mr. John Constance, Acting Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408; telephone (202) 523-3214.

Comments on this collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

Dated: January 30, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-2546 Filed 2-2-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL ECONOMIC COMMISSION

Cancellation of Public Meetings

February 1, 1989.

AGENCY: National Economic Commission.

ACTION: Cancellation of Public Meetings on February 7, 8, 14, 15, and 16.

SUMMARY: The National Economic Commission meetings scheduled for February 7, 8, 14, 15, and 16, 1989 have been cancelled. A public meeting has been scheduled for February 21, 1989. The agenda will be announced. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: February 21, 1989 at 10:30 a.m. in Room 608 Senate Dirksen Office Building.

Open Meeting: All meetings of the commission will be open to the public.

For Additional Information: Jim Hildreth at 703-425-8986 or 202-789-1993, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

Supplementary Information: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, Page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 89-2666 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-45-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by March 6, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the reinstatement of a previously approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: U.S.-Japan Artist Exchange Fellowship Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals and households.

Use: The U.S.-Japan Artist Exchange Fellowship Program offers non-matching fellowships to individual artists of exceptional talent who wish to reside in Japan for six months. The information collected in the application and the required work samples are used in the peer review process and are necessary for accurate, fair and thorough consideration of all applications submitted under the guidelines.

Estimated Number of Respondents: 275.

Average Burden Hours per Response: 10.

Total Estimated Burden: 2,750.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-2594 Filed 2-2-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Industrial Advisory Committee for Computer and Information Science and Engineering

The Assistant Director for Computer and Information Science and Engineering (CISE) has determined the establishment of the Industrial Advisory Committee for Computer and Information Science and Engineering is necessary and is in the public interest in connection with the duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Industrial Advisory Committee for Computer and Information Science and Engineering.

Purpose: To complement divisional disciplinary research advisory committees; to provide a forum enabling the Assistant Director and other senior staff of the Directorate to obtain industry views pertaining to desirable research directions, the relative status of U.S. and foreign research and development in CISE fields and how CISE impacts on this, the role of CISE in improving U.S. competitiveness, and possible methods for increasing industry/university/government cooperation and collaboration in research.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-2600 Filed 2-2-89; 8:45 am]

BILLING CODE 7555-01-M

Review Panel for Informal Science Education Program; Meeting

The National Science Foundation announces the following meeting:

Name: Review Panel for Informal Science Education Program.

Date and Time: February 13, 1989, from 9:30 am to 4:00 pm.

Place: Children's Television Workshop, One Lincoln Plaza, New York, NY 10023.

Type of Meeting: Closed.

Contact Person: Michael Templeton, Program Director for Informal Science Education, Room 635, (202) 357-7076.

Summary Minutes: May be obtained from the Contact Person at the above number.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of propriety confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with exemptions (4) and (6) of the 5 U.S.C. 552b(c), Government in the Sunshine Act.

January 31, 1989.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-2601 Filed 2-2-89; 8:45 am]

BILLING CODE 7555-01-M

Instructional Materials Development Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Instructional Materials Development Panel Meeting.

Date and Time: February 10-11, 1989, from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G St., NW. Washington, DC 20550. Rooms 642 and 643.

Type of Meeting: Closed Meeting.

Contact Person: Alice J. Moses or Mary Kohlerman, National Science Foundation, 1800 G St., NW. Washington, DC 20550, Instructional Materials Development, Room 635-A, Phone (202) 357-7066.

Summary of Minutes: May be obtained from the Contact persons at the above address.

Purpose of Meeting: To attend Instructional Materials Development Panel and provide advice and recommendations concerning K-12 Math, Science and Technology education.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential including nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Rebecca Winkler,

Committee Management Officer.

January 31, 1989.

[FR Doc. 89-2602 Filed 2-2-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-425]

Georgia Power Co. et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.33(k)(1) to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for Vogtle Electric Generating Plant, Unit 2 (Vogtle 2) located at the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

10 CFR 50.33(k)(1) states, "Each application shall state: For an application for an operating license for a production or utilization facility, information in the form of a report, as described in § 50.75 of this part, indicating how reasonable assurance will be provided that funds will be available to decommission the facility." 10 CFR 50.75 establishes requirements for indicating how reasonable assurance will be provided that funds will be available for decommissioning. By letter dated December 13, 1988, the licensee requested an exemption from the schedular requirement of 10 CFR 50.33(k)(1) for Vogtle 2. Each holder of an operating license is required to submit a decommissioning funding plan on or before July 26, 1990. The licensee proposes to submit the decommissioning funding plan for Unit 2 at the time it submits the decommissioning funding plan for Unit 1 for which it holds an operating license, that is by July 26, 1990.

The Need for the Proposed Action

The licensee has stated that each of the plant's owners must evaluate the funding options to determine which is most appropriate for them, and then the owners collectively, or each owner separately, must effectuate their decisions by financial instrument. The funding report and certification are complex and require careful and deliberate financial planning. The proposed exemption is needed to provide the time necessary to perform this planning properly and provide an accurate and informed report.

Environmental Impacts of the Proposed Action

The proposed exemption from 10 CFR 50.33(k)(1) will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant cumulative radiation exposure. Accordingly, the Commission concludes that the proposed exemption would result in no significant radiological environmental impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts, since the power would need to be replaced by power generated by another source.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the Final Environmental Statements (construction permit and operating license) for the Vogtle Electric Generating Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated December 13, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Burke County Public Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 30th day of January, 1989.

For The Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2551 Filed 2-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-254; 50-265, Licenses No. DPR-29; DPR-30, EA 88-161]

Order Imposing Civil Monetary Penalty; Commonwealth Edison Co.

I

In the matter of Quad Cities, Units 1 and 2, Cordova, Illinois.

Commonwealth Edison Company, Cordova, Illinois (licensee) is the holder of Operating Licenses No. DPR-29 and No. DPR-30 (licenses) issued by the Nuclear Regulatory Commission. The licenses authorize the licensee to operate the Quad Cities facility in accordance with the conditions specified therein.

II

NRC inspections of the licensee's activities under the licenses were conducted on April 18-22, May 2-6, 11, 31 and June 1, 1988. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated September 15, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amounts of the civil penalties proposed for the violations. The licensee responded to the Notice by letter dated October 17, 1988. In its response, the licensee admitted Violation I.A and paid the associated civil penalty. With respect to Violation I.B, the licensee acknowledged that no formal evaluation of continued operation with grounds in the DC system was performed pursuant to 10 CFR 50.59, but requested reconsideration of the civil penalty on the basis that (1) the civil penalty partially duplicated the escalated civil penalty assessed for Violation I.A. and (2) the mitigation factors in 10 CFR Part 2, Appendix C, Section V.B., were not appropriately applied in assessing the penalty.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the original penalty proposed for Violation I.B, as designated in the Notice of Violation and Proposed Imposition of Civil Penalty, should not be mitigated.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295) and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) 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.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commisison, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement, the Regional Administrator, RIII, and to the NRC Resident Inspector, Quad Cities, Units 1 and 2.

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 issue to be considered at such hearing shall be: whether on the basis of Violation I.B set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, which the licensee has admitted, the Order to pay a Fifty Thousand Dollar civil penalty should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 23rd day of January 1989.

Appendix—Evaluation and Conclusion

On September 15, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Commonwealth Edison Company responded to the Notice on October 17, 1988. With respect to Violation I.B., the licensee acknowledges that no formal evaluation of continued operation with grounds in the DC System was performed pursuant to 10 CFR 50.59, but requests mitigation of the civil penalty.

Restatement of Violation

I.B. 10 CFR 50.59(b)(1) requires that the licensee maintain records of changes in the facility, to the extent that the changes constitute changes in the facility as described in the Safety Analysis Report. Those records must include a written safety evaluation which provides the bases for determining that the change does not involve an unreviewed safety question. A proposed change involves an unreviewed safety question if the probability of occurrence of a malfunction of equipment important to safety previously evaluated in the Safety Analysis Report may be increased.

Final Safety Analysis Report Section 8.2.3.2.2 states, "The 125 volt battery system operates ungrounded with a ground detector alarm set to annunciate the first ground. In adidtion, the ground fault resistance, and the time at which a ground fault occurs, is recorded by a recording voltmeter. Thus, multiple grounds, the only reasonable mode failure, are extremely unlikely."

Contrary to the above, at the time of the inspection the licensee did not have a written safety evaluation for operating the ungrounded ESS DIV 1 125 volt battery system from February 1986 until July 1988 with several grounds, constituting a change in the facility as described in the safety analysis report. This change involves an unreviewed safety question because it increases the probability of occurrence of a malfunction caused by the ESS DIV 1 125 volt battery system.

This is a Severity Level III violation (Supplement I). Civil Penalty—$50,000

Summary of Licensee's Response

The licensee acknowledges that no formal evaluation of continued operation with grounds in the DC system was performed pursuant to 10 CFR 50.59. In view of the escalated penalty for Violation I.A, the licensee is requesting mitigation of the penalty for Violation I.B since it believes the penalty partially duplicates the escalated penalty proposed for Violation I.A. For this reason, the licensee requests reconsideration of the civil penalty for Violation I.B. Additionally, the licensee claims mitigation is appropriate because its corrective actions were unusually prompt and extensive, and proper credit was not given for its past good performance involving safety evaluations.

NRC Evaluation of Licensee's Response

The licensee contends that a civil penalty should not be proposed for Violation I.B because it partially duplicates the escalated penalty for Violation I.A. The NRC staff concludes that the licensee has not properly considered the factors that formed the basis for escalating the civil penalty for Violation I.A and proposing the civil penalty for Violation I.B. The escalation of the civil penalty for Violation I.A for failure to take prompt and extensive corrective actions to prevent recurrence was based on the licensee's failure to correct the problem despite three clear opportunities to do so.

Violation I.B represents a much broader concern than merely the licensee's failure to adequately disposition the particular ground indication that resulted from the improper wiring of the emergency diesel generator circuitry and constituted one of the opportunities to discover and correct the wiring problem. Rather, Violation I.B concerns the licensee's failure to properly evaluate and disposition indications of various system grounds during the stated time period. The licensee's failure to properly evaluate these grounds on an ungrounded system is a significant concern to the NRC staff as the evaluation of such a condition is required by 10 CFR 50.59. Therefore, the problem warrants the issuance of a separate Severity Level III violation and the proposal of a civil penalty.

In assessing the escalation and mitigation factors in the Enforcement Policy, NRC considered all five factors and determined that no escalation or mitigation of the base penalty was warranted. The NRC staff determined and the licensee has agreed that no change was warranted for identification and reporting, prior notice, or multiple notice, or multiple occurrences.

Concerning the licensee's request for reconsideration of the civil penalty, the licensee addresses two areas: (1) Past performance and (2) corrective action. The licensee states that its past performance involving safety evaluations has been good, and its review of violations identified by the NRC for a three year period did not show any past violations for not performing adequate evaluations. For this reason, the licensee believes that the civil penalty should be mitigated. The NRC staff review of the licensee's past performance shows that there were two previous violations of 10 CFR 50.59 identified by the NRC in early 1986 as described in Inspection Reports No. 50–254/86002(DRP) and No. 50–265/86002(DRP). After considering that information along with the licensee's SALP ratings in the general area of concern, the NRC staff concluded that no basis existed for mitigation of the civil penalty for past performance.

With regard to the licensee's corrective actions, the NRC staff agrees that the steps taken to raise the level of sensitivity for resolving potential safety issues, such as the ground problem, are indicative of broad based corrective actions. However, the NRC concludes that the licensee's interim policy for dealing with DC power system grounds does not provide timely resolution or proper evaluation of system grounding problems. The licensee's interim policy allows a significant ground (greater than or equal to 115 volts) to exist for up to 14 days prior to location and removal or justification of continued operation. The NRC staff concludes that such a time period is unacceptably long given the magnitude of a significant ground. The licensee's evaluation of grounds under the interim policy is insufficient in that it is based solely on the magnitude of the ground. To provide a proper evaluation, other factors such as consideration of the specific equipment affected, the nature of the ground, and the presence of previously existing grounds should also be considered. On balance, the NRC staff finds no basis for mitigating the civil penalty for corrective actions.

In summary, NRC properly considered all five factors in Section V.B of the enforcement policy and correctly determined that no change to the base civil penalty is appropriate.

NRC Conclusion

For reasons set forth herein, the NRC staff has concluded that the licensee has not provided an adequate basis for remission or mitigation of the civil penalty proposed for Violation I.B. Consequently, the civil penalty in the aount of $50,000 should be imposed.

[FR Doc. 89–2550 Filed 2–2–89; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50-244]

Rochester Gas and Electric Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Facility Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation (the licensee), for operation of the Ginna Nuclear Power Plant located in Ontario, New York.

The proposed amendment would modify the Technical Specifications on the safety injection and residual heat removal pump recirculation systems. These changes are related to pump start, operation, and minimum discharge pressure for certain flow rates. The discharge pressure of the system pump is based on an assumed conservative degradation of the pump head capacity that may occur due to wear of the pump. In addition to the above changes, the amount of the boric acid in the storage tanks must be increased as a result of the larger recirculation lines that will be installed in the safety injection and residual heat removal systems. All of the aforementioned changes are being carried out in accordance with NRC Generic Letter 88-04, Potential Safety-Related Pump Loss. Modifications are required in order to increase margins of pump protection during conditions which require pump operation at minimum flows. These conditions exist when the reactor coolant system pressure is higher than the shutoff head of the pumps, particularly during surveillance testing.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall filed a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the cope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Directorate I-3: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92

For further details with respect to this action, see the application for amendment dated November 21 and 29, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Rochester Public Library, 115 South Avenue, Rochester, NY 14610.

Dated at Rockville, Maryland, this 23rd day of January 1989.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2547 Filed 2-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise Appendix A Technical Specifications to incorporate Limiting Conditions for Operation and Surveillance requirements for the revised Auxiliary Feedwater System (AFWS). To eliminate single failure susceptibilities in the AFWS, a third pump will be added. The revised system configuration will consist of two trains, with the new pump on one train and the existing two pumps on the other train. The new system will start automatically with a lead train providing the necessary decay heat removal capability, and the second train remaining in standby to provide flow should a malfunction occur in the lead train. To preclude exceeding water hammer limits, train interlocks and mechanical flow restrictors will be incorporated into the new design. In addition, the minimum volume of water required to be available in the AFW storage tank would be changed from 150,000 gallons to 190,000 gallons.

The Need for the Proposed Action

The proposed amendment is required to implement the changes described above, improving the auxiliary feedwater system reliability, and also correct a single failure deficiency in the auxiliary feedwater system.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 12, 1989 (54 FR 1260). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 8, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2548 Filed 2-2-89; 8:45 am]

BILLING CODE 7590-01-M

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-206]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendent to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to revise Technical Specification 4.2, "Safety Injection and Containment Spray System Periodic Testing," to add a new surveillance requirement for the proposed trip of the safety injection and main feedwater pumps on low-low refueling water storage tank (RWST) level. The proposed modification is designed to ensure that safety injection flow is terminated at the correct time and to minimize operator actions that may need to be taken in the short time frame of a few minutes. The proposed change would also revise the diesel generator load rejection surveillance test from 3220 Kw to 4000 Kw since the safety injection and feedwater pumps would be tripped simultaneously with the new trip circuit on low-low RWST level. The surveillance test would periodically confirm (at least every 18 months) that these pumps can be tripped as designed without causing a diesel-generator trip from overspeed.

The Need for the Proposed Action

The proposed amendment is required to authorize the licensee to make the changes described above.

Environmental Impacts of the Proposed Action

The proposed action would reduce the reliance on prompt operator action and thereby improve the reliability of the safety injection system.

The proposed action would not involve a significant change in the

probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 17, 1989 (54 FR 1809). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 11, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2549 Filed 2-2-89; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Hearing and Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of Hearing and Public Meeting.

SUMMARY: The Physician Payment Review Commission will hold a hearing on Wednesday, February 8, 1989 for interest groups to comment on issues that the Commission will address in its upcoming report to Congress. The hearing is scheduled from 9:00 a.m. to 5:00 p.m. at the Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW. (between L and M Streets). In addition to the hearing on February 8, the Commission will hear testimony from groups representing beneficiaries at its meeting on the morning of Friday, February 10.

The Commission will hold its regular public meeting on Thursday, February 9, 1989, from 9:00 a.m. to 5:00 p.m., and Friday, February 10, 1989, from 8:30 p.m. to approximately 4:00 p.m., also at the Ramada Renaissance Hotel. The agenda for that meeting will include a status report on the Commission's work to develop a relative value scale and discussion of coding and determining relative work values for evaluation and management services, transition from the current payment system to a fee schedule, processes for updating the fee schedule, preliminary results of simulations of the impact of a fee schedule on beneficiaries, alternative options for assignment policy, issues related to care of geriatric patients, utilization and quality review and expenditure targets.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director

[FR Doc. 89-2524 Filed 2-2-89; 8:45 am]

BILLING CODE 6820-SE-M

PRESIDENT'S COMMISSION ON FEDERAL ETHICS LAW REFORM

Meetings

ACTION: Notice of meetings of President's Commission on Federal Ethics Law Reform.

SUMMARY: This notice announces two meeting of the President's Commission on Federal Ethics Law Reform. The purpose of these meetings is to continue work on the Commission's assigned task, which is the provision of recommendations to the President regarding any necessary changes and/or improvements in the governmentwide ethics program. Also included is an explanation of why 15 days notice of the February 14 meeting could not be provided to the public. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and its implementing regulation, 41 CFR 101.6.

DATE: February 14, 1989 and February 22, 1989, 9 a.m.

ADDRESS: U.S. Department of Justice, 10th Street and Constitution Avenue NW., Conference Room B, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, at 202-633-3452.

SUPPLEMENTARY INFORMATION: It was not possible to provide 15 days notice of the February 14 meeting. The Commission was not established until Wednesday, January 25, 1989. The first meeting has been scheduled for February 7, 1989. Since the Executive Order requires a report by March 9, 1989, all meetings are being scheduled on an expedited basis.

Members of the public who wish to present written statements concerning the Federal ethics program are invited to send such statements to the Commission at the following address: President's Commission on Federal Ethics Law Reform, U.S. Department of Justice, Tenth and Constitution Avenue NW., Washington, DC 20530.

The Commission has not yet reached a decision as to whether it will have

time to accept oral testimony. If any member of the public is interested in giving such testimony please contact Amy L. Schwartz, Executive Director of the Commission, at 202–456–7953.

Persons who wish to attend one or more of the Commission's meetings should contact Jean Schmidlin at 202–633–4667 prior to the meeting in order that building access may be facilitated. Visitors should use the entrance at the center of the Constitution Avenue side of the building, midway between Ninth and Tenth Streets.

Malcolm Wilkey,

Chairman.

[FR Doc. 89–2714 Filed 2–2–89; 8:45 am]

BILLING CODE 4410–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17Ad–4 (b) and (c); File No. 270–264
Rule 17Ad–11; File No. 270–261
Rule 17Ad–13; File No. 270–263

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted the following rules under the Securities Exchange Act of 1934 for clearance:

Rule 17Ad–4 (b) and (c) (15 U.S.C. 78 *et seq.*), which generally requires transfer agents to prepare, maintain, and under certain circumstances, file a Notice of exempt status or loss of exempt status with their appropriate regulatory authority. Seventy transfer agents incur an estimated average burden of thirty minutes in order to comply with this rule.

Rule 17Ad–11 under the Securities Exchange Act of 1934, which generally requires transfer agents to file reports regarding aged record differences, buy-ins, and failure to post certificate detail to master security holder and subsidiary files. One hundred and fifty respondents incur an estimated average burden of thirty minutes to comply with the rule.

Rule 17Ad–13 under the Securities Exchange Act of 1934, which requires certain registered transfer agents to file annually a study and evaluation of internal accounting control. Two hundred respondents incur an estimated average burden of one hundred and seventy-five hours to comply with the rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–0341 for Rule 17Ad–4 (b) and (c), 3235–0261 for Rule 17Ad–11, and 3235–0263 for Rule 17Ad–13) Room 3208 New Executive Office Building, Washington, DC 20543.

Jonathan G. Katz,

Secretary.

January 27, 1989.

[FR Doc. 89–2553 Filed 2–2–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26501; File No. Amex–89–1]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Listing Fees for Non-U.S. Domiciled Companies

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on January 23, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend section 140 of the Amex Company Guide to provide reduced original listing fees to all non-U.S. domiciled companies seeking to list on the Amex, whose shares are already listed and traded on a foreign exchange.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In order to provide an incentive for foreign-based companies to list on the Amex, the Exchange believes that it is appropriate to offer a reduced original listing fee for all non-U.S. domiciled companies whose shares are already listed and traded on other foreign markets. Reducing the fees as proposed would recognize the fact that these companies have already paid a listing fee in their country of domicile, and although seeking to expand the market for their shares, may be hesitant to incur an additional fee to list on the Amex, particularly since the number of shares (or ADRs) to be held by U.S. investors is likely to be relatively insignificant compared to the total number of these companies' shares held on worldwide basis.

The Exchange proposes to offer a 50% discount from the existing initial listing fee rate structure, subject to a maximum charge of $30,000 to all non-U.S. domiciled companies. This fee is based on the current initial listing charge to Canadian-based companies. In 1985 the Exchange reduced its initial listing fee structure for Canadian companies as an incentive for them to list on the Amex. Since that time, 11 Canadian companies have joined the Amex, as compared with four in the prior 2½ year period.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act is general and furthers the objectives of section 6(b)(4) in particular in that it achieves a reasonable balance between the Exchange's objective of attracting an adequate number of non-U.S. domiciled listed companies and its need for a

reasonable level of listing revenue. This assures the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. On the contrary, it is intended to enhance competition between markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In particular, the Commission is interested in hearing from U.S. domiciled companies whose shares are already listed and traded on the Amex. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2555 Filed 2-2-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26500; File No. SR-NASD-88-47]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Definition of the Term "Bona Fide Research"

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on October 12, 1988 (and an amendment thereto on December 8, 1988), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend section 24(b)(2) of Article III of the NASD Rules of Fair Practice and the Board of Governors' Interpretation thereunder to conform the definition or "bona fide research" to the standard announced by the Commission in 1986 with respect to the meaning of "research" under section 28(e) of the Securities Exchange Act of 1934, as amended. In addition, the amendment deleted reference to the Commission's 1976 Release in order to substitute the revised standard (announced in the 1986 Release) to be used in determining what products and services shall be deemed protected "research."

Notice of the proposed rule change together with the substance of the terms of the proposed rule change, as amended, was given by the issuance of the Commission release (Securities Exchange Act Release No. 26375, December 20, 1988) and by publication in the **Federal Register** (53 FR 52286, December 27, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-88-47, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: January 27, 1989.

[FR Doc. 89-2554 Filed 2-2-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16785; (812-7157)]

Legal & General Group Plc and Legal & General Finance Inc.; Application

January 30, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Legal & General Group Plc and Legal & General Finance Inc. ("Applicants").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order exempting them from all provisions of the 1940 Act so that they may issue and sell in the United States unsecured prime quality commercial paper and debt securities unconditionally guaranteed by Legal & General Group Plc.

Filing Date: The Application was filed on October 20, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing the Secretary of the SEC.

Addresses: Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549. Applicants, Legal & General Group Plc, Temple Court, 11 Queen Victoria Street, London EC4N 4TP, England.

For Further Information Contact: Bibb L. Strench, Staff Attorney (202) 272-2856 or Karen L. Skidmore, Branch Chief (202) 272-3023, Office of Investment Company Regulation.

Supplementary Information: The appliction is a summary of the application; the complete application is

available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representatives

1. Legal & General Group Plc ("L&G") is a holding company incorporated in England whose direct and indirect subsidiaries are engaged worldwide primarily in the insurance and reinsurance business and also in related financial service activities. The group of companies comprised of L&G and its subsidiaries (the "Group") forms the second largest quoted life insurance group in the United Kingdom with consolidated total assets as of December 31, 1987 of $23,022 million. The Group writes both general and long-term insurance, principally in the United Kingdom. The Group's worldwide premium income net of reinsurance for 1987 was $2,886.7 million, of which 20% was attributable to general insurance and 80% to long-term insurance.

2. The Group's activities are subject to extensive regulation in the United Kingdom, principally under the Insurance Companies Act 1982. This act and associated regulations impose on insurance companies operating in the United Kingdom minimum solvency standards and auditing and reporting requirements and grant to the Secretary of State for the Department of Trade and Industry wide powers to supervise and intervene in the affairs of insurance companies. Financial services activities of the Group are also subject to comprehensive United Kingdom government regulation. The business of the Group is also subject to regulation and supervision in the United States and in other countries in which the Group conducts its activities.

3. Legal & General Finance Inc. ("L&G Finance"), incorporated in Delaware, is a wholly-owned subsidiary of L&G. There has been and will be no offering of capital stock or of any other equity security of L&G Finance other than to L&G. L&G Finance's sole business will consist of issuing and selling its commercial paper or other debt securities and advancing substantially all the net proceeds of the sale thereof to L&G or L&G subsidiaries. L&G Finance will not invest in or hold other securities, other than U.S. government securities, securities of L&G or a company controlled by L&G or short-term notes exempt from registration under section 3(a)(3) of the Securities Act of 1933 (the "1933 Act").

4. The Applicants propose to issue and sell in the United States unsecured prime quality commercial paper notes in bearer form ("Notes"). The Applicants may offer other debt securities for sale in the United States ("Debt Securities"). The Application is not intended to cover the issuance of equity securities in the United States at any future time.

5. The Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and will arise out of current transactions or the proceeds of which will be used for, current transactions. The Notes will be sold in amounts not to exceed $350,000,000 at any one time outstanding, whether issued or guaranteed by L&G, and in denominations of no less than $250,000. The notes will have maturities not exceeding 270 days and will contain no provision for payment on demand, extension, renewal or automatic rollover, either at the option of the issuer or the holder.

6. At the present time, it is anticipated that the Notes will be issued by L&G Finance and unconditionally guaranteed by L&G, though in future L&G may itelf issue Notes. If the Notes are issued by L&G Finance and guaranteed by L&G, the Notes will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of L&G Finanace, and L&G's guarantee of Notes will rank equally with all other unsecured and unsubordinated obligations of L&G, in each case prior to equity securities. The obigations of L&G under its guarantee will be enforceable against it directly by the holders of the Notes. If the Notes are issued L&G, they will be the direct liabilities of L&G, will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated obligations of L&G, in each case prior to equity securities.

7. The Applicants will not issue and sell the Notes until they have received an opinion of United States legal counsel to the effect that, under the circumstances of the proposed offering, the notes would be entitled to exemption under section 3(a)(3) of the 1933 Act. The Applicants do not request the Commission's review or approval of Applicants' United States counsel's opinion. The Applicants are not subject to the reporting requirements of section 13(a) of the Securities Exchange Act of 1934, as amended, and will not become subject to such requirements in connection with the issuance and sale of the Notes.

8. While an announcement of the commercial paper facility may be made as a matter of record, the Applicants undertake to ensure that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by one or more dealers to institutional investors and other persons who normally purchase commercial paper notes.

9. Debt Securities issued by L&G Finance would be unconditionally guaranteed by L&G; and the obligations of L&G under its guarantee would be enforceable against it directly by the holders of such securities.

10. The Applicants undertake that any offerings of Debt Securities in the United States would be registered under the 1933 Act or made pursuant to an exemption from the registration requirements of the 1933 Act. Applicants would not offer and sell any of their Debt Securities until they have received an opinion of United States legal counsel that the offer and sale of their Debt Securities would be entitled to an exemption from the 1933 Act. L&G undertakes with regard to Debt Securities that are not issued in the United States or sold to United States nationals or residents and are not so exempt, that it will adopt such agreements or procedures reasonably designed to prevent such securities from being offered or sold in the United States or coming into the hands of a United States national or resident as United States counsel may advise are necessary in the circumstances.

11. The Applicants represent that the Notes and Debt Securities sold in the United States shall have received prior to their issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization, and that the Applicants' United States counsel will have certified that such rating has been received, provided, however, that no such rating need be obtained with respect to any issue if, in the opinion of the Applicants' United States counsel (after taking into consideration the doctrine of integration referred to in Rule 502 under the 1933 Act and various releases and no-action letters made by the Commission) an exemption from registration is available under section 4 of the 1933 Act.

12. The Applicants undertake to ensure that the dealer for the Notes will furnish to each offeree a memorandum which will briefly describe the business of the Group (including L&G Finance in the case of issuance by that company) and will contain financial information from the most recent publicly available financial statements for L&G, which shall have been audited in such a manner as is customarily done for L&G by its auditors. Such memorandum would disclose any material differences between the accounting principles applied in the preparation of such financial statements and generally

accepted accounting principles as employed by similar companies in the United States. Such memorandum and financial statements will be at least as comprehensive as those customarily used in offering prime grade commercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of the Group and L&G Finance.

13. Any future offering or sale in the United States of Debt Securities will be on the basis of disclosure documents, including audited financials, at least as comprehensive as is customary for the issuance of similar securities in the United States and such documents will be updated promptly to reflect material changes. In the case of a public offering of Debt Securities pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registrations.

14. Substantially all (in no event less than 85%) of the proceeds of the sale of the Notes or Debt Securities issued by L&G Finance would be provided as soon as practicable (but in no event more than six months after receipt) to L&G (or companies controlled by L&G) on terms that will allow L&G Finance to make timely payment on such securities. In the case of commercial paper proceeds, L&G and its subsidiaries will use such proceeds in the ordinary course of their respective businesses for "current transactions" within the meaning of section 3(a)(3) of the 1933 Act.

15. The Applicants undertake that in the event of an offering in the United States of Debt Securities or Notes denominated in a currency other than United States dollars, the Applicants will set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are denominated and United States dollars as of a recent date and (ii) appropriate disclosure of the risks to investors regarding the potential for exchange rate fluctuations.

16. The Applicants intend to appoint a bank or other financial institution in the United States as their authorized agent to issue the Notes; the authorized agent will not be a trustee for the Noteholders and will not have any responsibilities or duties to act for such holders as would a trustee. L&G will appoint an agent to accept any process which may be served in any action based on any such security and instituted in any State or Federal court by the holder of any such security. L&G further undertakes that it will submit to the jurisdiction of any State or Federal Court in the City of New York in respect to any such action. Such appointment of agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect to such securities have been paid. L&G will also be subject to suit in any court in the United States which would have jurisdiction because of the manner of the offering of Notes or Debt Securities or otherwise in connection with such Notes or Debt Securities.

Legal Conclusion

1. Approval of the application would further the policies of opening United States financial markets to foreign entities and encouraging the free flow of capital among world economies.

2. L&G is applying for an order because of uncertainties raised by the fact that the exclusion for "insurance companies" under section 3(c)(3) of the 1940 Act does not extent to foreign insurance companies. The Group's primary business, insurance, is conducted in a rigorous regulatory environment similar to that in which United States insurance companies operate.

3. L&G Finance is an applicant because its rights to receive repayments of loans made to L&G and L&G subsidiaries which constitute virtually all of L&G Finance's assets, could be deemed securities and, under the 1940 Act, L&G Finance could be deemed to be an investment company. However, in promulgating Rule 6c–9 and Rule 3a–5 under the 1940 Act, the Commission has recognized that finance subsidiaries should not be required to register as investment companies. Moreover, the Applicants have undertaken that offerings of securities by L&G Finance and its manner of operation will be essentially in accordance with the Commission's requirements for automatic exemption for finance subsidiaries set out in Rule 3a–5 under the 1940 Act.

Condition

Applicants consent to any Commission order granting the application being expressly conditioned upon its compliance with the undertakings and representations summarized above, under the heading "Applicants' Representations", and more fully set forth in its application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2556 Filed 2–2–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16784; (812–7137)]

Mutual of Omaha Growth Fund, Inc., et al.; Application

January 27, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Mutual of Omaha Growth Fund, Inc. Mutual of Omaha Income Fund, Inc., Mutual of Omaha Tax-Free Income Fund, Inc. (the "Load Funds"), Mutual of Omaha America Fund, Inc., Mutual of Omaha Money Market Account, Inc., Mutual of Omaha Cash Reserve Fund, Inc. (the "No-Load Funds") (collectively, "the Funds"), and Mutual of Omaha Fund Management Company (collectively with the Funds, the "Applicants").

RELEVANT 1940 ACT SECTION: Approval of exchange offers requested under section 11(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order approving certain exchange offers on a basis other than the relative net asset values of the shares to be made between the Funds and made between the Funds and investment companies that may be organized in the future in the same family of the Funds or a subsidiary under common control with the offering company as defined in section 2(a)(9) of the Act. The approval requested hereby is prospective in nature and the Applicants will not rely on any such approval as authority for any exchanges which occurred prior to the issuance of the approval.

FILING DATES: The Application was filed on September 30, 1988, and amended on January 13, 1989.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either

personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Mutual of Omaha Fund Management Company, 10235 Regency Circle, Omaha, Nebraska 68114.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney (202) 272–2856 or Karen L. Skidmore, Branch Chief (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Funds are all diversified, open-end, management investment companies registered under the Act. The Management Company is the manager and investment adviser, principal underwriter, and transfer and divided disbursing agent for the Funds. The Management Company is a wholly-owned subsidiary of Mutual of Omaha Insurance Company.

2. The Management Company proposes to maintain a continuous public offering of shares of the Load Funds at their respective net asset values plus a front end sales load. On purchases of less than $10,000, the maximum sales load for shares of each of the Load Funds is 8.0% of the offering price, with the sales load reduced on larger purchases at the same breakpoints for each Load Fund. This has been the sales load structure since the inception of the Load Funds and the Load Funds have no current plans to alter this sales load structure. The sales load is subject to reductions based upon the amount being invested and to certain exceptions in accordance with the conditions of Rule 22d–1. There is no charge imposed on reinvestment of dividends and distributions from shares of the Load Funds. The Load Funds do not have any redemption charges, contingent deferred sales loads, or other back-end charges nor do they have 12b–1 plans, and they have no current plans to alter such practices.

3. The Management Company proposes to maintain a continuous public offering of shares of No-Load Funds at their respective net asset values. The No-Load Funds do not have any front-end sales loads, redemption charges, contingent deferred sales loads, or other back-end charges. Only the Cash Reserve Fund has implemented a 12b–1 plan and it is not held out to the public as a "no-load fund."

4. Applicants seek an order approving certain exchange offers to be made between the Funds and made between the Funds and investment companies which may be organized in the future in the same family of investment companies or a subsidiary under common control with the offering company. An exchange offer, which is not materially different from the exchange offer described herein, has been offered in the past to shareholders of the Funds. The approval requested hereby is prospective in nature and the Applicants will not rely on any such approval as authority for any exchanges which occurred prior to the issuance of the approval.

5. The shares are to be exchanged on the basis of their relative net asset values, except for shares previously not subject to a load which would be charged the "sales load differential". In exchanges between Reduced Load Funds and Load Funds, any applicable sales load differential will also be assessed. In calculating the sale load charged in connection with exchanges: (i) Where a shareholder exchanges less than all of his shares, the shares upon which the highest sales load was previously paid is deemed to be exchanged first, so that in all cases accumulated sales loads will be used up before new sales loads are imposed, (ii) no sales loads are assessed against reinvested dividends and distributions, and (iii) any variation in sales loads or sales of shares of the Funds by means of exchanges or otherwise, will comply with the requirements of Rule 22d–1 as adopted and as it may be modified. There are no redemption fees and administrative fees on the foregoing transactions.

6. The Management company distributes substantially all of the shares of the Funds through direct marketing from its home office and through a captive sales force of registered representatives ("Reps"). The Management Company has also entered into selling group agreements with a relatively small number of qualified broker-dealers to distribute shares of the Load Funds and a limited number of agreements with qualified broker-dealers and other organizations to assist in the distribution of shares of the Cash Reserve Fund.

7. Shareholders will be notified of the exchange offer, including the imposition of a sales's load differential where applicable, through the Fund's prospectuses and by means of other communications, including sales literature and other advertising. If a shareholder advises any of the Applicants that he wishes to exchange his shares in a Fund for shares of a successor Fund, the shareholder will be provided with a prospectus of such successor Fund. The Applicants undertake that the prospectuses, and any sales literature and other advertising that mentions the existence of the exchange offer, will disclose that for any modification to the exchange offer, the Applicants will seek from the Commission an order amending the approval requested herein to permit the modification.

8. The Management Company will not actively solicit exchanges and will not contact investors by telephone to notify them of the exchange offer. In addition, the Management Company has established adequate internal monitoring and review procedures to ensure that such exchanges are made at the request of investors rather than the Rep's or broker-dealer's personal gain.

Appliant's Legal Conclusions

1. The purpose of the proposed exchange offer is to permit a shareholder whose investment objectives changes to switch his investment to a different Fund within the group of Funds, without incurring the expense of an additional full sales load. At the same time, the proposed exchange offer is intended to treat shareholders exchanging into a Fund and its existing shareholders equitably, without disrupting the distribution system of the Funds. If an exchange from a No-Load Fund to a Reduced-Load Fund or to a Load Fund or from a Reduced-Load Fund to a Load Fund were made at relative net asset value without a sales charge, the distribution of the Funds would be disrupted because an investor could easily avoid the sales charge by first purchasing one of the No-Load Funds and then exchanging the share so acquired for shares of one of the Load Funds that are otherwise sold with a sales charge.

2. The exchange program complies with the terms and conditions of Rule 11a–3 under the Act, as proposed in Investment Company Act Release No. 16504 (July 29, 1988).

Applicants' Conditions

1. Applicants will comply with Revised Proposed Rule 11a–3 as currently stated, an as it may be adopted and modified in the future.

2. Applicants will comply with Rule 12b-1 as adopted and as it may be modified in the future.

3. Any variation in sales loads on sales of shares of the Funds by means of exchanges or otherwise, will comply with the requirements of Rule 22d-1 as adopted and as it may be modified in the future.

4. Any future offers of exchange among Additional Funds will be subject to the representations and conditions described in this application.

5. For any modification to the exchange offer described herein, Applicants will seek from the Commission an order amending the order requested herein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2557 Filed 2-2-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1093]

Extension of the Restriction on the Use of United States Passport for Travel to, in, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), all United States passports with the exception of the category cited below, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was required because the situation in Lebanon, and in West Beirut in particular, was so chaotic that it was not believed that any American citizen could be considered safe from terrorist acts.

Review of the situation in Lebanon has led me to conclude that conditions there have not improved by any measurable degree.

Therefore, in light of these circumstances, I have determined that Lebanon continues to be an area "* * * where there is imminent danger to the public health and physical safety of United States travelers" within the meaning of § 51.72(a)(3) of Title 22, Code of Federal Regulations.

Accordingly, all United States passports, except for those passport holders who are immediate family members of hostages in Lebanon, shall remain invalid for travel to, in, or, through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Date: January 29, 1989.

James A. Baker III,

Secretary of State.

[FR Doc. 89-2641 Filed 2-2-89; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-006]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; U.S.C. App. I), notice is hereby given a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The Subcommittee meeting will be held on March 8, 1989 in room 2230 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.

2. Discussion of the following topics:

(a) Port Facilities and Operations.

(b) Tug-Barge Construction, Certification and Operations.

(c) Personnel Manning and Licensing.

(d) Personnel Safety and Workplace Standards.

(e) Existing Regulations Review and Restructure.

(f) IMO/MARPOL Initiatives.

(g) Miscellaneous:

(1) Air Quality/Vapor Control.

(2) Bridge to Bridge Radiotelephone Issues.

(3) NAV Rules Update.

3. Presentation of any new items for consideration of the Subcommittees.

4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from CDR R.J. Asaro, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard(G-MP-3), Washington, DC 20593-0001 or by calling (202) 267-0449.

Dated: January 27, 1989.

J. D. Sipes,

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

[FR Doc. 89-2537 Filed 2-2-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-005]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on March 9, 1989 in room 4234 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. The agenda, which includes docketed rulemakings where indicated, is expected to be as follows:

1. Approval of minutes from October 1988 meeting.

2. Reports on the following items;

(a) Licensing of Pilots (CGD 84-060).

(b) Inland Radar Observer Courses.

(c) Licensing of Maritime Personnel (CGD 91-059).

(d) Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks (CGD 85-061).

(e) Drydock and Tailshaft Requirements.

(f) Hazardous Substances Regulations (CGD 86-034).

(g) Tankerman Requirements (CGD 79-116).

(h) Regulations Implementing Annex V (CGD 88-002).

(i) Special Area Designation of the Gulf of Mexico.

(j) IMO/MARPOL Initiatives.

(k) IMO Status Report: Global Maritime Distress and Safety Systems.

(l) ABS Towing Rules Questionnaire.

(m) Programs For Chemical Drug and Alcohol Testing of Commercial Vessel Personnel (CGD 86-067).

(n) OSHA's Proposed Benzene Standard.

(o) Air Quality Vapor Control.

(p) Bridge to Bridge Radiotelephone Issues.

(q) NAV Rules Update.

(r) Any other matter properly brought before the Committee. Where appropriate, reports on the above items

may be followed by TSAC discussion, deliberation and recommendations concerning these subjects, including rulemaking projects.

3. Summary of Action Items.

4. Adjournment.

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 30 copies of written material should be submitted to the Executive Director no later than March 3, 1989.

FOR FURTHER INFORMATION CONTACT: CDR R. J. ASARO, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard(G–MP–3), Washington, DC 20593–0001 or by calling (202)267–0449.

Dated: January 27, 1989.

J. D. Sipes,

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

[FR Doc. 89–2538 Filed 2–2–89; 8:45 am]

BILLING CODE 4910–14–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Delights for the Senses: Dutch and Flemish Still-Life Paintings From Budapest

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Delights for the Senses: Dutch and Flemish Still-Life Paintings from Budapest" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Leigh Yawkey Woodson Art Museum in Wausau, Wisconsin, beginning on or about March 4, 1989, to on or about April 16, 1989, at the Rochester Museum and Science Center in Rochester, New York, beginning on or about April 28, 1989, to on or about June 18, 1989, at the Dixon Gallery and Gardens in Memphis, Tennessee, beginning on or about July 8, 1989, to on or about August 20, 1989, at the J. B. Speed Art Museum in Louisville, Kentucky, beginning on or about September 12, 1989, to on or about October 22, 1989, at the Bayly Art Museum, University of Virginia in Charlottesville, Virginia, beginning on or about November 1, 1989, to on or about December 31, 1989, at the Cummer Gallery of Art in Jacksonville, Florida, beginning on or about January 13, 1990, to on or about February 25, 1990, at the Tampa Museum of Art in Tampa, Florida, beginning on or about March 17, 1990, to on or about April 29, 1990, and at the Arkansas Arts Center in Little Rock, Arkansas, beginning on or about May 19, 1990, to on or about July 1, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

Date: January 30, 1989.

[FR Doc. 89–2517 Filed 2–2–89 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7979, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 22
Friday, February 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).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 11:30 a.m., Wednesday, February 8, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Establishment of Office of Inspector General. Closed pursuant to exemption (2).

RECESS: 12:30 p.m.

TIME AND DATE: 1:30 p.m., Wednesday, February 8, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of ~~Previous~~ Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Insurance Fund Report.
4. Semiannual Agenda of Regulations.
5. Appeal of the denial of a Federal Credit Union Charter for The Center for Religious Financial Services FCU, St. Louis, Missouri.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-2673 Filed 2-1-89; 3:08 pm]

BILLING CODE 7535-01-M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday and Friday, February 9 and 10, 1989.

TIME: Thursday 11:00 a.m. to 5:30 p.m., Friday 9:15 a.m. to 1:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street NW., ground floor (conference room).

STATUS: Open session—Thursday 11:00 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (TENTATIVE):

Swearing-in ceremony for Chairman Moore and Members Bark, Kirkpatrick, Thompson, and Weinstein at 10:00 a.m. in the West Conference Room, the United States Supreme Court (Open to the Public).

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-ninth meeting. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: February 1, 1989.

Bernice J. Carney,

Administrative Officer, the United States Institute of Peace.

[FR Doc. 89-2683 Filed 2-1-89; 8:45 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 54, No. 22
Friday, February 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita, AR

Correction

In the issue of Friday, November 25, 1988, on page 47791, in the correction to FR Doc. 88-25405, the eighth item was inaccurately printed and should have appeared as follows:

* * * * *

8. On page 5612, in the second column, T1S, R23W, Section 30 should read: Pt. S½SW¼ above 610', Pt. SW¼SE¼ above 610'.

Editorial Note: The legal land description for the transfer of administrative jurisdiction was originally published February 25, 1988, at 53 FR 5603. Corrections were subsequently published at 53 FR 44214, November 2, 1988, 53 FR 45854, November 14, 1988 and 53 FR 47791, November 25, 1988.

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 31, 145, and 147

Leverage Transactions

Correction

In proposed rule document 89-1294 beginning on page 3476 in the issue of Tuesday, January 24, 1989, make the following corrections:

1. On page 3479, in the third column, in footnote 9, in the fourth line from the bottom, after "amendments", insert "to Form 2-FR are not reproduced here. Anyone interested ".

2. On page 3480, in the first column, in the last paragraph, in the third line, "(1)" should read "(m)". In the fifth line, "31.11(1)" should read "31.11(m)". In the 11th line, "31.11(1)" should read "31.11(m)".

§ 31.11 [Corrected]

3. On page 3487, in the second column, in § 31.11(m)(2), in the fifth line, "(n)" should read "(m)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 343, and 369

[Docket No. 77N-0094]

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 88-26157 beginning on page 46204 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46227, in the second column, in the third complete paragraph, in the eighth line, "§ 343.50(c)(1)(v)(8)" should read "§ 343.50(c)(1)(v)(B); and in the ninth line, "(2)(v)(8)" should read "(2)(v)(B)".

2. On page 46243, in the 2nd column, under *M. Comments on Salsalate*, in the 3rd paragraph, in the 17th line, "if" should read "in".

§ 343.50 [Corrected]

3. On page 46257, in the second column, in § 343.50(d)(1), in the footnote to the table, in the second line, "four" should read "five".

4. On the same page, in the 3rd column, in § 343.50(d)(6), in the 12th line, "65.5 milligrams" should read "565.5 milligrams".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0362]

Alcon Laboratories, Inc.; Premarket Approval of Models C118, C119, C138, and C139 Posterior Chamber Intraocular Lenses

Correction

In notice document 88-27542 appearing on page 48311 in the issue of Wednesday, November 30, 1988, make the following correction:

In the 3rd column, under **Opportunity for Administrative Review**, in the 1st paragraph, in the 27th line, "published" should read "publish".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0346]

Corometrics Medical Systems, Inc.; Premarket Approval of Corometrics® Model 146 Fetal Acoustic Stimulator

Correction

In notice document 88-27541 beginning on page 48312 in the issue of Wednesday, November 30, 1988, the heading was inaccurate and should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0363]

Siemens Medical Systems Inc.; Premarket Approval of the Siemens LITHOSTAR Lithotripter

Correction

In notice document 88-27543 beginning on page 48313 in the issue of Wednesday, November 30, 1988, make the following correction:

On page 48313, in the third column, under **Opportunity for Administrative Review**, in the second and third lines, "(21 U.S.C. 360(d)(3))" should read "(21 U.S.C. 360e(d)(3))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0353]

IOLAB® Intraocular; Premarket Approval of UVBLOC™ Plus Models U102D, U102E, U103B, U103G, U103N, U103Q, U106D, U106E, U106G, U106J, U106M, U106V, U107B, U107D, U107E, U107G, U107P, U107Q, U107W, U108B, U108D, U152D, U156E, U156H, U157E, U157G, U157R, U177B, U194D, U196D, U196E, U703G, U706C, U706D, U706F, U706G, U706J, U706M, U706S, U707D, U707E, U707G, U708G, U709G, U756B, U756E, U757B, U776Q, U777B, U796E, and U796N, Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses

Correction

In notice document 88-27544 beginning on page 48312 in the issue of Wednesday, November 30, 1988, make the following correction:

On page 48313, in the first column, under **Opportunity for Administrative Review**, in the ninth line, "to" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Areas Unsuitable for Mining; Areas Designated by Act of Congress; Applicability of the Prohibitions of the Surface Mining Act to the Surface Impacts of Underground Coal Mining; Public Hearings

Correction

In proposed rule document 89-2181 beginning on page 4837 in the issue of Tuesday, January 31, 1989, make the following correction:

On page 4837, in the third column, in the **ADDRESSES**, in the fourth location, in the second line, "1915 Constitution Avenue" should read "1951 Constitution Avenue".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T. D. 8238]

Corporate Separations; Income Taxes

Correction

In rule document 89-118 beginning on page 283 in the issue of Thursday, January 5, 1989, make the following corrections:

§ 1.355-2 [Corrected]

1. On page 291, in the third column, in § 1.355-2(c)(2), Example (3), in the fourth and fifth lines, remove the words, "of A in X is less than the minimum equity interest " and transfer them to Example (4), in the 15th line after the word "interest".

2. On the same page and in the same column, in paragraph (d)(1) in the 14th line, "of" should read "or".

3. On page 293, in the third column, in § 1.355-2(d)(5)(iv), in the eighth line, "proceding" should read "preceding".

14. On page 296, in the third column, in the file line at the end of the document, "FR Doc. 89-119" should read "FR Doc. 89-118".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-111-86]

Income Tax; Taxable Years Beginning After December 31, 1986; Changes With Respect to Prizes and Awards and Employee Achievement Awards

Correction

In proposed rule document 89-368 beginning on page 627 in the issue of Monday, January 9, 1989, make the following correction:

§ 1.274-8 [Corrected]

On page 631, in the third column, in § 1.274-8(c)(5), in the tenth line, "section 414(g)" should read "section 414(q)".

BILLING CODE 1505-01-D

federal register

Friday
February 3, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Restriction of Instrument Approaches and Certain Visual Flight Rules Operations in High Pressure Weather Conditions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25793; Special Federal Aviation Regulation (SFAR) No. 54]

Temporary Restriction of Instrument Approaches and Certain Visual Flight Rules Operations in High Pressure Weather Conditions

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action authorizes the issuance of temporary flight restrictions to prohibit certain operations in Alaska and northern border states when accurate altitude information is not available. On January 31, 1989, barometric readings of pressure higher than 31.00 inches of mercury (Hg.) were recorded in various locations in Alaska. Barometric pressure at this level exceeds the capability of standard aircraft pressure altimeters and prevents the indication of accurate altitude information to the pilot. This special regulation authorizes restrictions on certain instrument approaches and night Visual Flight Rules (VFR) operations while the extreme weather conditions remain in existence. This action is necessary to ensure flight safety during certain operations for which accurate altitude information is critical.

DATES: Effective date: February 1, 1989. Expiration date: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel C. Beaudette, Deputy Director, Flight Standards Service, AFS–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–8237.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document 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 number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

On January 31, 1989, weather observations in the State of Alaska recorded extremely high, record-breaking readings of barometic pressure. This condition continued on February 1 and is forecast to continue for at least several more days. The condition may also extend to northern portions of the contiguous United States.

Aircraft altimeters indicate aircraft altitude based on a reading of the air pressure surrounding the aircraft. Altimeters incorporate an adjustment for environmental barometric pressure to permit the pilot to manually set the correct pressure reading in the instrument. If the pressure setting is incorrect, the altitude readout will be incorrect. Because barometric readings of 31.00 Hg. or higher almost never occur, standard altimeters do not permit setting of barometric pressures above that level and are not calibrated to indicate accurate aircraft altitude above 31.00 Hg. As a result, U.S.-manufactured altimeters cannot be set to provide accurate altitude readouts to the pilot in conditions such as those that currently exist in Alaska.

The FAA Airman's Information Manual, Paragraph 533, provides a procedure for issuance of altimeter settings when the pressure is above 31.00 inches Hg. However, this procedure is intended for slight barometric variations and not to resolve the severe, widespread, and continuing situation now being experienced in Alaska.

It is theoretically possible to estimate the error in altitude for pressures above 31.00 Hg., by adding 100 feet in aircraft altitude for each .10 inches Hg. However, the extreme cold associated with high barometric pressure produces an effect opposite to the high pressure effect. Therefore, a pilot who corrects for the pressure difference above 31.00 Hg. but not for the temperature effect may unknowingly operate the aircraft at a lower altitude than intended, creating, a highly dangerous situation.

Accurate altitude information is essential for normal flight operations and critical to certain phases of flight. Without an accurate altitude reading, a pilot cannot safely execute an instrument approach in instrument weather conditions or execute a VFR approach to an airport at night.

Temporary Restrictions on IFR and VFR Operations

On the basis of the above, I find that these weather conditions are an emergency condition requiring immediate action by the agency in order to maintain safety of flight in Alaska and other areas. It is necessary for the FAA to issue temporary restrictions on certain IFR approaches and night VFR operations while the extreme weather conditions exist.

The specific restrictions authorized by this rule will be issued in a Notice to Airmen (NOTAM) by each affected FAA region. These restrictions may include, but are not limited to, prohibitions of the following when the barometric pressure exceeds or is forecast to exceed 31.00 Hg.:

(1) Initiation of standard instrument approach procedures in IFR weather conditions;

(2) Initiating an IFR flight to an airport;

(3) Making a VFR approach to an airport during night hours;

(4) Special VFR operations in a control zone.

(5) Dispatching an air carrier flight when no alternate with acceptable conditions is available.

A preliminary NOTAM was issued on January 31 to provide the quickest response possible to the developing weather situation. A NOTAM issued under this rule on or after February 1 will incorporate a reference to this Special Federal Aviation Regulation.

The Manager, Regional Flight Standards Division, is authorized to waive any restriction issued under this special rule in order to permit emergency supply or medical services to isolated communities, where the operation can be conducted with an acceptable level of safety.

Effective Date of Final Rule

Because the emergency weather conditions in the State of Alaska are currently in effect and the potential for similar conditions exists in northern portions of the contiguous United States, immediate action is required to maintain safety of flight until the emergency situation abates. For this reason, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective immediately upon issuance.

The FAA has determined that this action is not a "major rule" under Executive Order 12291 and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The immediate nature of the action required does not permit that prior completion of a full regulatory evaluation. Because the action is a nonsignificant rulemaking and in effect for only a brief period, a

subsequent regulatory evaluation will not be performed.

Federalism Determination

The amendment set forth herein would 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 regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Visual flight rules, Instrument flight rules, Special Visual flight rules (VFR).

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by P.L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; P.L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 54 to read as follows:

Special Federal Aviation Regulation No. 54

Temporary Restriction of Instrument Approaches and Certain Visual Flight Rules Operations in High Pressure Weather Conditions

1. *Applicability.* This rule applies in states within the Alaskan, Northwest Mountain, Great Lakes, Eastern, and New England Regions.

2. *Special flight restrictions.* No person may operate an aircraft or initiate a flight to an airport in a state contrary to the requirements and terms of any Notice to Airmen issued under this special rule by the Manager, Flight Standards Division of the FAA region within which that state is located.

3. *Waivers.* The Manager, Flight Standards Division, is authorized to waive any restriction issued under this special rule in order to permit emergency supply or medical services to isolated communities, where the operation can be conducted with an acceptable level of safety.

4. *Expiration.* This special rule expires March 31, 1989.

Issued in Washington, DC on February 1, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89–2751 Filed 2–2–89; 8:45 am]

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